

## **United States Court of Appeals for the District of Columbia Hears Oral Arguments on the Aircraft Noise Litigation from the DC Fair Skies Coalition**

### **Ken Buckley**

Since spring 2015, the Palisades and other communities near the Potomac are subjected to excessive aircraft noise due to changes made by the FAA to the northern flight path from Ronald Reagan National Airport. Prior to the flight path changes enacted by the FAA, the historic northern departure flight path, NATIONAL 328, took planes on a straight line flight path over the Pentagon, Arlington National Cemetery, and commercial Arlington before intersecting the river above the Georgetown Reservoir. The new flight path is based on the FAA's Next Generation Airport System project (NextGen) which uses GPS-based guidance. NextGen has moved the northern flight path approximately one-half mile east. The change has resulted in increased aircraft noise affecting residents from Foggy Bottom to the Palisades and upriver. As a result of residents' growing frustration with elevated noise levels, the Citizens Association of Georgetown (CAG) and other DC communities (Palisades, Hillandale, Burleith, Foxhall Village, Foggy Bottom, Colony Hill, and Woodland Normanstone) near the Potomac River, joined by Georgetown University, challenged the legality of the new northern flight path. The communities also formed the DC Fair Skies Coalition to pursue other opportunities to mitigate aircraft noise.

The Coalition had hoped to come to a settlement with the FAA via mediation but this effort unfortunately failed. In January 2017, the Coalition filed its Opening Brief with the US Court of Appeals for DC. On January 11, 2018, Mr. Matthew Adams from Dentons LLP presented oral arguments pertaining to the Coalition's lawsuit before the Court. The key points of the lawsuit are that the FAA improperly instituted the new flight patterns without the required environmental review of noise impacts and did so without any notice to the impacted DC communities or elected representatives. Mr. Adams was successful this past August in obtaining a ruling from the same court (but not the same panel of judges) in favor of the city of Phoenix's lawsuit to overturn NextGen flight changes. The Court agreed with the city that the action taken by the FAA to change longstanding flight routes in and out of Phoenix Sky Harbor International Airport was arbitrary and capricious. The decision vacated the new NextGen routes that the FAA had established over Phoenix historic neighborhoods and parks without conducting an environmental review. At the January oral briefing, I thought that Mr. Adams did a terrific job of presenting our arguments and fielding some tough legal and factual issues. My sense is that the Court seemed sympathetic to our case. However the case does raise some issues never precisely dealt with in the Phoenix case and the Court seemed concerned that they would need to break new ground to rule in our favor. The Court usually takes several months to craft an opinion that the panel finds acceptable. The audio transcript of the hearing is available on the PCA website.

### **Action Taken by Maryland**

The Capital Gazette reported on September 12 that Maryland Governor Larry Hogan directed his Attorney General to sue the FAA and Administrator Michael Huerta, over the implementation of NextGen at BWI and Reagan National Airports. Governor Hogan noted that "We have heard from countless Marylanders, including many community leaders and elected officials, about this continuing problem." Hogan wrote. "This program has made many Maryland families miserable in their own homes with louder and more frequent flights which now rattle

windows and doors.” The DC Metroplex BWI Community Roundtable, a group of community representatives established by the Maryland Aviation Administration, noted that the recent Phoenix suit could serve as a model for Maryland’s litigation.

### **DOEE Briefing on the DC Aircraft Noise Study**

In early 2017, DOEE engaged Freytag and Associates, LLC to conduct an environmental study of aircraft noise resulting from the NextGen routing changes at Reagan National Airport. Last September, DOEE provided a public briefing by Freytag on its study. The study concludes that implementing NextGen has increased noise levels, especially from aircraft departures. The report forwards a number of recommendations that could reduce noise, such as moving the flight paths further west over the Potomac, requiring more southern departures/ landings, and reinstating the 10pm-7am restriction on flights.

### **Marcio Duffles Interviewed on Kojo Nnamdi Radio Show**

Marcio represents Ward 3 on the Washington Metropolitan Airports Authority’s Technical Group. The show was broadcast on January 23 and audio is available as a podcast on iTunes - **“Flying High in the Unfriendly Skies”**

**Reminder:** If you are bothered by aircraft noise this is the time and place to do something about it!

1. Residents should continue to use the FAA’s web application (<http://webtrak5.bksv.com/dca>) to identify aircraft causing excessive noise and file complaints with the FAA. These complaints matter!
2. Litigation is costly and the Fair Skies Coalition’s efforts are totally funded by contributions from residents and citizen associations. No funding is currently received from the DC government. Please consider donating to the Fair Skies Coalition’s Aircraft Noise Fund at [www.dcfairskies.org /donate](http://www.dcfairskies.org/donate).