

EXHIBIT 6 - continued

Court Ordered Injunction of Town's "Free Air Law"

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business may charge a reasonable fee when the service is provided using a coin-operated or credit card device-operated air machine" (*Memorandum, A08280*).

The justification for the legislation as stated in that Memorandum reads as follows in pertinent part:

Section 396-x of the General Business Law . . . mandate[s] that any motor fuel dealer must provide on the premises for use in motor vehicles a functioning motor driven air compressor capable of inflating automobile tires for use by customers during hours in which such station is open for business. In order to comply with the law, *most service stations use coin-operated or credit card device-operated air machines*. In this way, stations assure that these machines are maintained in good working condition and are repaired in a timely manner. This bill clarifies that a reasonable fee may be charged by service stations for tire inflation service that are provided using a coin-operated or credit card device-operated air machine

(emphasis added) (*Memorandum, A08280*).

In contrast, the earlier Assembly bill introduced on January 26, 2017 (*A03058*), and which is cited by defendants, contained language that the dealers must make the air "available at no cost to customers," and that there also be "a gauge for measuring air pressure, and water, for use in servicing any motor vehicle," almost identical to the language contained in the Town's amendment to Section 336.G(3).

Notably, the "no cost" and gauge requirement language contained in the January 26, 2017 Assembly bill was stricken from the two later versions of the bills introduced in the Assembly and Senate in June 2017. The fact that the more recent bills introduced by the Assembly and Senate delete the near-identical language to that contained in the amendment enacted by the Town is significant to this Court, in that it signals the State's recent intent to "occupy the field" (*Willow Woods Manufactured Homeowner's Association, Inc. v. R & R Mobile Home Park, Inc.*, 81 AD3d 930, 933 [2d Dept 2011]).

While the Court is cognizant of the fact that the bills have not been signed into law, the recognition by the Legislature that "most service stations use coin-operated or credit card device-operated air machines" (*Memorandum, A08280*) establishes to this Court's satisfaction that plaintiffs have demonstrated a likelihood of success on the merits of their third cause of action. For the same reason, the Court finds that the balance of equities favors plaintiffs.

The Court further finds that the submitted minutes of the March 29, 2016 Town meeting clearly and convincingly establishes the danger of irreparable economic injury, as recounted by the various gasoline station owners who spoke at the meeting, and who also re-emphasized that the machines are labeled to state that free air is available, and