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February 2, 2020

The Honorable Glenn Wakai
Chair, Senate Committee on Energy,
Economic Development and Tourism
Hawai`i State Capitol, Room # 407
415 S. Beretania Street
Honolulu, HI 96813

The Honorable Lorraine R. Inouye
Chair, Senate Committee on Transportation
Hawai`i State Capitol, Room # 210
415 S. Beretania Street
Honolulu, HI 96813

Dear Senators Wakai, Inouye and members of the EET and TRS committees:

Thank you for the opportunity to comment regarding SB 2319, relating to tourism. I write on behalf of the Aircraft Owners and Pilots Association (AOPA), the world's largest aviation organization, representing the general aviation interests of over 1,000 members in Hawai`i. General aviation encompasses all civilian flying except scheduled passenger airline service and military aviation. AOPA strongly opposes SB 2319, legislation that would prohibit tour vehicle operators and tour aircraft operations from conducting commercial activity on Sunday in any county of the State and establishes penalties for violations.

Federal Preemption

Regulation of the National Airspace System (NAS) is the sole responsibility of the Federal Aviation Administration (FAA) which is defined by United States Code 49 § 40103 - Sovereignty and use of airspace. As such, the FAA holds the regulatory authority to control the use of navigable airspace and regulate all operations in that airspace in the interest of the safety and efficiency of the public. Allowing the FAA to uphold this mandate is crucial to the effective and free use of airspace across the country and cannot be preempted by state or local legislation. Simply put, the State does not have the authority to enact SB 2319 as written and the bill is in clear violation of the Supremacy Clause, Article VI of the U.S. Constitution.

This topic has been debated extensively and as such there is plenty of legal precedent. The United States Supreme Court has previously considered the issue of federal preemption of state and local regulation and control of aircraft based on noise issues. After evaluating the Federal Aviation Act of 1958 and the Noise Control Act of 1972, the Supreme Court found that Congress unequivocally intended that the federal government shall have "full control over aircraft noise, pre-empting state and local control," and that this congressional intent left "no room for local

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curfews or other local controls”. The Court also determined that the federal government had preempted the field of “airspace management”. (*City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 1973)

Following the decision of the U.S. Supreme Court in *Burbank*, the U.S. District Court of Appeals for the 9th Circuit concluded that a state’s attempt to direct when planes may or may not fly in the San Diego area impinged on airspace management; and its attempt to restrict the permissible flight times of planes solely on the basis of their noise emissions impinged on federal control of aircraft noise at its source. The Court concluded that the state had attempted to act in an area preempted by the federal government and its actions were void. (*San Diego Unified Port Dist. v. Gianturco*, 651 F.2d 1306, 1981)

The proposed restrictions by the State in SB2319 are much broader than the restrictions that were struck down in *Burbank* and *Gianturco* and we urge the State to find more appropriate avenues to address their concerns that do not violate the law.

Overtourism

While it is clear SB 2319 is a violation of Federal Preemption, it also makes little sense. The State of Hawai`i has a robust aviation history which has enabled the State’s tourism industry to flourish. According to State government data, in 2017 alone there were over 9.4 million visitors to the Hawaiian Islands with expenditures of over \$16 billion. Tourism remains one of Hawaii's largest industries and aviation is a critical part of that.

The aviation industry in the State produces over 4,100 jobs and \$742 million in economic output. AOPA understands the concerns regarding “overtourism” and respects the intent of the “aloha spirit of the state’s residents” but it is critical to understand the impact aviation and aviation related business has in the state’s GDP, making up nearly 19 percent. Aerial tours alone contribute as much as \$150 million a year to the State’s economy. SB 2319 threatens to directly impact the State’s most critical revenue streams while providing no real benefit.

Hawaii Air Tour Task Force

AOPA acknowledges the concerns Senator Thielen highlights in SB 2319 but suggests that these topics be properly evaluated within the newly formed Air Tour Task Force. This group was developed to “address safety and noise issues related to rotor and fixed-wing aerial tours in the state of Hawaii. Community involvement, public outreach, and transparency will be prioritized in all recommendations from the task force to industry and regulators”. This group is made up of subject matter experts and technical advisors from industry and individuals that represent the interest of the State and the Federal Government. AOPA asks that the state look to the Task Force to evaluate next steps regarding noise and safety concerns that have come up in SB 2319.

Summary

We understand the intent of SB 2319, but it is clear the bill as written violates the United States Constitution, specifically the Supremacy Clause of Article VI. The FAA maintains regulatory authority of airspace and access to airspace. Attempting to enact laws that circumvent the FAA’s authority is quite simply, unlawful. There are several avenues available to address the concerns outlined in SB 2319 but allowing this bill to move forward in the legislative process is not one of

them. AOPA looks forward to the State finding a positive, lawful solution which does not include SB 2319 continuing through the legislature as written.

If you have questions or require additional information, please contact me directly at 301-695-2228 or Melissa.McCaffrey@aopa.org

Respectfully,

A handwritten signature in black ink that reads "Melissa McCaffrey". The signature is written in a cursive, flowing style.

Melissa McCaffrey
Government Affairs, Western Pacific Region
Aircraft Owners and Pilots Association, AOPA