June 11, 2025

Via Electronic Mail

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Margaret Hurley
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Re: Chatham May 10, 2025 Town Meeting, Warrant Article No. 59 – Unlawfully Prohibiting Aircraft with a Wingspan of Over 49 ft. from Operating at Chatham Municipal Airport

Dear Mr. Rhoades and Ms. Hurley:

The Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the General Aviation Manufacturers Association (GAMA), the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA) and Vertical Aviation International (VAI) are concerned about **Warrant Article no. 59** as adopted by the town meeting of **Chatham, Massachusetts** on May 10, 2025. We interpret this article and the bylaw that it would implement to be preempted by both federal and Massachusetts law and **urge you to use your authority to disapprove it**.

Our national associations represent pilots and aircraft owners, aircraft manufacturers, fixed base operators, the experimental aircraft community, charter and fractional operators, companies and individuals who use their aircraft in support of their business or are otherwise involved in the business aviation sector, as well as those with a focus on vertical aviation. Collectively, we represent the majority of the users and stakeholders operating at Chatham Municipal Airport (CQX). We are strongly interested in the Airport's safety and future accessibility and viability, as well as the role it plays in the system of airports across the Commonwealth and the United States.

As background, the warrant article at issue is subject to review by both MassDOT and the Municipal Law Unit pursuant to Mass. Gen. Laws c. 90, § 39B, and c. 40, § 32, respectively. The article would by bylaw prohibit operations at CQX, except in emergencies, by aircraft exceeding the parameters of Aircraft Design Group I, as defined by the Federal Aviation Administration (FAA) – generally, aircraft with a wingspan of more than 49 feet. However, larger aircraft can and routinely do operate safely at CQX. Moreover, federal statutes, grant agreements between the Town and the FAA, and grant agreements between the Town and MassDOT all prohibit the Town from limiting the accessibility of its airport in such a manner. Accordingly, the bylaw should be disapproved.

We understand that Chatham's Select Board, Municipal Airport Commission, and other leadership concur that the warrant article should be rejected. Prior to the town meeting, the Select Board and Finance Committee both unanimously voted not to recommend its adoption. Additionally, the Select Board and

Airport Commission procured advice from both aviation counsel (Anderson & Kreiger, LLP)[1] and municipal counsel (Mead, Talerman & Costa, LLC),[2] which both concluded that the proposed bylaw would be illegal.

Our associations concur with those legal opinions, although we understand that there are further reasons that Warrant Article no. 59 should be disallowed. In particular, we emphasize that:

- The bylaw is preempted by federal law. The FAA has the exclusive authority to regulate both the operation and safety of aircraft. To the extent the bylaw would restrict operations, and is nominally premised on safety, it impermissibly intrudes into the federal sphere. *See, e.g.,* 49 U.S.C. § 40103(a) ("[t]he United States Government has exclusive sovereignty of airspace in the United States"); *Price v. Charter Township of Fenton*, 909 F. Supp 498 (E.D.Mich. 1995).

- Likewise, to the extent that the bylaw also appears to have been motivated by the impacts of aircraft noise, the FAA again has the exclusive regulatory authority. Notably, for jet-powered aircraft, the Town was required to perform a detailed study and obtain FAA approval of any noise or other access restriction, pursuant to the Airport Noise and Capacity Act of 1990 (49 U.S.C. § 47524; "ANCA"). The warrant article does not even mention ANCA, and is facially non-compliant.

- The Airline Deregulation Act (49 U.S.C. § 41713(b); "ADA") also prohibits Chatham from restricting – directly or indirectly – the prices, routes, or services of air carriers, which includes Part 135 operators at CQX. *See, e.g., In re Changes in Physical Structures and Use at Burlington International Airport,* 117 A.3d 457, n.10 (Vt. 2015) ("[t]he federal government has specifically preempted the states from regulating the type of aircraft that are authorized to use an airport").

- Chatham routinely has accepted FAA Airport Improvement Program ("AIP") grants to fund improvements at CQX, which are accompanied by a series of "assurances." AIP assurance #22 prohibits unjust economic discrimination, which in practice means that a sponsor must allow all categories of aeronautical activities that can safely be conducted its airport (with safety, as discussed above, being a matter solely for the FAA). *See, e.g., City of Santa Monica v. FAA*, 631 F.3d 550 (D.C.Cir. 2011).[3]

- Moreover, as a recipient of AIP funds and other federal assistance, Chatham is prohibited from granting any "exclusive rights" at CQX, pursuant to 49 U.S.C. § 40103(e). FAA has clarified that restrictions which enable certain operations at an airport, but refuse others, impermissibly grant a constructive exclusive right to the former. Because the bylaw would confer a constructive exclusive right at the airport to operations by ADG I aircraft,[4] it cannot be reconciled with federal law.

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[1] Memorandum to Mike Schell, Select Board, and Huntley Harrison, Airport Commission, *Re: Response to Memorandum of Louis J. Muggeo* (February 6, 2025) [see Attachment 1].

[2] Memorandum to Jill Goldsmith, Town Manager, *Re: Citizens Petition – Airport Bylaw* (March 3, 2025) [see Attachment 2].

[3] Chatham also has accepted MassDOT grants which include a similar prohibition on unjust economic discrimination.

[4] Additionally, should the Town propose to waive its applicability to jets (based on ANCA) and/or commercial operations (based on the ADA) in an effort to salvage the bylaw, it would confer impermissible exclusive rights on those operations, and thus still be inconsistent with federal law.

We understand that MassDOT and the Municipal Law Unit have previously considered similar issues. For example, on May 9, 2023, the town meeting of Rehoboth adopted a warrant article (no. 27) which would have required a local permit for helicopter operations. In a decision in case #10976 dated November 16, 2023, the Municipal Law Unit concluded that the bylaw conflicted with the authority of MassDOT under state law – also noting that it potentially conflicted with federal law, given the federal government's exclusive sovereignty over air commerce.[5]

In sum, because **Chatham's Warrant Article no. 59 cannot be reconciled with federal law or obligations that the Town has assumed pursuant to federal and state grants, it must be disapproved**. If any additional factual or legal information would be helpful as MassDOT and the Municipal Law Unit review the proposed bylaw, we certainly can be available to assist.

Thank you for your time and consideration.

Sincerely,

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CC:

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[5] Although not specifically applicable to a warrant article, MassDOT and airport commissions are obligated by Mass. Gen. Laws c. 90, § 39 and § 51J to ensure that their rules and regulations "shall not be inconsistent with, or contrary to, any act of the Congress of the United States relating to aeronautics or any regulations promulgated or standards established pursuant thereto." The Municipal Law Unit also has generally advised that its review of bylaws includes their consistency with federal law. *See, e.g., Wakefield Fall Annual Town Meeting of November 15, 2012 – Case #6601 – Warrant Article #11 (Zoning)* (March 13, 2013).