June 23, 2022

Hon. Kathleen C. Hochul
NYS State Capital Bldg.
Albany, NY 12224

RE: Bill 7493-A

The Honorable Kathy Hochul, Governor of New York:

As representatives of the aviation community, including thousands of general aviation and commercial helicopter pilots, we are writing to express our grave concerns with Bill 7493-A (colloquially known as the "Stop the Chop Act," and referred hereinafter as "the Act") which was passed the New York State Assembly on June 3, 2022 and is expected to be submitted for your consideration.

The Act, ostensibly passed to address issues residents of New York City experience related to the noise of helicopters, is written in such a way that it could have unintended and far-reaching consequences. The Act does not represent sound policy, and, in fact, may violate federal law. Therefore, we urge you to veto the Act. Below we provide a brief overview of several of the larger issues with the Act.

First, the Act appears to run afoul of well-settled federal law related to noise and access restrictions at air navigation facilities, which include heliports. As written, the Act operates as an access restriction at the West 30th Street heliport. But that is prohibited by the federal law governing the implementation of noise and access restrictions, the Airport Noise and Capacity Act of 1990 (49 U.S.C. § 47521, et seq.) ("ANCA"). Under ANCA, access restrictions cannot be implemented without first complying with the FAA regulation governing their implementation, 14 C.F.R. Part 161. And ANCA's procedural requirements unambiguously apply to all public airport proprietors. *See* Friends of the East Hampton Airport v. Town of East Hampton, 841 F.3d 133, 149 (2d Cir. 2016). Given the complete absence of any effort to comply with ANCA, the State of New York and the Hudson River Park Trust (as the owners of the heliport) as well as the New York City Economic Development Corporation (as the manager of the heliport), can expect a lengthy legal fight if the Act is adopted.

Second, Section 11-108 of the Act apparently would empower the New York Attorney General to enjoin helicopter operators from violating the Act – apparently by dictating their permissible flight operations over New York City. This is entirely preempted by FAA's exclusive authority to regulate airspace. *See, e.g.*, *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F.Supp. 678, 692 (N.D.N.Y. 1989). Likewise, many helicopter operations over New York City are conducted by air carriers, as that term is defined in

Title 49 of the U.S. Code, and federal law specifically prohibits states and municipalities from regulating the routes or services of air carriers (*see, e.g.,* 49 U.S.C. § 41713).

Third, additional language in the Act is overly broad. For example, the Act purports to create a private right of action for "any person" who has suffered from an "unreasonable level" of noise attributed to the operation of helicopters. The Act allows for a lawsuit against "any person" who has "caused or contributed" to the use of helicopters at "unreasonable levels."

As a preliminary matter, the Act does include several exceptions to this private right of action, but the scope of those exceptions is not clear. For example, the exception to be codified at Section 11-108(4)(d) (which would also amend the Hudson River Park Act) seems to exclude from liability operations on "routes" that have been approved by FAA. However, helicopter operations over New York City are not generally proscribed to certain routes as fixed-wing aircraft would be, and the bill does not define what an FAA-approved route would be. Therefore, this bill could be read to make all helicopter operations susceptible to liability.

Further, the private right of action is not limited to pursuing violations against operators of aircraft but also enables litigation against anyone who "contributed" to the noise. This could be read to cover anyone, up to and including heliport operators, fixed base operators at heliports, aircraft manufacturers, and mechanics, as well as New York State, the City of New York, and other public entities. The effort and expense to defend the frivolous claims that this Act could engender would be astronomical, and some of the affected entities would be small businesses or even individuals.

Additionally, there is no definition as to what the threshold for "unreasonable levels" of noise would be, which is the determining factor for whether a person could pursue litigation. The FAA sets the noise level for aircraft. *See Advisory Circular* 36-1H (Nov. 15, 2001). Could litigants pursue violations for operators operating within the noise levels set forth in that guidance? Would litigants be able to assert violations if the noise level is unreasonable to them, but the operation otherwise is operated in accordance with all FAA safety and other expert regulations? These questions are important, and determining the answers could lead to costly and lengthy litigation that, all other issues aside, would likely not provide any benefit to those who claim to be affected by noise levels of rotorcraft.

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The aviation and helicopter community in New York City strives to be good stewards of the environment and good neighbors to the citizens who live and work in New York. Helicopter operations provide a valuable economic engine to the City. While they appreciate the issues that the Act is intended to address, the Act as written presents a host of legal and logistical issues that are simply unworkable and illegal. Implementing the Act would likely result in costly litigation, and it would not generate the relief that the

persons sponsoring the Act are seeking. But we stand ready to work with the City and the State government to implement workable solutions to aviation noise issues.

Sincerely,

Eastern Region Helicopter Council
Helicopter Association International
New York Aviation Management Association
National Business Aviation Association
National Air Transportation Association
General Aviation Manufacturers Association