

February 18, 2016
Senator Floyd Prozanski
Chair, Senate Committee on Judiciary
Oregon State Legislature
900 Court St. NE, S-415
Salem, OR 97301

Re: **Unmanned Aircraft Systems– Proposed House Bill 4066 (HB4066)**

Dear Chairman Prozanski:

We are writing today in opposition to enactment of HB4066 which proposes to (i) effectively create a patchwork of unmanned aircraft system (“UAS”) no-fly zones throughout Oregon. Although well-intended, the proposed legislation should be rejected because it would thwart a growing and innovative industry and is preempted by federal law. Oregon has been recognized as an innovation leader¹ and should avoid the enactment of legislation that would deter future innovation and investment in Oregon by the UAS industry.²

The Consumer Technology Association (CTA, formerly the Consumer Electronics Association) represents more than 2,200 companies, 80 percent of which are small businesses and startups. As a champion of innovation, CTA has been a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA is involved in the Federal Aviation Administration’s (“FAA”) current rulemaking on the operation and certification of small UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign which is educating prospective drone users about the safe and responsible operation of UAS.

The explosive growth of the UAS industry has prompted legislators in many states to propose legislation regulating the industry. Before considering new legislation, however, legislators should consider whether (i) the conduct at issue may already be addressed by existing state laws and (ii) the conduct is subject to exclusive federal regulation. Such an analysis here demonstrates that HB4066, as well as O.R.S. 837.380, authorize the creation of no-fly zones which are subject to exclusive federal jurisdiction.

¹ See Consumer Technology Association, Innovation Scorecard, https://www.cta.tech/CorporateSite/media/Events-Media/InnovationScorecard_PDF_for_WEB.pdf.

² The UAS industry is expected to exceed \$100 million in revenue and Oregon could be a major part of this growth. See New Tech to Drive CE Industry Growth in 2015, Projects CEA’s Midyear Sales and Forecasts Report, <https://www.ce.org/News/News-Releases/Press-Releases/2015-Press-Releases/New-Tech-to-Drive-CE-Industry-Growth-in-2015,-Proj.aspx>.

No-Fly Zones Are Preempted

HB4066 proposes to establish UAS no-fly zones over critical infrastructure (Section 12) and to modify an existing law that empowers private landowners to establish additional no-fly zones over their property (Section 10, modifying O.R.S. 837.380). As discussed below, no-fly zones only may be established by the federal government and state and local laws purporting to establish such zones, such as proposed in HB4066 and set forth in O.R.S. 837.380, are preempted. Accordingly, HB4066 should not be enacted and O.R.S. 837.380 should be repealed or modified to remove the prohibition on UAS operations over private property.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land.”³ As noted by the Supreme Court, this gives Congress the power to preempt state law.⁴ There are three types of preemption: express preemption when Congress specifically preempts a state law;⁵ field preemption when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it” or where a “federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject;”⁶ and conflict preemption when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”⁷ Congress has occupied the field with regard to air navigation. As the Supreme Court has observed:

Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.⁸

Pursuant to this federal regime, the FAA has adopted specific “no-fly zones” for drones and has authorized specific commercial operations subject to limited restrictions. HB4066 proposes to create additional “no-fly zones” within national airspace, and O.R.S. 837.380 effectively authorizes private parties to establish no-fly zones over their real property. This violates the Supremacy Clause and is preempted by federal law. Federal control of the national airspace “is *intensive and exclusive*.”⁹

³ U.S. Const., Art. VI, Cl 2.

⁴ See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

⁵ *Id.*

⁶ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁷ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁸ *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973)(quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (Jackson, concurring)).

⁹ *Burbank*, 411 U.S. at 633-34.

Senator Floyd Prozanski
February 18, 2016
Page 3

The FAA recently issued a Fact Sheet reminding states and localities of this federal regime and noting that state and local regulation of airspace is preempted. Specifically:

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this “patchwork quilt” of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.¹⁰

For the above reasons, CTA urges you not to enact HB4066 as currently written. To minimize potential preemption concerns, Oregon should revise HB4066 and O.R.S. 837.380 to prohibit certain conduct – such as photography or data collection – rather than general flight operations. CTA stands ready to work with the Oregon legislature to craft such language.

Sincerely,



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cc: Members of the Senate Committee on Judiciary

¹⁰ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, FAA Office of the Chief Counsel at 2 (Dec. 17, 2015) (“Fact Sheet”),

http://www.faa.gov/uas/regulations_policies/media/UAS_Fact_Sheet_Final.pdf.