crisis in the future as more Americans need long term care services. This bill is an important first step in our effort to making long term care insurance plans more affordable and accessible.

Mr. SPRATT. Mr. Speaker, few would question the goals of H.R. 4946. Most of us see the need to provide assistance to those burdened by the costs of long-term care. However, once again we are approaching an issue with fiscal impact in a vacuum, without a plan to guide us.

Republicans claim that this bill is consistent with their budget resolution, because the resolution provided for some tax relief. But the House has already adopted tax bills totaling $43.145 billion through fiscal year 2007. The 2003 budget resolution provided for only $27.853 billion over five years. Attached is a table compiled by the House Budget Committee Democratic staff that documents these figures.

There is no room for these tax cuts under the fiscal plan that is supposed to be our guide. Either these tax cuts are not real, and we are passing tax bills that will never become law; or the 2003 House Republican budget is not real, and we are about to tax cut our way even deeper into deficit, and spend even more of the Social Security Trust Fund surplus.

We continue to consider legislation without any coherent Republican budget plan. The Republicans claim that their budget provides tight fiscal management. But then the Republican leadership again and again schedules legislation that violates their own budget.

Mr. Speaker, as we speak, we are sliding deep into deficit. It is time for all of us to sit down together and hammer out a real budget that saves Social Security, pays down the debt, and protects national priorities.

COSTS OF TAX BILLS PASSED BY THE HOUSE THUS FAR

Title	2002–2007	2002–2012	Bill No.	Status
Clergy Housing Clarification Act	−0.007	−0.033	H.R. 4156	Enacted into Law.
Energy Tax Policy Act	22.759	33.521	H.R. 4	Passed the House.
Encouraging Work and Supporting Marriage Act	0.907	0.908	H.R. 4626	Passed the House.
Expansion of Adoption Benefits	0.000	0.401	H.R. 4800	Passed the House.
Holocaust Restitution Tax Fairness Act	0.000	0.003	H.R. 4823	Passed the House.
Marriage Penalty Tax Bill	0.000	42.000	H.R. 4019	Passed the House.
Retirement Savings Security Act	0.000	6.105	H.R. 4931	Passed the House.
Armed Forces Tax Fairness Act	0.069	0.156	H.R. 5063	Passed the House.
Pension Security Act	10.440	24.615	H.R. 3762	Passed the House.
Tax Relief Guarantee Act	8.977	373.712	H.R. 586	Passed the House.
Grand total	43.145	481.388		
Concurrent Resolution on the Budget	27.853	N.A.	H. Con. Res. 353	
Available	−15.292	−481.388		
Improving Access to Long-Term Care Act	1.501	5.487	H.R. 4946	On the Floor.

Mr. SHAYS. Mr. Speaker, I rise in strong support of H.R. 4946, the Improving Access to Long-Term Care Act.

H.R. 4946 phases in tax deductions for individuals who pay 50 percent of their long-term care costs. The deduction can be used for the taxpayer, a spouse or a dependent. The challenge of caring for a loved one over years and, in some cases, decades can literally break families apart and exhaust a lifetime of savings. Many families do not use private long-term care insurance to help protect against financial and emotional strain. I am a strong advocate for making private long-term care more affordable and support providing incentives—including tax deductions—for the purchase of private long-term care insurance.

Under the current system Medicare doesn't pay for long term care and seniors are forced to ''spend down'' their assets to qualify for Medicaid, which provides $33 billion in long term care services each year. This has serious financial repercussions for retirees and taxpayers who pay for long term care assistance through public programs.

As the Baby Boom generation retires, the financial burden will consume more of the public resources. In the coming decade, people over age 65 will represent up to 20 percent or more of the population, and the proportion of the population composed of individuals who are over age 85, who are most likely to be in need of long-term care, may double or triple.

I urge my colleagues to vote for this crucial legislation.

Mr. HAYWORTH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. HAYWORTH) that the House suspend the rules and pass the bill, H.R. 4946, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. HAYWORTH. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4946, the bill just debated.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

Mr. MICA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3479) to expand aviation capacity in the Chicago area, as amended.

The Clerk read as follows:

H.R. 3479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—NATIONAL AVIATION CAPACITY EXPANSION

SEC. 101. SHORT TITLE.

This title may be cited as the ''National Aviation Capacity Expansion Act of 2002''.

SEC. 102. FINDINGS.

Congress finds the following:

(1) O'Hare International Airport consistently ranks as the Nation's first or second busiest airport with nearly 34,000,000 annual passengers enplanements, almost all of whom travel in inter-state or foreign commerce. The Federal Aviation Administration's most recent data, compiled in the Airport Capacity Benchmark Report 2001, projects demand at O'Hare to grow by 18 percent over the next decade. O'Hare handles 72,100,000 passengers annually, compared with 64,600,000 at London Heathrow International Airport, Europe's busiest airport, and 36,700,000 at Kimpo International Airport, Korea's busiest airport, 7,400,000 at Narita International Airport, Japan's busiest airport, 23,700,000 at Kingsford-Smith International Airport, Australia's busiest airport, and 6,200,000 at Ezeiza International Airport, Argentina's busiest airport, as well as South America's busiest airport.

(2) The Airport Capacity Benchmark Report 2001 ranks O'Hare as the third most delayed airport in the United States. Overall, slightly more than 6 percent of all flights at O'Hare are delayed significantly (more than 15 minutes). On good weather days, scheduled traffic is at or above capacity for 3½ hours of the day with about 2 percent of flights at O'Hare delayed significantly. In adverse weather, capacity is lower and scheduled traffic exceeds capacity for 8 hours of the day, with about 12 percent of the flights delayed.

(3) The city of Chicago, Illinois, which owns and operates O'Hare, has been unable to pursue projects to increase the operating capability of O'Hare runways and thereby reduce delays because the city of Chicago and the State of Illinois have been unable for more than 20 years to agree on a plan for runway reconfiguration and development. State law states that such projects at O'Hare require State approval.

(4) On December 5, 2001, the Governor of Illinois and the Mayor of Chicago reached an agreement to allow the city to go forward with a proposed capacity enhancement project for O'Hare which involves redesign of the airport's runway configuration.

(5) In furtherance of such agreement, the city, with approval of the State, applied for and received a master-planning grant from the Federal Aviation Administration for the capacity enhancement project.

(6) The agreement between the city and the State is not binding on future Governors of Illinois.

(7) Future Governors of Illinois could stop the O'Hare capacity enhancement project by refusing to issue a certificate required for such project under the Illinois Aeronautics Act, or by refusing to submit airport improvement grant requests for the project, or by improperly administering the State implementation plan process under the Clean

Air Act (42 U.S.C. 7401 et seq.) to prevent construction and operation of the project.

(8) The city of Chicago is unwilling to continue to go forward with the project without assurance that future Governors of Illinois will not be able to stop the project, thereby endangering the value of the investment of city and Federal resources in the project.

(9) Because of the importance of O'Hare to the national air transportation system and the growing congestion at the airport and because of the expenditure of Federal funds for a master-planning grant for expansion of capacity at O'Hare, it is important to the national air transportation system, interstate commerce, and the efficient expenditure of Federal funds, that the city of Chicago's proposals to the Federal Aviation Administration have an opportunity to be considered for Federal approval and possible funding, that the city's requests for changes to the State implementation plan to allow such projects not be denied arbitrarily, and that, if the Federal Aviation Administration approves the project and funding for a portion of its cost, the city can implement and use the project.

(10) Any application submitted by the city of Chicago for expansion of O'Hare should be evaluated by the Federal Aviation Administration and other Federal agencies under all applicable Federal laws and regulations and should be approved only if the application meets all requirements imposed by such laws and regulations.

(11) As part of the agreement between the city and the State allowing the city to submit an application for improvement of O'Hare, there has been an agreement for the continued operation of Merrill C. Meigs Field by the city, and it has also been agreed that, if the city does not follow the agreement on Meigs Field, Federal airport improvement program funds should be withheld from the city for O'Hare.

(12) To facilitate implementation of the agreement allowing the city to submit an application for O'Hare, it is desirable to require by law that Federal airport improvement program funds for O'Hare be administered to require continued operation of Merrill C. Meigs Field by the city, as proposed in the agreement.

(13) To facilitate implementation of the agreement allowing the city to submit an application for O'Hare, it is desirable to enact into law provisions of the agreement relating to noise and public roadway access. These provisions are not inconsistent with Federal law.

(14) If the Federal Aviation Administration approves an airport layout plan for O'Hare directly related to the agreement reached on December 5, 2001, such approvals will constitute an action of the United States under Federal law and will be an important first step in the process by which the Government could decide that these plans should receive Federal assistance under chapter 471 of title 49, United States Code, relating to airport development.

(15) The agreement between the State of Illinois and the city of Chicago includes agreement that the construction of an airport in Peotone, Illinois, would be proposed by the State to the Federal Aviation Administration. Like the O'Hare expansion proposal, the Peotone proposal should receive full consideration by the Federal Aviation Administration under standard procedures for approving and funding an airport improvement project, including all applicable safety, utility and efficiency, and environmental review.

(16) Gary/Chicago Airport in Gary, Indiana, and the Greater Rockford Airport, Illinois, may alleviate congestion and provide additional capacity in the greater Chicago metropolitan region. Like the O'Hare airport expansion proposal, expansion efforts by Gary/Chicago and Greater Rockford airports should receive full consideration by the Federal Aviation Administration under standard procedures for approving and funding an airport capacity improvement project, including all applicable safety, utility and efficiency, and environmental reviews.

SEC. 103. STATE, CITY, AND FAA AUTHORITY.

(a) PROHIBITION.—In furtherance of the purpose of this Act to achieve significant air transportation benefits for interstate and foreign commerce, if the Federal Aviation Administration makes, or at any time after December 5, 2001 has made, a grant to the city of Chicago, Illinois, with the approval of the State of Illinois for planning or construction of runway improvements at O'Hare International Airport, the State of Illinois, and any instrumentality or political subdivision of the State, are prohibited from exercising authority under sections 38.01, 47, and 48 of the Illinois Aeronautics Act (620 ILCS 5/) to prevent, or have the effect of preventing—

(1) further consideration by the Federal Aviation Administration of an O'Hare airport layout plan directly related to the agreement reached by the State and the city on December 5, 2001, with respect to O'Hare;

(2) construction of projects approved by the Administration in such O'Hare airport layout plan; or

(3) application by the city of Chicago for Federal airport improvement program funding for projects approved by the Administration and shown on such O'Hare airport layout plan.

(b) APPLICATIONS FOR FEDERAL FUNDING.—Notwithstanding any other provision of law, the city of Chicago is authorized to submit directly to the Federal Aviation Administration without the approval of the State of Illinois, applications for Federal airport improvement program funding for planning and construction of a project shown on an O'Hare airport layout plan directly related to the agreement reached on December 5, 2001, and to accept, receive, and disburse such funds without the approval of the State of Illinois.

(c) LIMITATION.—If the Federal Aviation Administration determines that an O'Hare airport layout plan directly related to the agreement reached on December 5, 2001, will not be approved by the Administration, subsections (a) and (b) of this section shall expire and be of no further effect on the date of such determination.

(d) WESTERN PUBLIC ROADWAY ACCESS.—As provided in the December 5, 2001, agreement referred to in subsection (a), the Administrator of the Federal Aviation Administration shall not consider an airport layout plan submitted by the city of Chicago that includes the runway redesign plan, unless the airport layout plan includes public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to such western access. Approval of western public roadway access shall be subject to the condition that the cost of construction be paid for from airport revenues consistent with Administration revenue use requirements.

(e) NOISE MITIGATION.—As provided in the December 5, 2001, agreement referred to in subsection (a), the following apply:

(1) Approval by the Administrator of an airport layout plan that includes the runway redesign plan shall require the city of Chicago to offer acoustical treatment of all single-family houses and schools located within the 65 DNL noise contour for each construction phase of the runway redesign plan, subject to Administration guidelines and specifications of general applicability. The Administrator may not approve the runway redesign plan unless the city provides the Administrator with information sufficient to demonstrate that the acoustical treatment required by this paragraph is feasible.

(2)(A) Approval by the Administrator of an airport layout plan that includes the runway redesign plan shall be subject to the condition that noise impact of aircraft operations at O'Hare in the calendar year immediately following the year in which the first new runway is first used and in each calendar year thereafter will be less than the noise impact in calendar year 2000.

(B) The Administrator shall make the determination described in subparagraph (A)—

(i) using, to the extent practicable, the procedures specified in part 150 of title 14, Code of Federal Regulations;

(ii) using the same method for calendar year 2000 and for each forecast year; and

(iii) by determining noise impact solely in terms of the aggregate number of square miles and the aggregate number of single-family houses and schools exposed to 65 or greater decibels using the DNL metric, including only single-family houses and schools in existence on the last day of calendar year 2000. The Administrator shall make such determination based on information provided by the city of Chicago, which shall be independently verified by the Administrator.

(C) The conditions described in this subsection shall be enforceable exclusively through the submission and approval of a noise compatibility plan under part 150 of title 14, Code of Federal Regulations. The noise compatibility plan submitted by the city of Chicago shall provide for compliance with this subsection. The Administrator shall approve measures sufficient for compliance with this subsection in accordance with procedures under such part 150. The United States shall have no financial responsibility or liability if operations at O'Hare in any year do not satisfy the conditions in this subsection.

(f) REPORT TO CONGRESS.—If the runway redesign plan described in this section has not received all Federal, State, and local permits and approvals necessary to begin construction by December 31, 2004, the Administrator shall submit a status report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 120 days of such date identifying each permit and approval necessary for the project and the status of each such action.

(g) JUDICIAL REVIEW.— An order issued by the Administrator, in whole or in part, under this section shall be deemed to be an order issued under part A of subtitle VII of title 49, United States Code, and shall be reviewed in accordance with the procedure in section 46110 of such title.

(h) DEFINITION.—In this section, the terms ''airport layout plan directly related to the agreement reached on December 5, 2001'' and ''such airport layout plan'' mean a plan that shows—

(1) 6 parallel runways at O'Hare oriented in the east-west direction with the capability for 4 simultaneous independent visual aircraft arrivals in both directions, and all associated taxiways, navigational facilities, and other related facilities; and

(2) closure of existing runways 14L–32R, 14R–32L and 18–36 at O'Hare.

SEC. 104. CLEAN AIR ACT.

(a) IMPLEMENTATION PLAN.—An implementation plan shall be prepared by the State of Illinois under the Clean Air Act (42 U.S.C.

7401 et seq.) in accordance with the State's customary practices for accounting for and regulating emissions associated with activity at commercial service airports. The State shall not deviate from its customary practices under the Clean Air Act for the purpose of interfering with the construction of a runway pursuant to the redesign plan or the south surburban airport. At the request of the Administrator of the Federal Aviation Administration, the Administrator of the Environmental Protection Agency shall, in consultation with the Administrator of the Federal Aviation Administration, determine that the foregoing condition has been satisfied before approving an implementation plan. Nothing in this section shall be construed to affect the obligations of the State under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)).

(b) LIMITATION ON APPROVAL.—The Administrator of the Federal Aviation Administration shall not approve the runway redesign plan unless the Administrator of the Federal Aviation Administration determines that the construction and operation will include, to the maximum extent feasible, the best management practices then reasonably available to and used by operators of commercial service airports to mitigate emissions regulated under the implementation plan.

SEC. 105. MERRILL C. MEIGS FIELD.

The State of Illinois and the city of Chicago, Illinois, have agreed to the following:

(1) Until January 1, 2026, the Administrator of the Federal Aviation Administration shall withhold all Federal airport grant funds respecting O'Hare International Airport, other than grants involving national security and safety, unless the Administrator is reasonably satisfied that the following conditions have been met:

(A) Merrill C. Meigs Field in Chicago either is being operated by the city of Chicago as an airport or has been closed by the Administration for reasons beyond the city's control.

(B) The city of Chicago is providing, at its own expense, all off-airport roads and other access, services, equipment, and other personal property that the city provided in connection with the operation of Meigs Field on and prior to December 1, 2001.

(C) The city of Chicago is operating Meigs Field, at its own expense, at all times as a public airport in good condition and repair open to all users capable of utilizing the airport and is maintaining the airport for such public operations at least from 6:00 A.M. to 10:00 P.M. 7 days a week whenever weather conditions permit.

(D) The city of Chicago is providing or causing its agents or independent contractors to provide all services (including police and fire protection services) provided or offered at Meigs Field on or immediately prior to December 1, 2001, including tie-down, terminal, refueling, and repair services, at rates that reflect actual costs of providing such goods and services.

(2) If Meigs Field is closed by the Administration for reasons beyond the city of Chicago's control, the conditions described in subparagraphs (B) through (D) of paragraph (1) shall not apply.

(3) After January 1, 2006, the Administrator shall not withhold Federal airport grant funds to the extent the Administrator determines that withholding of such funds would create an unreasonable burden on interstate commerce.

(4) The Administrator shall not enforce the conditions listed in paragraph (1) if the State of Illinois enacts a law on or after January 1, 2006, authorizing the closure of Meigs Field.

(5) Net operating losses resulting from operation of Meigs Field, to the extent consistent with law, are expected to be paid by the 2 air carriers at O'Hare International Airport that paid the highest amount of airport fees and charges at O'Hare International Airport for the preceding calendar year. Notwithstanding any other provision of law, the city of Chicago may use airport revenues generated at O'Hare International Airport to fund the operation of Meigs Field.

SEC. 106. APPLICATION WITH EXISTING LAW.

Nothing in this Act shall give any priority to or affect availability or amounts of funds under chapter 471 of title 49, United States Code, to pay the costs of O'Hare International Airport, improvements shown on an airport layout plan directly related to the agreement reached by the State of Illinois and the city of Chicago, Illinois, on December 5, 2001.

SEC. 107. SENSE OF CONGRESS ON QUIET AIRCRAFT TECHNOLOGY RESEARCH AND DEVELOPMENT.

It is the sense of the Congress that the Office of Environment and Energy of the Federal Aviation Administration should be funded to carry out noise mitigation programming and quiet aircraft technology research and development at a level of $37,000,000 for fiscal year 2004 and $47,000,000 for fiscal year 2005.

TITLE II—AIRPORT STREAMLINING APPROVAL PROCESS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Airport Streamlining Approval Process Act of 2002''.

SEC. 202. FINDINGS.

Congress finds that—

(1) airports play a major role in interstate and foreign commerce;

(2) congestion and delays at our Nation's major airports have a significant negative impact on our Nation's economy;

(3) airport capacity enhancement projects at congested airports are a national priority and should be constructed on an expedited basis;

(4) airport capacity enhancement projects must include an environmental review process that provides local citizenry an opportunity for consideration of and appropriate action to address environmental concerns; and

(5) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

SEC. 203. PROMOTION OF NEW RUNWAYS.

Section 40104 of title 49, United States Code, is amended by adding at the end the following:

''(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47179.''.

SEC. 204. AIRPORT PROJECT STREAMLINING.

(a) IN GENERAL.—Chapter 471 of title 49, United States Code, is amended by inserting after section 47153 the following:

''SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

''§ 47171. DOT as lead agency

''(a) AIRPORT PROJECT REVIEW PROCESS.—The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

''(b) COORDINATED REVIEWS.—The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport will be conducted concurrently, to the maximum extent practicable, and completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (c) with respect to the project.

''(c) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport, the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

''(d) STATE AUTHORITY.—If a coordinated review process is being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

''(e) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (c) with respect to the project and the airport sponsor.

''(f) EFFECT OF FAILURE TO MEET DEADLINE.—

''(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

''(2) AGENCY REPORT.—Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, license, or approval.

''(g) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law,

shall be bound by the project purpose and need as defined by the Secretary.

''(h) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport. Any other Federal or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

''(i) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

''§ 47172. Categorical exclusions

''Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

''§ 47173. Access restrictions to ease construction

''At the request of an airport sponsor for a congested airport, the Secretary of Transportation may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise impacts from the runway only if the Secretary determines that imposition of the restriction—

''(1) is necessary to mitigate those impacts and expedite construction of the runway;

''(2) is the most appropriate and a cost-effective measure to mitigate those impacts, taking into consideration any environmental tradeoffs associated with the restriction; and

''(3) would not adversely affect service to small communities, adversely affect safety or efficiency of the national airspace system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

''§ 47174. Airport revenue to pay for mitigation

''(a) IN GENERAL.—Notwithstanding section 47107(b), section 47133, or any other provision of this title, the Secretary of Transportation may allow an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments, out of revenues generated at the airport (including local taxes on aviation fuel), for measures to mitigate the environmental impacts of the project if the Secretary finds that—

''(1) the mitigation measures are included as part of, or are consistent with, the preferred alternative for the project in the documentation prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or local government; and

''(3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

''(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation measures described in subsection (a) may include the insulation of residential buildings and buildings used primarily for educational or medical purposes to mitigate the effects of aircraft noise and the improvement of such buildings as required for the insulation of the buildings under local building codes.

''§ 47175. Airport funding of FAA staff

''(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 47114(c), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project.

''(b) ADMINISTRATIVE PROVISION.—Instead of payment from an airport sponsor from funds apportioned to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

''(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b)—

''(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

''(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

''(3) shall remain available until expended.

''(d) MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).

''§ 47176. Authorization of appropriations

''In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), $2,100,000 for fiscal year 2003 and $4,200,000 for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

''§ 47177. Judicial review

''(a) FILING AND VENUE.—A person disclosing a substantial interest in an order issued by the Secretary of Transportation or the head of any other Federal agency under this part or a person or agency relying on any determination made under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

''(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or the head of any other Federal agency involved. The Secretary or the head of such other agency shall file with the court a record of any proceeding in which the order was issued.

''(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or the head of any other Federal agency involved, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or the head of such other agency to conduct further proceedings. After reasonable notice to the Secretary or the head of such other agency, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or the head of such other agency are conclusive if supported by substantial evidence.

''(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order of the Secretary or the head of any other Federal agency under this section, the court may consider an objection to the action of the Secretary or the head of such other agency only if the objection was made in the proceeding conducted by the Secretary or the head of such other agency or if there was a reasonable ground for not making the objection in the proceeding.

''(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

''(f) ORDER DEFINED.—In this section, the term 'order' includes a record of decision or a finding of no significant impact.

''§ 47178. Definitions

''In this subchapter, the following definitions apply:

''(1) AIRPORT SPONSOR.—The term 'airport sponsor' has the meaning given the term 'sponsor' under section 47102.

''(2) CONGESTED AIRPORT.—The term 'congested airport' means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration's Airport Capacity Benchmark Report 2001.

''(3) AIRPORT CAPACITY ENHANCEMENT PROJECT.—The term 'airport capacity enhancement project' means—

''(A) a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

''(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 471 of such title is amended by adding at the end the following:

''SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

''47171. DOT as lead agency.
''47172. Categorical exclusions.
''47173. Access restrictions to ease construction.
''47174. Airport revenue to pay for mitigation.
''47175. Airport funding of FAA staff.
''47176. Authorization of appropriations.
''47177. Judicial review.
''47178. Definitions.''.

SEC. 205. GOVERNOR'S CERTIFICATE.

Section 47106(c) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''and'' after the semicolon at the end of subparagraph (A)(ii);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(2) in paragraph (2)(A) by striking ''stage 2'' and inserting ''stage 3'';

(3) by striking paragraph (4); and

(4) by redesignating paragraph (5) as paragraph (4).

SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

Section 47504(c)(2) of title 49, United States Code, is amended—

(1) by striking ''and'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; and''; and

(3) by adding at the end the following:

''(E) to an airport operator of a congested airport (as defined in section 47178) and a unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47178) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.''.

SEC. 207. LIMITATIONS.

Nothing in this Act, including any amendment made by this Act, shall preempt or interfere with—

(1) any practice of seeking public comment; and

(2) any power, jurisdiction, or authority of a State agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. MICA) and the gentleman from Illinois (Mr. LIPINSKI) each will control 20 minutes.

Mr. LIPINSKI. Mr. Speaker, I ask unanimous consent to yield the 20 minutes that is designated to me to the gentleman from Illinois (Mr. JACKSON), who is a true opponent of this legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Florida (Mr. MICA).

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased today to rise in support of H.R. 3479, the National Aviation Capacity Enhancement Act. This legislation was introduced by the ranking Democrat of the Subcommittee on Aviation, the gentleman from Illinois (Mr. LIPINSKI).

This legislation codifies a long-sought agreement that was reached between the Governor of Illinois and the mayor of Chicago to address the critical aviation needs in the Chicago region. In December of 2001 after some 20 years of disagreement and in action, State and local leaders approved a plan to expand Chicago's O'Hare International Airport. The agreement also requires full FAA consideration of projects at regional reliever airports. These include the proposed South Suburban Airport in Peotone, and airports in Gary, Indiana, and Rockford, Illinois.

H.R. 3479 is not, as some have claimed, an attempt for the Federal Government to in any way usurp local decision-making authority. The State and local decision-makers in the greater Chicago region have come to an agreement. This bill ensures that the agreement in fact will be implemented, but only if all normal procedures for FAA approval are completed and Federal funding is received.

Federal approvals can take years. Title 2 of this legislation would help expedite that process. However, we do not want local leaders to change their minds while that process is in an ongoing situation and after having spent millions and millions of taxpayer dollars.

Why should Congress care or become involved in ensuring the viability of this important Chicago agreement? It is simple. Chicago O'Hare Airport is absolutely vital to our National aviation system and also to our interstate commerce and this Nation's economy.

O'Hare has consistently ranked as one of the world's busiest airports. It supports domestic hub operations for two major airlines, and over 70 million Americans a year and travelers use this facility.

□ 1245

Even during the economic downturn and with the aftermath of the tragic events of September 11, aircraft activity at O'Hare was up slightly last year. Unfortunately, O'Hare continues to be one of the most congested and delayed airports in the country. If future congestion at O'Hare affected only the Chicago area, we might not need to stand here before all of Congress to address this issue. However, the congestion in Chicago, in O'Hare often closes down and causes serious delay in our aviation activity across the Nation.

This legislation does provide assurances needed to proceed with the much-needed projects at O'Hare, and again, it is the codification of local and State governments.

Some of our colleagues have raised questions regarding this legislation, even said it is unconstitutional or supersedes State law. That is not the case. However, the preemption language contained in this legislation is extremely limited and is tied to a decision by the FAA to fund the O'Hare project. The preemption of State law would expire immediately upon a decision by the Federal Aviation Administration not to fund the construction of the O'Hare Capacity Enhancement Project.

This legislation ensures that State law will not prevent the Federal Government from spending Federal funds the way the Federal Government intends they be spent. I would ask this body to remember State and local officials have already reached an agreement regarding Chicago's regional aviation projects, but the agreement is not binding on future administrations, and we are not going to go round in circles any longer on this. We have to look at the national interest.

Therefore, before committing to a $6 billion capacity enhancement project at O'Hare, and it can even be more at this airport, it is absolutely reasonable to seek assurance that the agreement will not be abandoned by future State or future debate on this issue. This bill simply codifies a local agreement that addresses regional and our national transportation needs.

This bill is good for interstate commerce. It is good for our economy, and it will protect our national interests, which is part of my responsibility. So, therefore, I support this legislation. I urge Members on all sides, regardless of their persuasion, to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself such time as I may consume.

First, let me begin by thanking the gentleman from Florida (Mr. MICA), the chairman, and the gentleman from Florida (Mr. LIPINSKI), the ranking member, for their work on H.R. 3479. There are many reasons why I oppose H.R. 3479, none of which have anything to do with them personally. I want to share with my colleagues some reasons why they should be opposed to the National Aviation Capacity and Expansion Act.

Mr. Speaker, just a week ago, this House rejected by a small margin this measure. There are a number of bills that we could be considering before the Congress, including saving Social Security, Medicare and Medicaid. There are a number of important measures that could be on the suspension calendar, but what has changed in a week for a bill that was rejected one week ago to be brought back in such short order, back on the noncontroversial suspension calendar?

Mr. Speaker, this is a highly controversial bill. This should offend every House traditionalist and institutionalist. It violates the established processes set up by the House of Representatives, and even if my colleagues agree on the substance, they should be against the process.

H.R. 3479 should be a stand-alone bill that is fully debated before the House, with the possibility of adding amendments to improve this bill. It should not be on the suspension calendar. Many of my colleagues believe that they are voting to codify, as the gentleman from Florida (Mr. MICA) said an agreement between Mayor Daley and the governor of our State, Governor Ryan, but this bill, the House version of the bill, does not reflect that deal.

Their agreement promised priority status for a south suburban airport in Peotone and O'Hare expansion. While I do not support the O'Hare-designed plan that is articulated in the bill, and I do believe in O'Hare modernization, the idea that this bill provides for O'Hare expansion but does not, I repeat, does not, give priority status to Peotone, offends those of us who have been fighting at least for the last 16 years to make aviation capacity and to alleviate the crisis for our entire Nation, a reality for all Americans.

Both sides agree that there is a capacity crisis at O'Hare. The disagreement comes over how best to solve it. A new south suburban airport in Peotone offers a faster and cheaper and safer, a cleaner and more permanent solution. What do I mean? I mean that after O'Hare expansion is completed if air travel expands as projected, we will

still be in the same capacity crisis that we are in today.

This is a 15-year construction project. So why spend more money, take longer, increase environmental problems, put the flying public at greater risk, support a temporary solution and increase the economic and racial divide in Chicago when there is a better way of resolving the current aviation capacity crisis?

O'Hare Airport is the economic magnet that provides jobs and economic security for Chicago's north side and northwest suburbs. Midway Airport, housed in the gentleman from Illinois' (Mr. LIPINSKI) district, is the economic magnet that provides jobs and economic security for Chicago's southwest side. There is no similar economic engine for Chicago's south side and south suburbs.

O'Hare expansion puts in 195,000 new jobs and $19 billion of economic activity in an area that already has an overabundance. For example, the biggest beneficiary of O'Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work every day. That is three jobs for every one person.

The greatest beneficiary of O'Hare, Mayor Craig Johnson of Elk Grove Village, is one of the biggest supporters of Peotone. By contrast, some communities in my district have 60 people for every one job.

Finally, it just so happens that the areas where O'Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs, but African American families need economically stable families and communities that have a future and can send their children to college, too. We need greater economic balance in the Chicago metropolitan area so that all of the people have jobs and economic security.

The gentleman from Illinois (Mr. LIPINSKI) says that 15 environmental groups, including the Sierra Club, support the language in this bill. He, of course, is implying that they have endorsed it. The gentleman from Illinois (Mr. LIPINSKI) knows better. They have not endorsed it. I also asked the gentleman from Illinois (Mr. LIPINSKI) to supply me with the names of the other environmental groups who he says support the language in this bill, and he has failed to do so.

O'Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O'Hare means pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year, over and above what would be expected based on the State's average, in eight northeastern communities downwind of O'Hare. Peotone's 24,000 acre site has a built-in environmental safety zone.

Mr. Speaker, the O'Hare expansion plan is obviously anti-consumer. Two airlines, American and United, control 90 percent of the flights in and out of O'Hare. It is a duopoly, and due to a lack of competition, fares at O'Hare continue climbing at faster than the national average.

Mr. Speaker, I do want to address the constitutional issue before I reserve the balance of my time. The United States Supreme Court stated in Printz versus United States decision in 1997 that dual sovereignty is incontestable, to preemp State law, that is, the Illinois Aeronautics Act, and give power to the city of Chicago and the city of Chicago's ability to come directly to the Federal Government for the purposes of expanding O'Hare airport.

The Printz versus United States decision emphasized that that is a constitutional structural barrier to Congress intruding on a State's sovereignty, and this structural barrier could not be avoided by claiming that constitutional authority was, A, pursuant to the commerce power clause. We have heard the gentleman from Florida (Mr. MICA) talk about the number of jobs and the fact this is a factor in our economy. It will create 195,000 jobs, $19 billion in economic activity pursuant to the commerce power. According to Printz versus the United States these arguments are not available to the chairman of the committee.

The necessary and proper clause of the Constitution, we have heard there is an aviation capacity crisis, that this bill seeks to alleviate. According to the Printz versus the United States, Congress cannot use the necessary and proper clause argument as a basis for preempting State law.

Last but not least, Printz versus the United States said that the Federal law preempted State law under the Supremacy Clause, that Congress can use its power to solve impasses, that should be solved at the local level in the city of Chicago and in the State of Illinois.

In other words, Mr. Speaker, all of the arguments that we have heard, including the arguments of my good friend, the chairman, are all unconstitutional according to Printz versus the United States, and whether my colleagues agree with my constitutional interpretation or not, because there is a legitimate constitutional interpretive disagreement that is taking place, this can only be solved in Federal court, which means the idea of expanding aviation capacity in northern Illinois is likely to be tied up in the Federal courts for a number of years, and therefore, we will not be expanding aviation capacity as the chairman and as the ranking member seek to do.

Therefore, Mr. Speaker, I urge my colleagues to reject this bill. It could be improved if it were brought in the regular order and amendments were allowed to include the faster, cheaper, safer and cleaner proposal, building a third airport in Peotone.

Mr. Speaker, I reserve the balance of my time.

Mr. MICA. Mr. Speaker, I am pleased to yield 10 minutes to the gentleman from Illinois (Mr. LIPINSKI), and I ask unanimous consent that he be allowed to control the time.

The SPEAKER pro tempore (Mr. ISAKSON). Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. LIPINSKI. Mr. Speaker, I ask unanimous consent to give the gentleman from Illinois (Mr. JACKSON) an additional 10 minutes, the gentleman from Florida (Mr. MICA) an additional 10 minutes, which his 10 minutes will be split with 5 minutes for himself, 5 minutes for my side.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. JACKSON of Illinois. Mr. Speaker, may I inquire as to how much time we have remaining.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) has 22½ minutes, the gentleman from Florida (Mr. MICA) has 14½ minutes. There is 5 minutes reallocated to the gentleman from Illinois.

Mr. LIPINSKI. Mr. Speaker, in the additional time request, it would be 10 minutes for the gentleman from Illinois (Mr. JACKSON), 10 minutes for the gentleman from Florida (Mr. MICA), which he automatically yields to me 5 minutes. So I should have 15 minutes at the present time.

The SPEAKER pro tempore. The gentleman is correct.

Mr. LIPINSKI. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY).

(Mr. VISCLOSKY asked and was given permission to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today in strong support of H.R. 3479, the National Aviation Capacity Expansion Act, and would point out that I believe one of the reasons we are here today under suspension is a broad-ranging bipartisan support that exists for this legislation today.

Whether we talk about a Democratic mayor for the city of Chicago, whether a Republican governor of the State of Illinois, whether we talk about the Illinois Chamber of Commerce, or whether we talk about the AFL–CIO, whether we talk about the Republican or Democratic leadership of the Committee on Transportation and Infrastructure that reported this bill to the Congress, one of the things that has been debated hotly about this legislation is the status of the Peotone site in the State of Illinois.

What I want to use my time today is to point out to Members of this body that there are three airports involved, O'Hare International Airport, an airport in Rockford, Illinois, and the airport in Gary, Indiana, which is in my congressional district. There is a proposed site in Peotone, Illinois.

The gentleman from Illinois (Mr. JACKSON) talked about a potential racial divide on the Illinois side. I would

point out that Gary, Indiana's population is 85 percent African American, and for those African American citizen of Gary, Indiana, the passage of this legislation is very important for their economic future because they and their surrounding environs have been decimated because of the loss of manufacturing jobs.

□ 1300

We have an existing airport at Gary, Indiana, just as there is one at Rockford. One of the things that the leaders on the committee took great pains to do was to ensure that both of those airports, as well as the proposed Peotone site, are all treated equally. Given that equity that exists in this bill for those two airports and that proposed site, I strongly urge support passage of this bipartisan legislation.

Mr. MICA. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. WELLER), who has worked to protect the interests of the Peotone expansion.

(Mr. WELLER asked and was given permission to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, today I stand in support of this legislation. As my colleagues know, I am very disappointed in the drafting of this legislation, particularly in regards to the south suburban airport at Peotone. But I believe it is in the best interests to move this process forward, particularly in the hope that in conference between the House and Senate, we can improve upon the language for Peotone.

Air travel is expected to double in the next 10 to 15 years. We need to expand O'Hare, we need to build Peotone to accommodate the doubling of air travel. As we know, expanding O'Hare alone will not accommodate that growth in aviation. We need a south suburban third airport at Peotone.

The governor and the mayor of Chicago have come to an agreement regarding the construction of Peotone, as well as expansion of O'Hare, and this legislation does not fully reflect that agreement, which has been the concern that I have had. But I spoke with the governor yesterday personally, and he asked me to support this legislation so it can move forward and move towards conference. In that spirit, I support this legislation today.

Let me take a moment to discuss the importance of the south suburban third airport at Peotone. The south suburban third airport at Peotone will be a complement to O'Hare. And I will note that while they are pouring concrete and ripping up concrete, it is difficult to land airplanes, so we need a third airport to serve while O'Hare is expanded over the next 10 to 15 years. I would note that the south suburban third airport can be constructed in 4 to 5 years. It can be constructed for $500–600 million, compared to $13 billion. And from a local standpoint, for the 2.5 million of us who reside within 45 minutes of the Peotone site, it will generate over 200,000 jobs.

Mr. Speaker, we need the south suburban third airport at Peotone to expand aviation capacity, and I believe by moving this legislation forward, we can move towards that goal. People often ask what is the status of the construction of the airport at Peotone. Just recently, the FAA released their EIS approval of FAA record of decision signing. They investigated and reviewed seven proposed sites for a third airport, and they said that the Peotone site is the best one. They gave their blessing for the State to continue moving forward with what we call land banking, and the State legislature and the governor have made the decision to move forward to acquire 4,000 acres of the 24,000 eventually needed for the purpose of land banking. That is an important step. We need to move this legislative process forward, and while I am disappointed in this language, I want to make it clear that I was strongly in opposition to this bill this past week, and should this bill come back without the provisions that we need to build a south suburban third airport, I will just as strongly oppose it when it comes back from the conference.

Mr. KIRK. Mr. Speaker, will the gentleman yield?

Mr. WELLER. I yield to the gentleman from Illinois.

Mr. KIRK. Mr. Speaker, this is a courageous decision by the gentleman. As a member of the committee and as a supporter of Peotone, the gentleman has engendered a lot of goodwill and friendship when we complete the final legislation. My hope is that it will strongly reflect the full agreement, including the gentleman's provision on Peotone.

Mr. WELLER. Mr. Speaker, I thank the gentleman and urge Members to join me in supporting this bill today.

Mr. JACKSON of Illinois. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on International Relations.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I hate to disabuse the gentleman from Illinois (Mr. WELLER), but if this expansion goes through, the gentleman will never see Peotone. We will not need Peotone. We will have all of the capacity that is needed, 1.6 million airplanes. So while the gentleman from Illinois (Mr. WELLER) hopes and prays that some agreement that has been made off the record will guarantee some favorable treatment of Peotone, the best medical advice I can give to the gentleman is not to hold his breath.

I do not know about others, but I love a mystery; and this bill is as mysterious as anything Agatha Christie ever wrote.

First of all, why is such a controversial bill being brought under suspension? What a mystery. Why are the bill's proponents, and I almost said perpetrators, allergic to debate and amendments? Well, let us be clear about what this bill seeks to do.

The establishment wants to nearly double the capacity of what is now the world's busiest airport, O'Hare International, to accommodate 1.6 million flights a year. Who is the establishment? Well, people of substance in the community: The major Chicago newspapers, the Chamber of Commerce, the mayor of Chicago, the governor of Illinois, United Airlines, American Airlines, and so many more that a famous President once labeled the malefactors of great wealth the establishment. Members know who they are. They have been besieged by their lobbyists.

Who is the opposition? Thousands of citizens who live and work near the airport and its present 900,000 flights a year, whose quality of life will be shattered by doubling the capacity at O'Hare. Those families whose homes will be condemned and bulldozed, whose businesses will be plowed under as the airport expands.

Members might say we cannot stand in the way of progress. Of course not. But O'Hare is landlocked. It is surrounded by vital suburban communities, many of which I represent. It is saturated with aircraft. Add to capacity, yes, but do it by building another airport at Peotone, a modern one that is environmentally friendly and can expand in years to come. By the time the $15–20 billion, not $6 billion as they propose, the $15–20 billion is spent on O'Hare, it will be obsolete. Peotone can be built faster and cheaper than expanding O'Hare.

It makes sense economically and logistically; but the flaw in the ointment is Chicago would not own Peotone. Therefore, it must not survive.

There are fundamental constitutional questions with this bill. In the first place, Chicago has no power or authority to do anything unless that power has been given to the city by the Illinois General Assembly. The city is a political subdivision of the State. It is a creature of the legislature, and its powers are defined and limited by the Illinois Municipal Code. The Illinois Municipal Code contains the Illinois Aeronautics Act which forbids anyone from expanding any airport without a certificate of approval from the Illinois Department of Transportation. The same limitation applies to the governor. The deal he made with the city to expand O'Hare is what the lawyers call ultra vires, beyond his authority. Neither the Federal Constitution nor the State constitution gives the governor the authority to ignore the Illinois Aeronautics Act.

If President Bush were to enter into an agreement with Commonwealth Edison to build a nuclear plant in Illinois, his action would be ultra vires, without a license from the Nuclear Regulatory Commission. But that would require full disclosure, something woefully absent from this O'Hare debate. Does

anyone supporting this bill think the President has constitutional authority to enter into an agreement with Exxon to drill in the Alaskan National Wildlife Refuge without statutory authority from Congress?

The Illinois Aeronautics Act requires a certificate of approval from the Department of Transportation. The city and the governor proposed to march ahead, ignoring the law, all to give the city an unfettered right to condemn all the land they want, sidestepping the Illinois law.

Now let us consider another mystery in this bill. The governor and the mayor should just ask the Department of Transportation for a certificate of approval. It is the Illinois DOT. The governor has peopled it and appointed its chairman. They should just ask that body for a certificate of approval. If that is what is keeping them from complying with the law, why not just apply for a certificate?

I asked my dear friend, the gentleman from Illinois (Mr. LIPINSKI), at least twice why they have not just asked for a certificate. It is so simple. The gentleman says he does not know. It is a real mystery.

Well, it finally dawned on me like a ton of fire appearing over my head why this circuitous route around Illinois law is being employed: To get a certificate of approval, they would have to disclose what their real plan is. That is the last thing that they want to do. Transparency is not in their vocabulary. To apply for a certificate, they would have to disclose how much this alleged $6.5 billion plan will really cost. How is it going to be financed? Who is going to pay the bonds? Will they be paid for by United and American Airlines after they get their share of the airline bailout? How many acres do they really plan to condemn? How many homes do they really plan to plow under? Does this expand the United-American monopoly existing at O'Hare now? So many questions they would have to disclose, and not to disclose them is why they are ignoring the law. That is why we should not let them.

How much corporate welfare are they concealing? What are they hiding? This is like Enron or WorldCom. What was wrong with them, they did not disclose the true state of affairs in their corporation, and we have tired fingers pointing at Enron and Arthur Andersen and WorldCom. Well, that is what we are doing today. We are giving American and United and the city of Chicago and the governor a pass on the law having to disclose what this plan, this massive plan is all about.

Do we encourage nondisclosure? Are we now accessories? Listen, Republicans are always given the image of being in bed with big business and Democrats march beside the little guy, the powerless. Well, this vote, if Members vote yes on this bill, they validate that they are in bed with big business, and the heck with the little people whose homes and businesses are going to be wiped out. I do not know how the Democrats will explain that.

This bill is wired. I know it. I can count. But I would rather be on the losing side of a good, honest cause than on the winning side of a cause that hurts vulnerable people.

A famous Russian writer whose name I never knew once wrote that even if the whole world was paved over, somewhere a crack would appear, and in that crack a blade of grass would begin to sprout.

So bring on the bulldozers, the cement mixers and shovels, and the 1.6 million roaring airplanes. That blade of grass is the rule of law, and this fight is far from over.

Mr. LIPINSKI. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, the issue of expansion at O'Hare has been around for a long time and there has been considerable debate. I want to commend the gentleman from Illinois (Mr. LIPINSKI) for his leadership on not only this issue, but other issues surrounding transportation. Today I stand in firm support of H.R. 3479.

I also want to commend the gentleman from Illinois (Mr. HYDE) for his efforts to bring a third airport in the Peotone area. Especially, though, I want to commend the gentleman from Illinois (Mr. JACKSON) for his consistent and eloquent, creative approach to try and develop jobs and economic opportunity and bring them closer to the people in his congressional district.

Chicago has a vast and growing transportation industry. Over the years, Chicago O'Hare International Airport has continued its growth in traffic and demand.

□ 1315

Presently, O'Hare ranks as the Nation's first or second busiest airport at any given time, with nearly 34 million annual passengers traveling both domestically and internationally.

Expanding O'Hare offers an immediate array of benefits, from employment to economic growth. And I am pleased to note that the plan for O'Hare expansion includes a 30 percent goal for minority and women-owned businesses as opposed to a 10 percent goal in the State's plan for Peotone.

As Chicago continues to grow, O'Hare continues to experience the backlog of delays. According to the Airport Capacity Benchmark Report in 2001, O'Hare was the third most delayed airport. Sitting in the heart of the Midwest, these delays continue to burden connecting airports, creating a snowball effect and frustrating passengers. By the addition of runways, and the expansion of O'Hare, delay times will diminish and air travel at Chicago's bustling O'Hare will undoubtedly improve for the consumer and the region.

I do not believe that this necessitates the idea that there cannot and will not be a third airport at Peotone, or in that area. As the time continues to develop, the need will continue to grow. Right now, though, the greatest need is to expand O'Hare, and I think we will get to Peotone as time comes.

Mr. MICA. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Speaker, the National Aviation Capacity Expansion Act is not just a bill about expanding O'Hare International Airport, it is about relieving congestion for the entire air transportation system in the United States, of which obviously O'Hare is an integral part.

I fought hard and testified several times to make sure this bill includes a provision asking the FAA to consider utilizing existing airports that are capable of immediately reducing congestion and delays at our Nation's major airports. In the Chicago region, that airport is the Greater Rockford Airport. Passage of this legislation ensures that Rockford Airport will be able to offer its vast resources, which include:

$150 million of recent infrastructure improvements; a 10,000-foot runway that can land any jet aircraft today as well as an 8,200-foot runway; a category III Instrument Landing System; a Glycol Detention and Treatment Facility; an upgraded taxiway system; an FAA 24-hour traffic control tower; it is the present home to United Parcel Service's second largest hub in the Nation; a modern passenger terminal immediately capable of handling 1 million emplaned passengers annually, and room for 3 million with a modest investment, and capacity for up to 15 million passengers a year; unconstrained airspace; the ability to relieve up to 20 percent of O'Hare's originating passengers; and all only 1 hour's distance from Chicago.

As my colleagues can see, this bill is the best vehicle by which the Nation's air traffic congestion and delays could be relieved. And Rockford Airport is ready today; built, paid for, existing. It is considered, as designated in this legislation, to be a low-cost and convenient factor in that solution.

I urge my colleagues to vote in favor of this bill.

Mr. JACKSON of Illinois. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. CRANE).

(Mr. CRANE asked and was given permission to revise and extend his remarks.)

Mr. CRANE. Mr. Speaker, I thank the gentleman for yielding me this time, and, once again, I rise in strong opposition to Federal legislation that would mandate runway expansion and reconfiguration at Chicago's O'Hare Airport.

Like most people, I want the air traffic congestion problem at O'Hare solved as soon as possible, but the plan mandated by this bill will not accomplish that objective. It is projected to

take 900,000 flights annually to 1.6 million flights annually. Moreover, it would be expensive. Very expensive. Its sponsors say the O'Hare runway plan will cost $6.6 billion to implement, but by the time the 500 to 600 property condemnations, the two graveyard relocations, road improvements, soundproofing work, and other items are finished, the price tag is likely to be double or triple that amount.

Meanwhile, there are four good-sized airports currently in operation within less than a 100-mile radius of Chicago, Great Rockford Airport being one, that could handle additional flights, and a fifth could be built south of the city with less difficulty and for less money than it would take to add to and reconfigure the runways at O'Hare. Making greater use of these airports would be a quicker, simpler, and less expensive option than trying to expand O'Hare's runway capacity.

Also, it would spare thousands of people living and/or working near O'Hare the consequences of higher noise and air pollution levels, declining property values, and, in some cases, the loss of their homes and their jobs.

For their sakes, and for the sake of others who live or work in places that could suffer a similar fate in the future, I urge my colleagues to vote ''no'' on this counterproductive and potentially precedent-setting piece of legislation. We can and should do better.

Mr. LIPINSKI. Mr. Speaker, may I inquire about the amount of time everyone has left here?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Illinois (Mr. LIPINSKI) has 10 minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 6½ minutes remaining, and the gentleman from Florida (Mr. MICA) has 9½ minutes remaining.

Mr. JACKSON of Illinois. I am sorry, Mr. Speaker, my math is a little bit different. Since the moment that you yielded me and informed me I had 22½ minutes, I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) and 2 minutes to the gentleman from Illinois (Mr. CRANE).

The SPEAKER pro tempore. In the gentleman's request to yield 10 minutes to the gentleman from Illinois (Mr. HYDE), did the gentleman ask that he control the time?

Mr. JACKSON of Illinois. I asked that he have 10 minutes.

The SPEAKER pro tempore. And the gentleman from Illinois (Mr. HYDE) debated and then yielded back with one minute remaining.

Mr. JACKSON of Illinois. Correct. And at the time I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE) I had 22½ minutes.

The SPEAKER pro tempore. Did you ask unanimous consent that the gentleman from Illinois (Mr. HYDE) be able to control 10 minutes?

Mr. JACKSON of Illinois. I asked that the gentleman from Illinois (Mr. HYDE) have 10 minutes, Mr. Speaker, and then the gentleman from Illinois (Mr. CRANE) had 2 minutes. That should leave me 10 minutes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) used 9 of the 10 minutes, which is 8½ minutes remaining, before yielding to the gentleman from Illinois (Mr. CRANE) 2 minutes, and that leaves 6½ minutes.

Mr. JACKSON of Illinois. I thank the Speaker.

Mr. LIPINSKI. Mr. Speaker, just so we are perfectly clear, I have 10 minutes remaining?

The SPEAKER pro tempore. The gentleman has 10 minutes remaining.

Mr. LIPINSKI. And the gentleman from Illinois (Mr. JACKSON) has 6½ minutes remaining.

The SPEAKER pro tempore. The gentleman has 6½ minutes remaining.

Mr. LIPINSKI. And what does the gentleman from Florida (Mr. MICA) have remaining?

The SPEAKER pro tempore. The gentleman from Florida has 9½ minutes remaining.

Mr. MICA. Mr. Speaker, just for the information of the House and the Speaker, I plan to use only 3 minutes of that time because the House does want to proceed with other business.

Mr. LIPINSKI. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member of the Committee on Transportation and Infrastructure, a longtime chairman of the Subcommittee on Aviation.

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of the National Aviation Capacity Expansion Act of 2002, and I do so with greatest respect and admiration for the gentleman from Illinois (Mr. LIPINSKI) who has labored mightily to bring together the State of Illinois, the City of Chicago, and a wide range of interests in the House to support this initiative.

It is unfortunate that we have to do this by legislation, but it is also unfortunate that historically the City of Chicago and the State of Illinois have not been able to work together constructively, with oftentimes the Governor's office countermanding an agreement worked out between the Mayor and the Governor, as Mayor Daley testified to so specifically in our committee hearings last year and early this year.

I just want to point out that we are not talking about an ordinary airport. This is the premier airport in the United States. This is a treasure for all of world aviation. There is no question that we need to address the needs of O'Hare; that we, if necessary, as we do in this legislation, in effect, codify an agreement between the Mayor and the State of Illinois.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Illinois.

Mr. HYDE. The gentleman had one hearing on this bill, did you not?

Mr. OBERSTAR. Reclaiming my time, Mr. Speaker, I believe there were two hearings

Mr. HYDE. If the gentleman will continue to yield, Mr. Speaker, it is my understanding that mayors whose towns are going to be affected by this, and citizens and businessmen were here and were not permitted to testify. Is that the gentleman's recollection?

Mr. OBERSTAR. That is not my understanding. All that I know who requested the hearing were accommodated. I am not aware of such. But at any rate, I have only limited time and perhaps the gentleman can discuss this on his time with the gentleman from Illinois (Mr. LIPINSKI).

Mr. HYDE. We can do this off the record, yes.

Mr. OBERSTAR. Mr. Speaker, it is cities, more than States, that have advanced the cause of aviation in the United States. Until 1958, there were only 7 States that provided any support financially for airport construction and development. In the 1940s, Chicago's city council looked into the crystal ball, saw the future of aviation and had the foresight to acquire orchard fields and an additional 7,000 acres to build this treasure of an airport, O'Hare, that was named for a World War II hero.

Similarly, LaGuardia was the brainchild of Mayor Fiorello LaGuardia, who sought to capitalize on the great success of Newark Airport, and built what was then a treasure on the East Coast. And the same with Atlanta. Hartsfield Airport was the vision of Alderman and Mayor William Hartsfield. So we are now dealing with the need to look into the future of aviation in the United States.

When traffic backs up at O'Hare, it backs up all the way around the world. Delays at O'Hare affect traffic as far away as Frankfurt, in Europe, and Tokyo on the Pacific Rim. This legislation, and I have spent a great deal of time looking at the airport runway reconfiguration, will allow operations of all weather conditions, simultaneous operations. It will make possible simultaneous operations under all but the very worst zero visibility conditions, and that would be a huge improvement over the existing situation at O'Hare.

There have been allegations about the constitutionality of this legislative proposal. Last week, during debate, the gentleman from Illinois (Mr. JACKSON) and the gentleman from Illinois (Mr. HYDE) made references to constitutional issues in a letter written by Professor Ronald Rotunda of the University of Illinois College of Law. Well, we have got other experts and other professors who have also reviewed this letter. We talked to Professor Thomas Merrill, the John Paul Stephens Professor of Law at Northwestern University, to get his opinion, which concludes as follows:

''This legislation is squarely within the power delegated to Congress under

the commerce clause and relies on familiar precepts of preemption. It presents no substantial issue under the anti-commandeering principle of U.S. v. New York.''

Mr. Speaker, I am submitting herewith for the RECORD the memorandum provided by Professor Merrill, and the letter of agreement between the Governor of Illinois and the Mayor of the City of Chicago, testifying that they have reached an agreement and both do strongly support this legislation.

STATE OF ILLINOIS,
CITY OF CHICAGO,
July 22, 2002.

DEAR MEMBER OF CONGRESS: We want to unequivocally state our strong support for Representative Bill Lipinski and Mark Kirk's legislation, H.R. 3479, the National Aviation Capacity Expansion Act of 2002, which is expected to be on the House Calendar this week.

This legislation is crucial to the agreement that we, as Governor of Illinois and Mayor of Chicago, reached to end decades of debate over the future of airports in the Chicago area. That debate has choked off necessary improvements to airport capacity in the region, and led to display and congestion that have negatively affected the economy of the region, and rippled through the national aviation system. It is time to end that debate and move forward.

Passage of this legislation is necessary for us to carry out this agreement, which will lead to reconfiguration of the runway system at O'Hare, the reduction of delays, and the creation of almost 200,000 new jobs in Illinois. It will help improve the operations of the entire system, reducing delays around the nation.

The agreement also includes going ahead with work on the development of a new airport in the southern suburbs of Chicago, which has been a great importance to not only the State of Illinois, but to many members of the Illinois delegation. Passage of this legislation is the best course of action to help develop a third regional airport in the southern suburbs.

Let us be clear: failure to pass this legislation will return us to the political gridlock over airport issues in the Chicago region that may take decades more to resolve. A huge economic boost to the State of Illinois, to the Midwest and to the entire nation will be lost.

We both strongly urge your favorable vote on H.R. 3479. Thank you.

GEORGE H. RYAN,
Governor.
RICHARD M. DALEY,
Mayor.

MEMORANDUM

To: R. Eden Martin, President, Civic Committee of The Commercial Club of Chicago.

From: Thomas W. Merrill, John Paul Stevens Professor of Law, Northwestern University.

Re: Constitutionality of the Durbin-Lipinski Legislation.

Date: April 17, 2002.

This memorandum is in response to your request for an evaluation of the constitutionality of the National Aviation Capacity Expansion Act, proposed federal legislation introduced in the Senate by Senator Durbin (S. 2039) and in the House by Representative Lipinski (H.R. 3479) (the Durbin-Lipinski Legislation). This legislation is designed to facilitate the redesign of Chicago's O'Hare International Airport in accordance with a plan agreed to by Mayor Richard Delay of Chicago and Governor George Ryan of the State of Illinois. The plan would redesign the runways, terminals and access roads at O'Hare so as to permit this facility, which is vital to both the national and the regional economy, to accommodate the existing and anticipated volume of commercial air traffic in the Chicago area.

In a letter to Representative Henry Hyde dated March 1, 2002, Professor Ronald Rotunda of the University of Illinois Law School has offered the opinion that the Durbin-Lipinski legislation is ''most likely unconstitutional.'' (Rotunda Letter at 16). The provisions he finds constitutionally problematic are §3(a)(3), which exempts the O'Hare redesign project from state permitting requirements, and §3(f), which, as it appears in the House bill, provides that if all state and local approvals are not obtained by 2004, the project shall proceed as a federal project. These provisions are constitutionally suspect, according to Professor Rotunda, because they ''conscript the instrumentalities of state government and state power as tools of federal power,'' do not constitute ''generally applicable'' legislation, and ''impose[] federal rules on the relationship between a city and the State that created the city.'' (Letter at 16.) I have reviewed the authorities and arguments advanced by Professor Rotunda and conclude that they raise no substantial question about the constitutionality of the proposed legislation.

I. THE DURBIN-LIPINSKI LEGISLATION REPRESENTS AN EXERCISE OF CORE FEDERAL POWERS UNDER THE COMMERCE CLAUSE AND PRE-EMPTS CONTRARY STATE LAW

No claim has been made by Professor Rotunda, nor could it be made, that the Durbin-Lipinski Legislation deals with a subject beyond the scope of Congress's authority under the Commerce Clause. The Supreme Court, in reviewing the historical understanding of the Commerce Power, has recently summarized that Power as falling into three general categories: (1) regulation of the channels of interstate commerce, (2) regulation of the instrumentalities of interstate commerce, and (3) regulation of commercial activity that in the aggregate has a substantial affect on interstate commerce. See United States v. Lopez, 514 U.S. 549, 558–59 (1995); United States v. Morrison, 529 U.S. 598, 609–09 (2000). The ''channels of interstate commerce'' include navigable rivers, interstate highways, interstate rail facilities and terminals—and of course navigable airspace and airport terminals. See, e.g., Braniff Airways, Inc. v. Nebraska State Bd. of Equalization, 347 U.S. 590, 596 (1954) (''Federal Acts regulating air commerce are bottomed on the commerce power of Congress''). Congress thus has complete and plenary power under the Commerce Clause to regulate the size, configuration, and operating parameters of airport facilities that serve as hubs of interstate air commerce. See, e.g., Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 303 (1944) (Jackson, J. concurring) (federal power over air commerce and air transit is ''exclusive''). It follows from this that the Durbin-Lipinski Legislation—which is designed to assure that the Nation's busiest airport terminal has sufficient capacity to accommodate future growth in interstate and international air commerce—falls squarely within the core of congressional power under the Commerce Clause.

Given that the Durbin-Lipinski Legislation is within Congress's power to legislate, any contrary provision of state law is preempted. ''[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.'' Gade v. National Solid Waste Management Ass'n, 505 U.S, 88, 108 (1992) (citation omitted). As the Court noted in Printz v. United States, 521 U.S. 898, 913 (1997)—one of the decisions Professor Rotunda relies upon most heavily—''all state officials'' act under a duty ''to enact enforce, and interpret state law in such as fashion as not to obstruct the operation of federal law;'' consequently, ''all state actions constituting such obstruction, even legislative Acts, are ipso facto invalid.'' Indeed, ''even state regulation designed to protect vital state interests must give way to paramount federal legislation.'' De Canas v. Bica, 424 U.S. 351, 357 (1976).

The Durbin-Lipinski Legislation provides, among other things, that the State of Illinois ''shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including 38.01, 47, and 48 of the Illinois Aeronautics Act.'' H.R. 3479, §3(a)(3). This provision is obviously inconsistent with any requirement for state certification of the O'Hare redesign plan under §47 of the Illinois Aeronautics Act or otherwise. Any such state certification requirement is therefore plainly pre-empted by the Durbin-Lipinski Legislation.

II. THE DURBIN-LIPINSKI LEGISLATION DOES NOT ''COMMANDEER'' THE STATE OR ITS OFFICIALS

Professor Rotunda concludes that the Durbin-Lipinski Legislation is ''likely unconstitutional'' primarily by relying on decisions holding that the Commerce Power does not extend to laws that ''compel the States to enact or administer a federal regulatory program,'' New York v. United States, 505 U.S. 144, 188 (1992), or that ''conscript the States' officers directly'' to administer or enforce federal law. Printz, supra, 521 U.S. at 935. He argues that the Durbin-Lipinski Legislation has the effect of ''commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago.'' (Letter at 14.)

The short answer to this elaborate argument is that the Durbin-Lipinski legislation does no such thing. I does not require the State of Illinois or any political subdivision to enact—or repeal—any legislation. Nor does it conscript state employees to act as administrators or enforcement agents of federal law. Instead, the Durbin-Lipinski Legislation simply preempts provisions of state law that might serve as an impediment to the completion of the O'Hare redesign plan. The State is not ordered to take affirmative steps to aid in the redesign of the airport, either by legislative or administrative action. It is merely prohibited from blocking the redesign and reconfiguration of the airport. This of course is what happens whenever state law is preempted by federal legislation. See, e.g., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) (local ordinance governing hours of operation of airport terminal pre-empted by comprehensive federal regulation of airport noise).

Absent some provision that directs Illinois to adopt legislation or regulations, or that commands Illinois officials or employees to enforce federal law, the Durbin-Lipinski Legislation raises no issue under New York and Printz. As the Supreme Court recently (and unanimously) held in Reno v. Condon, 528 U.S. 141 (2000), where a federal statute does not require a state legislature ''to enact any laws or regulations'' and does not ''require state officials to assist in the enforcement of federal statutes regulating private individuals,'' the anti-commandeering doctrine of New York and Printz does not apply. Id. at 151. Condon involved a federal statute, The Driver's Privacy Protection Act, that prohibited States from disclosing personal information about individuals obtained from

department of motor vehicle records without the individual's consent. Because the Act did not direct the ''States in their sovereign capacity to regulate their own citizens,'' id., the Court found that it was a legitimate exercise of the Commerce Power and that contrary state legislation was preempted. The Durbin-Lipinski Legislation likewise contains no provision that would compel the State or its agents to regulate the citizens of Illinois.

Nor does the provision of the House bill that calls for the O'Hare redesign to become a federal project if construction has not commenced by 2004 raise any commandeering problem. This is a form of conditional regulation, in which Congress ''offer[s] States the choice of regulating [private] activity according to federal standards or having state law pre-empted by federal regulation.'' New York, 505 U.S. at 167. This type of conditional regulation is often used in environmental legislation, and the New York Court took pains to reaffirm its constitutionality. Id; see also Printz, 521 U.S. at 925–26. Such condition regulation, the Court found, is constitutionally permissible because it does not represent direct coercion of State governments in the way that commandeering does. Section 4(f) of the House bill is of a similar design. It provides that in the event the Administrator of the FAA finds that ''a continuous course of expected to commence by December 1, 2004'' then ''the Administrator shall construct the runway redesign plan as a Federal project.'' H.R. 3479, §4(f). The legislation, in other words, does not order State and local officials to issue permits and approvals for construction; it sets a deadline for obtaining such approvals, and if this is not met, provides for federal permits and approvals—a classic form of conditional regulation approved by New York and Printz.

III. THE DURBIN-LIPINSKI LEGISLATION IS NOT CONSTITUTIONALLY INFIRM BECAUSE IT APPLIES TO A SINGLE AIRPORT

Professor Rotunda also seeks to rely on language in New York and Condon that distinguishes impermissible commandeering statutes from laws ''that subject state governments to generally applicable laws.'' New York, 505 U.S. at 160; Condon, 528 U.S. at 151. He notes that the Durbin-Lipinski Legislation applies to only one airport and in this sense is not a ''generally applicable'' law, thus, he suggests, the legislation is unconstitutional under New York and Prinitz.

This argument, however, reflects misapplication of the ''generally applicable laws'' exception recognized in New York and Condon. The exception applies only to federal laws that otherwise compel a State to enact legislation or conscript state employees to enforce federal law. If a federal law has this ''commandeering'' effect, then it may nevertheless be upheld as constitutional if it is a ''generally applicable law'' that applies to state governments and private persons alike. Thus, for example, the Fair Labor Standards Act (FLSA), as amended, applies to state and local governments as well as to private employers. This statute requires state governments to enact laws or regulations (e.g., setting wages and hours of state employees), and it requires state officers and employees to administer federal law (e.g., determining that all units of state government are in compliance with federal standards). Yet the constitutionality of the FLSA as applied to state governments was upheld in Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 528 (1985). The Court in New York reconciled this result with the anti-commandeering principle by noting that the FLSA is a generally applicable law that governs state and private employers alike. New York, 505 U.S. at 160–61.

Properly understood, therefore, the generally applicable laws exception has no relevance to the Durbin-Lipinski Legislation. The Durbin-Lipinski Legislation does not compel the State to enact any laws or regulations, and does not conscript state employees to administer any federal law. Instead, it is a narrow preemption statute. As such, the anti-commandeering principle of New York and Printz does not apply at all, and hence the generally applicable laws exception does not apply at all.

Outside the commandeering context, there is no principle of law that condemns congressional legislation under the Commerce Clause because it proceeds project-by-project rather than under generally applicable laws. Congress has often legislated under the Commerce Clause by addressing particular obstructions of commerce, whether they be inadequate harbor facilities, impassive on rivers, or bottlenecks in the interstate highway system. For example, Congress has legislated with respect to a single bridge spanning a navigable river, and this has been sustained as a valid exercise of the Commerce Power. See Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421, 431 (1855). Similarly, federal agencies exercising delegated power under the Commerce Clause, such as the Army Corps of Engineers and the FAA, commonly and properly focus their attentions on particular obstructions of commerce, rather than proceeding by promulgating general regulations. That is all Congress has done here, by legislating to assure that a critical airport that serves as a central hub of the entire air traffic system of the United States does not become an impediment to the free flow of interstate and international commerce.

IV. THE DURBIN-LIPINSKI LEGISLATION DOES NOT IMPERMISSIBLY INTERFERE WITH RELATIONS BETWEEN A STATE AND ITS POLITICAL SUBDIVISIONS

Finally, Professor Rotunda suggests in passing (Letter at 7) that the Durbin-Lipinski legislation violated some general principle of federalism that requires Congress to afford a state government complete and unlimited control over the powers and duties of its political subdivisions. The decision he cites in support of this proposition, Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), held no such thing. Instead, the Court merely rejected the claim of the City of Pittsburgh that a Pennsylvania law directing the annexation of Pittsburgh and another city over the objection of a majority of the Pittsburgh electorate violated Pittsburgh's rights under Fourteenth Amendment's Due Process Clause. It was in this context that the Court said that the ''number, nature, and duration of the powers conferred upon'' a municipal corporation ''rests in the absolute discretion of the state.'' Id. at 178. No issue was presented in the case about the authority of Congress to deal directly with municipal corporations—as it often deals directly with other types of corporations—in the implementation of otherwise valid federal legislation.

In fact, Congress has long dealt directly with municipalities in a variety of contexts, and the federal courts have uniformly rejected challenges to these measures based on the notion that the federal government must always defer to state-law limitations on municipal powers. Lawrence County v. Lead-Deadwood School District, 469 U.S. 256 (1985), for example, involved a federal statute that provided payments in lieu of taxes to a county based on the presence of tax-exempt federal land in the county. The federal statute gave the county discretion to allocate funds for ''any governmental purpose.'' Id. at 258. A South Dakota statute, however, provided that all in lieu payments be allocated in the same ratio as the county's general tax revenues were allocated. By a vote of 7–2, the Supreme Court held that the federal statute preempted the allocation requirement in the state statute, and specifically rejected the contention based on the language in Hunter that this constituted impermissible interfence with state control over its political subdivisions, Id. at 269; cf. id. at 270–71 (Rehnquist, J. dissenting (quoting Hunter)).

The same conclusion has been reached when the federal government has given regulatory permission to political subdivisions to take action contrary to state law. In one case the Federal Power Commission issued a license to the City of Tacoma, Washington, to build a hydroelectric dam on the Cowlitz River. An agency of the State of Washington opposed the license, and argued that Washington statutes required the City to obtain permission from the State. The United States Court of Appeals for the Ninth Circuit held that the case presented a simple matter of federal supremacy: State law cannot interfere with the ability of a federal licensee to exercise the rights provided by a federal license on a navigable waterway. State of Washington Dept. of Game v. Federal Power Comm., 207 F.2d 396 (9th Cir. 1953). The court agreed that the City was a creature of the State and normally could not act without authorization of state law. But private licensees—such as corporations and electrical cooperatives—are also creatures of state law, and it is well-established that they can invoke federal law to preempt state law inconsistent with a federal license. See First Iowa Hydro-Electric Coop. v. Federal Power Comm., 328 U.S. 152 (1946). The court reasoned that municipal corporations are no different in this regard, and they too may be empowered by the federal government to take action affecting the channels of interstate commerce without regard to limitations contained in state law. The Washington Supreme Court later disagreed with this ruling, see City of Tacoma v. Taxpayers of Tacoma, 307 P.2d 567 (Wash. 1957), but the U.S. Supreme Court reversed, holding that the decision of the Ninth Circuit was res judicata. See City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320 (1958).

Similiarly, in a controversy closely analogous to the instant matter, the City of New Haven, Connecticut received a $750,000 grant from the Federal Aviation Administration for extension of an airport runway. Pursuant to agreements between the City and the FAA, the City was required to purchase land in the neighboring town of East Haven in order to provide an expanded ''clear zone'' for takeoffs and landings. When neighbors objected and instituted actions in state court seeking to block the project on the ground that New Haven's purchase of land in East Haven violated state law, the United States sought and obtained a preliminary injunction against further state-court litigation. In affirming the injunction, the United States Court of Appeals for the Second Circuit observed that ''[i]n the case of a clash between federal legislation and state orders in the area of air commerce, it is clear that under the doctrine of federal supremacy and the commerce clause'' the United States would likely prevail on the merits. See United States v. City of New Haven, 447 F.2d 972, 973–74 (2d Cir. 1971) (citations omitted).

There are, to be sure, constitutional questions about how far the federal government may go in bypassing state governments and dealing directly with municipalities and other subdivisions of a State. The Washington Supreme Court in the Tacoma dam controversy thought that the federal government could not confer the power of eminent domain on a municipality in circumstances

where such power is not given by state law. City of Tacoma, 307 P.2d at 576–78, rev'd on other grounds, 357 U.S. 320. And although the Supreme Court has held that a federal district court in implementing a desegregation decree may issue an order pre-empting state tax limitations in order to permit a city to raise taxes, it has reserved judgment as to whether it would be constitutional for such a court directly to order a city to raise taxes. Missouri v. Jenkins, 495 U.S. 33, 50–51 (1990).

But the Durbin-Lipinski Legislation raises none of these unresolved questions. Section 3(a)(3) in both bills simply pre-empts state certification requirements that might act as an impediment to the City's execution of the redesign plan using its otherwise-existing delegated and home-rule powers under state law. And §3(f) of the House bill provides that if the O'Hare redesign project becomes a federal project, either the City will exercise its existing eminent domain power or the FAA will use its federal eminent domain power to acquire needed land. See H.R. 3479, §3(f)(1)(E) & §3(f)(3). Nor is there any suggestion in this bill that Congress has authorized the City to exercise powers of taxation beyond those it already enjoys under state law. See id. §3(f)(1)(F) (''the costs of the runway redesign plan will be paid from the sources normally used for airport redevelopment projects of similar kind and scope'').

CONCLUSION

The Durbin-Lipinski Legislation is squarely within the power delegated to Congress under the Commerce Clause and relies on familiar precepts of pre-emption. It presents no substantial issue under the anti-commandeering principle of United States v. New York and Printz v. United States. Nor does it attempt to intrude upon State-municipality relations in a manner that is constitutionally problematic. The proposed legislation addresses a matter of vital national importance in a manner that is minimally intrusive to the legitimate interests of the State as sovereign, and is therefore fully constitutional.

PARLIAMENTARY INQUIRY

Mr. JACKSON of Illinois. Mr. Speaker, I feel compelled at this time to ask a parliamentary inquiry about my time. The reason I need to ask the parliamentary inquiry is that there have been three speakers for those of us who have been opposed to the legislation.

The debate began with 20 minutes on each side, and then there was a unanimous consent for an additional 10 minutes, which should have left me with 30 minutes on my side and 30 minutes on the other side of this legislation. I have yielded 10 minutes to the gentleman from Illinois (Mr. HYDE), and you said he spoke for 9½ minutes and yielded back the balance of his time. I yielded 2 minutes to the gentleman from Illinois (Mr. CRANE), and I made an opening statement.

I do not know how long my opening statement was, but I do not believe it left me 6½ minutes.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. JACKSON) made an opening statement of 7½ minutes, leaving 12½ minutes. Thereon the time was expanded by 10 minutes per side, leaving the gentleman 22½ minutes. The gentleman then yielded 5 minutes to the gentleman from Illinois (Mr. LIPINSKI), leaving him 7½ minutes.

Mr. JACKSON of Illinois. No, sir. No, sir, I did not yield 5 minutes to the gentleman from Illinois (Mr. LIPINSKI).

□ 1330

The time of the gentleman from Illinois (Mr. LIPINSKI) is controlled by the chairman, sir. I am in opposition to the bill. They divided time amongst themselves. Ten minutes additional on each side, sir, should have left me with 22½ minutes. I yielded 10 minutes to the gentleman from Illinois (Mr. HYDE), and I yielded 2 minutes to the gentleman from Illinois (Mr. CRANE), which should leave me with 10 minutes.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman did not make a unanimous consent request that the gentleman from Illinois (Mr. LIPINSKI) control 5 minutes?

Mr. JACKSON of Illinois. No, sir. The gentleman from Illinois (Mr. LIPINSKI) made a unanimous consent request that 10 minutes be increased on each side and there was no objection, 10 minutes for that side and I am the other side.

The SPEAKER pro tempore. The Chair will subtract 5 minutes from the gentleman from Illinois's (Mr. LIPINSKI) side that apparently the gentleman from Illinois (Mr. JACKSON) did not yield to him, which means that the gentleman from Illinois has no time remaining.

Mr. LIPINSKI. How much time do I have?

The SPEAKER pro tempore. The gentleman has no time remaining now.

Mr. LIPINSKI. That is not right, Mr. Speaker. If I may say, before my 10 minutes was used at all, my request was for an additional 10 minutes for the gentleman from Illinois (Mr. JACKSON), an additional 10 minutes for the gentleman from Florida (Mr. MICA), which he would yield 5 minutes to me, thereby giving me 15 minutes.

To the best of my recollection, I gave 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY), 3 minutes to the gentleman from Illinois (Mr. DAVIS), and 5 minutes to the gentleman from Minnesota (Mr. OBERSTAR). That is 10 minutes, which means I have 5 minutes remaining.

The SPEAKER pro tempore. Let the chair get this straight.

The gentleman's 5 minutes was taken out of the gentleman from Florida's (Mr. MICA) time. Of the 10-minute expansion, 5 went to the gentleman from Illinois (Mr. LIPINSKI), 5 went to the gentleman from Florida (Mr. MICA), and 10 went to the gentleman from Illinois (Mr. JACKSON).

Mr. LIPINSKI. Correct.

The SPEAKER pro tempore. The gentleman from Florida (Mr. MICA) has 4½ minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 11½ minutes remaining, and the gentleman from Illinois (Mr. LIPINSKI) has 5 minutes remaining.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 4¾ minutes.

(Mr. JACKSON of Illinois asked and was given permission to revise and extend his remarks.)

Mr. JACKSON of Illinois. Mr. Speaker, I have not often come to the floor of this Congress to talk about the racial divide in the city of Chicago; but when I do, it is very serious business because I do not want to take lightly the implications of what Members of Congress are going to vote on today. This bill will greatly exacerbate what the New York Times has referred to as the most segregated city in Chicago. I guess, Mr. Speaker, I want to draw the relationship with this chart between those comments and what the demographic shifts are actually showing in Chicago.

When John F. Kennedy inaugurated O'Hare Airport in the early sixties, you see that the center of economic activity in this first map is in central downtown Chicago. As a result of O'Hare Airport and our economy moving from an industrial-based economy to a service-based economy, we see tremendous economic growth by 1980 in the northwestern suburban area. In the meantime, the south side of Chicago and the south suburbs is experiencing zero to negative growth.

By 1990, O'Hare Airport, well into Du Page County, Kane County, McHenry County, and Lake County, Illinois, end up being responsible, for every three jobs that exist in our area, three of them can be found in the northwestern suburbs per one person. Under a build scenario for the south suburban airport, which is why I am here, the Second Congressional District of Illinois extends from 71st and Yates all the way to Will County, to the county line and just beyond the county line. The south suburban airport under a 2020 build scenario allows the balancing of growth between the northwest suburban areas and the south suburban areas, with Chicago being the overwhelming beneficiary of that balanced economic growth. Without that airport, under a 2020 no-build scenario, south Cook County becomes increasingly reliant upon government services, welfare, various forms of section 8 housing, and other programs.

And so when we debate aviation capacity and the opportunity to expand aviation in northeastern Illinois and build an airport on the south side of Chicago and the south suburbs, Mr. Speaker, it is our goal to solve a longstanding problem. Consistent with the gentleman from Indiana (Mr. VISCLOSKY), I too support modernization at Gary Airport. I do support modernization at Rockford Airport. But, Mr. Speaker, the deal between the Governor of the State of Illinois and the mayor of the city of Chicago was to add priority status to the building of a south suburban airport in Peotone, Illinois.

This legislation does not reflect that deal. That deal is better reflected by the Senate version of the bill offered by Mr. DURBIN where the Peotone language is given priority status. And so why the gentleman from Illinois (Mr. LIPINSKI) stands here, my good friend,

and advocates that this bill is reflective of the deal but removes the priority status that by 2020 will alleviate the racial, social and economic tensions that exist in our region is a factor is why some of us are so adamantly opposed to O'Hare expansion without building this south suburban airport at least first and as a priority.

I agree that there must be some modernization at O'Hare Airport. I disagree that we must tear up five runways at O'Hare and build an additional eight runways at O'Hare Airport as the solution. This area already has sufficient economic activity and jobs. Bring jobs and growth to the south side of Chicago that only a service-based economy can build.

Mr. Speaker, it is not just about airports. With airports come Hyatt and Hilton and Fairmont and UPS and Federal Express and every other ancillary business that requires moving cargo in and out of aviation facilities. Those jobs are badly needed not just in the northwest suburbs. They are also needed on the south side of Chicago and in the south suburbs. That is why bringing this bill to the floor in regular order, allowing those of us who have been advocating for this bill and advocating for expansion of aviation capacity in the regular order that we might amend it and ensure that our interests are protected is a factor is why we are disappointed and many of us, namely myself I know for a fact, are going to vote against this bill.

Certainly the gentleman from Illinois (Mr. WELLER) says that he hopes these issues will be worked out in conference. Mr. Speaker, the mayor of the city of Chicago's father wanted to expand aviation capacity by building a third airport on Lake Michigan. The mayor himself wanted to build one in Lake Calumet. Only when the idea came about to build it in south suburban Peotone where he did not control it did he oppose it.

And so, Mr. Speaker, I am asking for the justice of this House to vote down this bill because it is controversial, and it has implications 20 years from now for the quality of life for people that I represent. Give us a chance to offer amendments in the regular order and not on suspension.

Mr. Speaker, I reserve the balance of my time.

Mr. LIPINSKI. Mr. Speaker, may I inquire how much extra time the gentleman from Illinois (Mr. JACKSON) used there?

The SPEAKER pro tempore. The gentleman has 6¾ minutes remaining.

Mr. LIPINSKI. You were very generous to him.

Mr. Speaker, I yield 30 seconds to the gentleman from Illinois (Mr. GUTIERREZ).

Mr. GUTIERREZ. Mr. Speaker, I want to come to say that the gentleman from Illinois (Mr. HYDE) and the gentleman from Illinois (Mr. JACKSON) have done a wonderful job. Obviously, people underestimated their ability last Monday. No one is underestimating their ability today. We have done the work that is necessary in order to expand O'Hare. We feel that it is necessary.

Last week, one of the Hispanic Members voted against the bill because some people were saying that Hispanics were going to be hurt by this expansion of O'Hare. Today we have a commitment of all of the Hispanic Members of this Congress to vote for the bill, including myself, who is present today to vote for this bill.

We will not underestimate it. We know the quality of your arguments and the commitment that you have. Please understand that this is a gentlemen's disagreement. We respect and love you both very, very much.

Mr. JACKSON of Illinois. Mr. Speaker, I am honored to yield 3¼ minutes to the distinguished gentlewoman from California (Ms. WATERS), who has an issue at Los Angeles International Airport.

Ms. WATERS. I would like to thank the gentleman from Illinois for yielding this time to me.

Mr. Speaker, I rise to oppose H.R. 3479, the National Aviation Capacity Expansion Act, which would expand the size of Chicago O'Hare International Airport and undermine the rights of States and local communities to make decisions regarding local airport development.

O'Hare expansion would destroy approximately 1,500 homes and exacerbate the pollution, traffic congestion and noise endured by residents who live near the airport and north of Chicago. O'Hare expansion is also opposed by residents of the south side of the Chicago region, because it would make the construction of a third regional airport virtually impossible. O'Hare expansion would deny the people who live on the south side of the Chicago region any opportunity to enjoy the economic benefits of having access to a local airport.

H.R. 3479 would set a dangerous precedent by allowing the Federal Government to preempt State and local laws that could limit airport expansion. Such a precedent could prevent the people of southern California from developing a regional solution to our region's aviation needs. The people of my congressional district in southern California are already overburdened by the noise, pollution, and traffic congestion generated by Los Angeles International Airport. Other communities in southern California would like to attract service to their local airports. Legislation to impose LAX expansion would undermine southern California's efforts to ensure that the benefits and burdens of airport development are fairly distributed throughout our region.

Last week I introduced H.R. 5144, the Careful Airport Planning for Southern California Act, known as the CAP Act. The CAP Act would cap LAX air traffic at its current capacity of 78 million passengers per year and would encourage airport development in southern California communities that actually want airport development.

I urge my colleagues to support the CAP Act and oppose the expansion of Chicago O'Hare and LAX.

Mr. Speaker, I join this debate because there is nothing worse than having the folks sit in Washington override the people in local communities and in the States, telling them what is best for them when in fact the people have a right to make those decisions in their own regions and in their own communities. I respect the right of the people of the south side of Chicago to talk about what is in the best interests of their area, of that region. If we are sincere about not trying to override local control, we will not allow this to happen.

I would ask my colleagues to please oppose H.R. 3479. Someday it may happen to you in your area, in your region; and you would not want the Federal Government to put its foot on your hand and tell you what you can or cannot do.

Mr. LIPINSKI. Mr. Speaker, could I have a breakdown on how much time everybody has left?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. LIPINSKI) has 4½ minutes remaining, the gentleman from Illinois (Mr. JACKSON) has 3½ minutes remaining, and the gentleman from Florida (Mr. MICA) has 4½ minutes remaining.

Mr. LIPINSKI. Mr. Speaker, I yield myself 2½ minutes.

First of all I would like to submit my printed statement for the RECORD, and then I would like to go into a couple of points that have been raised here on the floor.

LAX. That was a wonderful speech by the gentlewoman from California (Ms. WATERS), but it has nothing to do with this situation whatsoever. The State of Illinois is the only State in the Union where the Governor has veto power over the construction of a new airport or a new runway. The Illinois channeling laws have strictly to do with the Illinois Department of Transportation and the Governor, as the gentleman from Illinois (Mr. HYDE) has stated, appoints all the people in charge of the Illinois Department of Transportation. So the LAX situation has nothing to do with, and it is not precedent-setting whatsoever as far as this legislation we have here.

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The gentleman from Illinois (Congressman HYDE) has asked me a number of times why the City of Chicago did not ask the Illinois Department of Transportation for a certificate of approval. I now have the answer for the congresswoman. In order to get a certificate for the Illinois Department of Transportation, it takes over a year. Unfortunately Governor Ryan would no longer be in office at the end of that time. A new governor could simply take that report because he has the arbitrary veto power and chuck it out

the window and say we are going to keep the gridlock in the Midwest in aviation.

The gentleman from Illinois (Congressman JACKSON) talks about Peotone. There is nothing in whatsoever in this legislation that stops Peotone from being built. What this legislation does not do, though, it does not reach out from Washington, D.C. and say we have to build Peotone. It is entirely left up to the State of Illinois. And it does not give high priority to Peotone because if we did that, every airport in the country would be rushing here to get exactly the same status. We do not even do that for O'Hare Airport in this legislation. O'Hare has to be improved in its modernization and expansion by the FAA before it becomes Federal law.

Mr. Speaker, I thought my time might have expired. I will be back shortly.

Mr. JACKSON of Illinois. Mr. Speaker, I just have one final speaker; so we will continue to reserve the balance of our time if that is okay.

The SPEAKER pro tempore (Mr. SIMPSON). Who yields time?

Mr. LIPINSKI. Mr. Speaker, since our side has time to close, I reserve the balance of my time.

Mr. JACKSON of Illinois. Mr. Speaker, the gentleman from Florida (Mr. MICA) has the right to close. The gentleman from Illinois (Mr. LIPINSKI) needs to exhaust the balance of his time and then we will exhaust the balance of ours and we will give it to the gentleman from Florida (Mr. MICA).

Mr. LIPINSKI. Mr. Speaker, is that the ruling of the Chair?

The SPEAKER pro tempore. It is.

Mr. LIPINSKI. Could I inquire to have a Parliamentary inquiry on why, since I have part of the gentleman from Florida's (Mr. MICA) time, I should not be able to come just before he closes?

The SPEAKER pro tempore. The original time is controlled by the gentleman from Florida (Mr. MICA) and the gentleman from Illinois (Mr. JACKSON); the reverse order of opening.

Mr. LIPINSKI. Mr. Speaker, I yield myself the balance of my time.

Let us see something else that has been brought up here. Competition. The gentleman from Illinois (Mr. HYDE) talked about the competition. We are going to have more gates at new modernized O'Hare Airport. In the agreement, Delta Airlines, Northwest Airlines, a number of airlines that now utilize O'Hare but feel that they are restricted because of the size of O'Hare will have a much greater opportunity to get gates, to get landing slots so that there will be significantly more competition at O'Hare.

Another point I would like to bring up is that this is really a very bipartisan piece of legislation. Not only do we have support from the Republican side and the Democratic side, but beyond this Chamber, five secretaries of Transportation enthusiastically support this legislation, and these are appointees both on the Democratic side and from the Republican side. Two of them that I could name right here, Secretary Slater, Secretary Skinner. People support this not only because it is necessary to break the gridlock at O'Hare for benefit of the American aviation flying public, but it will also create 195,000 jobs, and those jobs are not going to just go to people on the northwest side of the city of Chicago. They are going to go to people within the city of Chicago, within Cook County, within the counties that surround Cook County. This is job creation. This is economic development at the highest possible level, and on top of all that, once again I say to you there is nothing in this legislation that stops the State, rural county, or anyone else from building Peotone.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, this is a Rand McNally map of Chicago. It is called the Rand McNally Chicago Easy Finder Map. And in this map it has all of the northwest suburbs in it, it has most of the city of Chicago, it has some of the southwest suburbs, but it stops here at 55th Street, right here at the Museum of Science and Industry. My district does not even start until 71st Street, and then it proceeds almost 40 miles outside the city of Chicago.

Mr. Speaker, it is as if the city of Chicago stops right there where all of the tourists and where all of the economic activity is without any consideration of the south suburbs.

Mr. Speaker, I brought with me some of the many books that document the damaging effects of Chicago's persistent disparities between north and south. Let me read a passage of just one of these titled When Work Disappears by noted University of Chicago and Harvard University Professor William Julius Wilson. Professor Wilson writes, ''Over the last two decades, 60 percent of the new jobs created in the Chicago metropolitan area have been located in northwest suburbs of Cook and DuPage County surrounding O'Hare Airport. African-Americans constitute less than 2 percent of the population in these areas.'' He concluded, ''The metropolitan black poor are becoming increasingly isolated.''

Let us not add to this hefty volume. Let us not continue to perpetuate and exploit this divide. Let us regulate all of these books to the history section and begin our own new chapter of balanced economic growth and justice in Chicago.

Mr. Speaker, I urge a no vote on this bill. It is an unprecedented act that undermines our State's ability to determine our State's future.

Mr. Speaker, I include for the RECORD the following remarks:

Mr. Speaker, I rise in opposition to H.R. 3479.

Votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is non-controversial is like arguing that the elimination of estate taxes, gun control legislation, a patients bill of rights, and prescription drug benefits for seniors should all be on the suspension calendar. H.R. 3479 is one of the most controversial bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation(our two U.S. Senators are divided over it), in all House and Senate Committees, in the full Senate, and, if a full debate were held on the House floor today, the nation would see just how controversial this bill is.

This bill has already been delayed in the Senate with one virtual filibuster—and it will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the senate again. Hardly non-controversial!

To tear down and rebuild O'Hare will cost taxpayers three times as much money as it will cost to build a third South Suburban airport—$15–20 billion (not the $6.6 billion generally used) versus $5–7 billion. This bill is hardly non-controversial for taxpayers!

Tearing down and rebuilding O'Hare is estimated to take 15–20 years, assuming ti proceeds on schedule, without lawsuits—not likely—while building a new South Suburban Airport would take five years, it would expand thereafter as need arises, and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How is that not controversial?

This bill will double the noise pollution in the suburban communities surrounding O'Hare. It is hardly non-controversial in the polluted northwest suburbs of Chicago.

Doubling the traffic in the air space around O'Hare from 900,000 to 1.6 million operations will make flying into O'Hare less safe for the public—hardly noncontroversial for the flying public.

This bill will increase environmental pollution—O'Hare is already the number one polluter in Illinois—hardly non-controversial for those having to live in the increased pollution.

The Chicago Tribune won a Pulitzer Prize for documenting ''sleaze'' surrounding the City of Chicago and past O'Hare construction, vender, and service contracts. By passing this bill—and removing the Illinois Aeronautics Law and by-passing the Illinois General Assembly—we are virtually sanctioning more ''sleaze'' to be found around O'Hare construction, vender, and service contracts. Since when has such potential ''sleaze'' become non-controversial for Congress.

I don't consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the U.S. Constitution—to build an airport—non-controversial.

Finally, we're already finding out how controversial this bill is as Judge Hollis Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwest suburban neighbors by illegally trying to buy up and tear down their homes and businesses to make room for O'Hare expansion. This is just one of many controversial lawsuits that have been and will be filed in the future if this bill passes and becomes law.

How is tearing down and rebuilding O'Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skys less safe, and be a less permanent solution than building a third airport—non-controversial? I say, solve the current air capacity crisis by building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O'Hare.

H.R. 3479 fall woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing the current air capacity crisis surrounding O'Hare. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environmental impact. About federal precedence—and I associate myself completely with the remarks of my good friend, Mr. HYDE.

Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill—constitutionality.

The attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human right, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark), California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As states by the United States Supreme Court:

> [T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added)

> It is incontestable that the Constitution established a system of ''dual sovereignty.'' Printz v. United States, 521 U.S. 898, 981 (1997) (emphasis added)

> Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

> Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'' Id at 918–919.

> This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a health balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991)

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress introducing on the States' sovereignty could not be avoided by claiming either (a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or (b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2002). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the sate legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 3479 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and power of the state's political subdivision—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

> Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such power, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Commissioners of Highways, 653 F.2d at 297 Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislation to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and built airports.

Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is

the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be build in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the record.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW,
Champaign, IL, March 1, 2002.

Re Proposed federal legislation granting new powers to the city of Chicago.

Hon. JESSE L. JACKSON, JR.,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN JACKSON. As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have authored a leading course book on Constitutional Law. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In addition to my books, I have taught and researched in the area of Constitutional Law since 1974.

I have been asked to give my opinion on the constitutionality of proposed federal legislation entitled ''National Aviation Capacity Expansion Act,'' identical versions of which have been introduced in both the Senate and the House of Representatives by Senator Durbin and Congressman Lipinski (S. 1786, HR 3479), hereafter the ''Durbin-Lipinski legislation.''

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O'Hare Airport in Chicago. While this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination.

First Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to build a proposed major alteration of O'Hare even though state law does not authorize Chicago to build the alteration without first receiving a permit from the State of Illinois. Chicago, as a legal entity, is entirely a creation of state—not federal law—and Chicago's authority to build airports is essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of that delegation of state power. The U.S. Constitution prohibits Congress (1) from invading and commandeering the exercise of state power to build airports, and (2) from changing the allocation of state-created power between the State of Illinois and its political subdivisions. The U.S. Constitution, in short, prohibits Congress from essentially rewriting state law dealing with the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress' power—which prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into agreements for a third party (the FAA) to alter O'Hare without first obtaining a permit from the State of Illinois. But Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of O'Hare without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build airports to require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the very authority and power of Chicago to undertake the actions proposed by Congress depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly.

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

Summary of Analysis

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment of the Constitution. In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (nuclear waste legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commandeered state law powers of the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to undertake any activity (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., Chicago) without a grant of authority from the State, or actions taken by political subdivision in violation of the conditions, limitations or prohibitions imposed by the State in delegating the state authority, are plainly ultra vires, illegal, and unenforceable. The City of Chicago is a creature of state law, not federal law.

4. The power exercised by any state political subdivision (e.g., the power to construct airports) is in reality a power of the State—not inherent in the existence of the political subdivision. For the political subdivision to have the legal authority to exercise that state power, there must be a delegation of that state power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must be exercised in accordance with the conditions, limitations, and prohibitions accompanying the State's delegation of that power.

5. In the case of airport construction, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipalities) the state law power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement is that Chicago must first comply with all of the requirements of the Illinois Aeronautics Act—including the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. the Illinois General Assembly has expressly provided that municipal construction or alteration of an airport without such a state permit is unlawful and ultra vires.

6. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to proceed with the ''runway redesign plan'' (a multi-billion dollar modification of O'Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly on the state statutory delegation to Chicago of the state law power to construct airports. Illinois law explicitly says Chicago has no state law authority to build or alter airports without first complying with the Illinois Aeronautics Act, including the state permitting requirements of §47 of that Act. Even though Chicago (a political creation and instrumentality of the State of Illinois) has no power to build or modify airports (a state law power) unless Chicago obtains State approval, Section 3(a)(3) purports to infuse Chicago (which has no legal existence independent of state law) with a federal power to build airports and to disregard Chicago's fundamental lack of power under state law to undertake such actions (absent compliance with state law). Like New York v. United States and Printz v. United States the proposed Durbin-Lipinski legislation involved Congress attempting to use a legal instrumentality of a State (i.e., the state power to build airports exercised through its delegated state-created instrumentality, the city of Chicago) as an instrument of federal power. As the Supreme Court held in New York and Printz, the Tenth Amendment—and the structure of ''dual sovereignty'' it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section provides that, if (for whatever reason) construction of the ''runway design plan'' is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall construct the ''runway redesign plan'' as a ''Federal Project''. But, Section 3(f)(1) then provides that this ''federal project'' must obtain several agreements and undertakings from Chicago—agreements and undertakings that are controlled by state law, which limits Chicago's authority to enter into such agreements or accept such undertakings. Chicago has no authority under the state law (which confers upon Chicago the state power to construct airports) to enter into agreements with any third party (be it the United States or a private party) to make alterations of an airport without the state permit required by state statute. Thus, Chicago has no authority under state law to enter into an agreement with the FAA Administrator to have the runway redesign

plan constructed by the Federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition of the delegation of state power (to build airports) to Chicago by the Illinois General Assembly. Just as Chicago (a creation and instrumentality of the State of Illionis) has no power or authority under state law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Sections 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both New York v. United States and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both New York v. United States and Printz do not allow).

8. The Durbin-Lipinski legislation is not a law of ''general application''. There is a line of Supreme Court decisions which allow Congress to use the Commerce Power to impose obligations on the States when the obligations imposed on the States are part of laws which are ''generally applicable'' i.e., that impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 528 U.S. 141 (2000) (Federal rule protecting privacy of drivers' records upheld because they do not apply solely to the State), South Carolina v. Baker, 485 U.S. 505 (1988); (state bond interest not immune from nondiscriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, upheld). But these cases have no application where, as here and in New York and Printz, the Congressional statute is not one of general applicaiton but a specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubly unconstitutional, because it does not apply to private parties or even to all States but only to one State (Illinois) and its relationship to one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the State of Illinois. This is an unconstitutional use of the Commerce Power under the holdings New York and Printz and does not fall within the ''general applicability'' line of cases such as Reno v. Condon, South Carolina v. Baker, and Garcia.

ANALYSIS

Before discussing any further the specific provisions of the Durbin-Lipinski legislation, let us review some important background law.

A. The basic legal principles

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal Power. Normally, this controversy surrounding the proposed expansion of O'Hare Airport would be left to the state political process. Under Illinois law, the cities in this state have only the power that the State Constitution or the legislature grants to them, subject to whatever limits the State imposes. This legal principle has long been settled.

Nearly a century ago, the U.S. Supreme Court, in Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) held that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give the, subject to whatever limits the States choose to impose:

''This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.''

Hunter held that a State that simply takes the property of municipalities without their consent and without just compensation did not violate due process. While Hunter is an old case, it still is the law, and the Seventh Circuit recently quoted with approval the language reprinted here.

The Illinois Aeronautics Act Expressly Limits Chicago's Power to Build and Alter. The State of Illinois has delegated to Chicago the power to build and alter airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to make ''any alteration'' to an airport unless it first obtains a permit, a ''certificate of approval,'' from the State of Illinois. Finally, Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

B. The federalism problem

As mentioned above, section 3(a)(3) of the proposed federal law overrides the licensing requirements of §47 of the Illinois Aeronautics Act. This section states:

''(3) The State shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including sections 38.01, 47, and 48 of the Illinois Aeronautics Act.''

In addition, section 3(f) authorizes Chicago to enter into an agreement with the federal government to construct the O'Hare Airport expansion. This project is called a ''Federal project,'' but Chicago must agree to construct the ''runway redesign as a Federal Project,'' and Chicago provides the necessary land, easements, etc., ''without cost to the United States.''

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion approved by the Administrator of the Federal Aviation Administration. But, under state law, Chicago cannot expand O'Hare because it does not have the required state permit.

There is no doubt that the O'Hare Airport is a means of interstate commerce, and Congress may certainly impose various rules and regulations on airports, including O'Hare. Congress, for example, may decide to require airport security and require that the security agents be federal employees. Or, Congress could provide that it would build and takeover the O'Hare Airport and construct expansion if the State of Illinois refused to do so.

Congress may also use its spending power to take land by eminent domain and then construct or expand an airport, no matter that the state law provides. The limits on the spending clause are few.

But, the proposed law does not take such alternatives. It does not impose regulations on airports in general, nor does it exercise the very broad federal spending power. Nor does the proposed law authorize the federal government take over ownership and control of O'Hare Airport. Instead, it seeks to use an instrumentality of state power (i.e., the state law power to build airports as delegated to a state instrumentality, the city of Chicago) as an exercise of federal power.

The proposed federal law is stating that it is creating a federal authorization or empowerment to the City of Chicago to do that which state law provides that Chicago may not do—expand O'Hare Airport without complying with state laws that create the City of Chicago and delegate to it certain limited powers that can be exercised only if within the limits of the authorizing state legislation.

New York v. United States

The proposed federal law is very similar to the law that the Supreme Court invalidated a decade ago in New York v. United States. The law that New York invalidated singled out states for special legislation and regulated that states' regulation of interstate commerce. The proposed Durbin-Lipinski legislation singles out a State (Illinois) for special legislation and regulates the State's regulation of interstate commerce dealing with O'Hare Airport.

While the law in this area has shifted a bit over the last few decades, it is now clear that Congress can use the Interstate Commerce Clause to impose various burdens on States as long as those laws are ''generally applicable.'' The federal law may not single out the State for special burdens. For example, Congress may impose a minimum wage on state employees in, or affecting, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress cannot single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to increase the home rule powers of the City of Chicago; it cannot enact federal legislation that adds to or revises Chicago's state created and limited delegated powers.

The leading case, New York v. United States, held that the Commerce Clause does not authorize the Federal Government to

conscript state governments as its agents. ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.'' The proposed Durbin-Lipinski legislation will do exactly what New York prohibits: it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

New York invalidated a legislative provision that is strikingly similar to the proposed federal Durbin-Lipinski legislation. The Court, in the New York case, considered the Low-Level Radioactive Waste Policy Amendments Act of 1985. Congress was concerned with a shortage of disposal sites for low level radioactive waste. The transfer of waste from one State to another is obviously interstate commerce. Congress, in order to deal with the waste disposal problem, crafted a complex statute with three parts, only one of which was unconstitutional. There were a series of monetary incentives, which the Court unanimously upheld under Congress' broad spending powers. Congress also authorized States that adopted radioactive waste and storage disposal guidelines to bar waste imported from States that had not adopted certain storage and disposal programs. The Court, again unanimously, relied on long-settled precedent that approves of Congress creating such trade barriers in interstate commerce.

Then the Court turned to the ''take title'' provisions and held (six to three) that they were unconstitutional. The ''take title'' provision in effect required a State to enact certain regulations and, if the State did not do so, it must (upon the request of the waste's generator or owner), take title to and possession of the waste and become liable for all damages suffered by the generator or owner as a result of the State's failure to promptly take possession.

The Court explained that Congress could, if it wished, preempt entirely state regulation in this area and take over the radioactive waste problem. But Congress could not order the States to change their regulations in this area. Congress lacks the power, under the Constitution, to regulate the State's regulation of interstate commerce. This is what the proposed federal O'Hare Airport bill will do: it will regulate the State's regulation of interstate commerce by telling the State that it must act as if the City of Chicago has complied with the Illinois Aeronautics Act and other state rules.

In a nutshell, Congress cannot constitutionally commandeer the legislative or executive branches. The Court pointed out that this commandeering is not only unconstitutional (because nothing in our Constitution authorizes it) but also bad policy, because federal commandeering serves to muddy responsibility, undermine political accountability, and increase federal power.

The proposed Durbin-Lipinski legislation prohibits Illinois from applying its laws regulating one of its cities. The proposed federal law also authorizes the federal government to make an agreement with Chicago, pursuant to which Chicago will assume some significant obligations, even though present state law gives Chicago no authority to engage in this activity. As the six to three New York decision made clear:

''A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress. . . . No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution.''

The proposed Durbin-Lipinski legislation is very much like the law that six justices invalidated in New York. The O'Hare bill provides that, no matter what the State chooses, ''it must follow the direction of Congress.'' The State has ''no option other than that of implementing legislation enacted by Congress.''

The Court in New York went on to explain that there are legitimate ways that Congress can impose its will on the states:

''This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.''

The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, ''where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.'' The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly takeover and expand O'Hare Airport. Instead, it proposes that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

New York v. United States did not question ''the authority of Congress to subject state governments to generally applicable laws.'' But Congress cannot discriminate against the States and place on them special burdens. It cannot commandeer or command state legislatures or executive branch officials to enforce federal law. Congress can regulate interstate commerce and States are not immune from such regulation just because they are States. For example, Congress can forbid employers from hiring child labor to work in coal mines, whether a private company or a State owns the coal mine and employs the workers.

Printz v. United States. Following the New York decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials, in Printz v. United States. The Brady Act, for a temporary period of time, required local law enforcement officials to use ''reasonable efforts'' to determine if certain gun sales were lawful under federal law. The federal law also ''empowered'' these local officers to grant waivers of the federally prescribed 5-day waiting period for handgun purchases. Note that the proposed Durbin-Lipinski legislation will also ''empower'' the City of Chicago to do that which Illinois does not authorize the city to do.

To make the analogy even more compelling, the chief law enforcement personal suing in the Printz case said that state law prohibited them from undertaking these federal responsibilities. That, of course, is the exact position in which Chicago finds itself. State law prohibits Chicago from entering into and committing to these federal responsibilities (e.g., the agreements between Chicago and the FAA in §3(f) of the proposed Durbin-Lipinski legislation call for construction as a ''federal project'' but then require Chicago to either construct or allow construction without a permit from the State of Illinois).

We should realize that the proposed Durbin-Lipinski legislation—in commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago—is quite unusual and not at all in the tradition of federal legislation. For most of our history, Congress would explicitly only ''recommend'' or ''request'' the assistance of the governors and state legislatures in implementing federal policy. It is only in very recent times that Congress has sought explicitly to commandeer or order the legislative and executive branches of the States to implement federal policies. Because such federal legislative activity is recent, the case law in this area is recent, but the case law is clear in prohibiting this type of federal assertion of power.

New York v. United States held that Congress cannot ''command a State government to enact state regulation.'' Congress may regulate interstate commerce directly, but it may not ''regulate state governments' regulation of interstate commerce.'' The Federal Government may not ''conscript state governments as its agents.'' Congress has the ''power to regulate individuals, not States.''

In short, there are important limits on the power of the federal government to commandeer the state legislature or state executive branch officials for federal purposes. Another way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called ''unfunded mandates'' on state officials. Congress cannot simply order the States or state officials or a city to take care of a problem. Congress can use its spending power to persuade the States by using the carrot instead of the stick.

While there are those who have attacked the restrictions that New York v. United States have imposed on the Federal Government, it is worth remembering the line-up of the Court in Maryland v. Wirtz when the justices first considered this issue. That case rejected the applicability of the Tenth Amendment and held that it was constitutional for Congress to set the wages, hours, and working conditions of employees, including state employees in interstate commerce. However, Justice Douglas, who was joined by Justice Stewart, dissented. Douglas found the law to be a ''serious invasion of state sovereignty protected by the Tenth Amendment'' and ''not consistent with our constitutional federalism.'' He objected that Congress, using the broad commerce power, could ''virtually draw up each State's budget to avoid 'disruptive effect[s]' '' on interstate commerce. New York v. United States prevents this result.

The ''generally applicable'' restriction is important, and it explains Reno v. Condon. Congress enacted the Driver's Privacy Protection Act (DPPA), which limited the ability of the States to sell or disclose a driver's personal information to third parties without the driver's consent. Chief Justice Rehnquist, for a unanimous Court, upheld the law as a proper regulation of interstate commerce and not violating any principles of federalism found in New York v. United States or Printz because the law was ''generally applicable.''

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to

businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtained the information from a state DMV. The Court concluded: ''The DPPA's provisions do not apply solely to States.'' Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

Unlike the law in New York, the Court concluded that the DPPA does not control or regulate the manner in which States regulate private parties, it does not require the States to regulate their own citizens, and it does not require the state legislatures to enact any laws or regulations. Unlike the law in Printz, the DPPA does not require state officials to assist in enforcing federal statutes regulating private individuals. This DMV information is an article of commerce and its sale or release into the interstate stream of business is sufficient to support federal regulation.

The DPPA is a ''generally applicable'' federal law regulating commerce because it regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the states as initial suppliers and the private resellers or redisclosers of this information. ''South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as applied to the States acting purely as commercial sellers.''

CONCLUSION

The proposed federal law dealing with the O'Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special burdens that are not generally applicable to private parties or even to other States. It authorizes the City of Chicago to do that which Illinois now prohibits.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private parties in interstate commerce. It does not subject the State of Illinois to ''generally applicable'' legislation. Instead, Congress is regulating the state's regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,
The Albert E. Jenner, Jr. Professor of Law.

CHICAGO IS NOT AN AGENCY OF THE FEDERAL GOVERNMENT

(By Ronald D. Rotunda)

Congress is at it again. The Senate Commerce Committee has cleared a bill that would, in effect, enlist Chicago as an agency of the federal government. The immediate dispute involves O'Hare Airport, but the underlying constitutional issue affects us all. The question is whether there should be a major expansion of O'Hare, or a new airport. That decision has been entrusted to Chicago, a city created under Illinois law. But the state placed an important condition on Chicago's power to expand O'Hare. First, the city has to secure a state permit.

That's the rub. Some people who favor the expansion don't want Chicago to comply with the state permit requirement, so they urged Congress to enact legislation that authorizes Chicago to do what state law forbids. Enter the U.S. Constitution. For over two centuries, the federal government has had the power to regulate interstate commerce. After the terrorist attacks, for example, Congress relied on that power to federalize airport security. Notably, Congress didn't deal with the problem by ordering state and city police to take over security and pay the bills. That's because the federal government knew it could not regulate by conscripting state or city governments as its agents.

Congress acknowledged that fundamental principle in 1789, the very year that the Constitution was ratified. The First Congress enacted a law that requested state assistance to hold federal prisoners in state jails at federal expense. The law did not command the states' executives, but merely recommended to their legislatures, and offered to pay 50 cents per month for each prisoner. When Georgia refused, Congress authorized the U.S. marshal to rent a temporary jail until a permanent one could be found. It never occurred to Congress that it could make city or state officials its minions by instructing them to act as if they were federal employees.

All this changed a little over a decade ago, when Congress has to decide how to dispose of radioactive waste. Rather than handle the matter directly, it chose a low-cost solution: it simply ordered the states to take care of the problem. The law required the states to take title to radioactive waste that private parties had generated, and be responsible for its disposal, at not cost to the federal government. In 1992, the Supreme Court invalidated the law, calling it an unprecedented effort by the federal government to co-opt legislative and executive branch officials of state government.

A few years later, Congress mandated background checks in connection with gun purchases. It didn't want to spend federal money for bureaucrats to enforce the new law, so it told city and state law enforcement personnel to carry out the background checks. Printz v. United States invalidated that portion of the federal law. The Supreme Court explained that city and state officials do not work for the federal government; they work for the state. Cities are creatures of state law, and they have only the powers that the state chooses to give them.

Federalism, the Court tells us, exists to protect the people by dividing power between the states and the federal government. That protection is undermined if Congress can bypass the federal bureaucracy by directing state or city officials to do its bidding. The Court added that allowing Congress to treat state officials as its worker bees is bad policy because it muddies responsibility, weakens political accountability, and increases federal power.

The Constitution gives Congress plenty of ways to deal with O'Hare, but they all cost money: Congress can use its spending power to expand the airport; it can give the state money on the condition that it expand the airport; it can order federal officials (the Army Corps of Engineers) to build the O'Hare expansion. But Congress may not simply order or authorize state or city officials to violate state law and act like federal employees. The proposed federal law dealing with the expansion of O'Hare Airport subjects Illinois to special burdens that are not applicable to other states or to private parties, and it authorizes Chicago, a city created by the state, to do that which Illinois law prohibits.

Justice Sandra Day O'Connor, speaking for the Court in 1992, put it bluntly: ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state [or city] governments as its agents.''

A CONTROLLER'S VIEW

Ladies and gentlemen; I have proudly served the FAA for the past 14 years as an Air Traffic Controller. I have been employed at several air traffic control facilities throughout the Chicagoland area, and feel that I have a unique perspective on enhancing future airport development.

To date, most of you have heard numerous insights on a proposed third major airport for Chicago. Let me offer another perspective from a ''controller's viewport''. Within a small twenty-mile radius of the Chicagoland area, lie four of the busiest airports in the country. Approximately one and one half million airplanes take off and land at Palwaukee, Dupage, Midway, and O'Hare Airports yearly! This puts a tremendous strain on the Air Traffic Controllers who struggle to keep this area safe and without significant delay. With air travel continuously increasing, delays and safety will become a nearly impossible challenge.

Plans for expansion at the two major Chicago airports will not be enough to meet demands. O'Hare airport has reached its maximum capacity creating consequential delays. There are not enough available gates, runways, and taxiways to serve all the aircraft. Although there are plans to add additional gates and another runway, this will not address the taxiway problem. Due to the layout of O'Hare airport, in my opinion there is no effective way to construct additional taxiways that will have a positive impact on airport operations. Thus making any other method to increase capacity ineffective.

The problems that face O'Hare are some of the same problems facing Midway Airport. Midway boasts as being aviation's busiest square mile. Nowhere else are there more commercial airplanes landing and departing in such a condensed area. Unfortunately, Midway Airport is very condensed. Due to runway lengths, it can only handle the smallest commercial aircraft. The airport is severely landlocked with major streets, houses and businesses immediately surrounding the field. Even with the current terminal expansion project in effect, an insufficient number of taxiways and the size of the runways, in my opinion limit any significant increase in traffic.

The need for a third major airport is loud and clear. With the projections of air traffic on the rise, additional airports must become available. In my opinion, Peotone is an excellent location for a major commercial airport. Peotone is located just outside the main flow of air traffic in and out of Chicago. Any additional airplanes created by the third airport would not adversely effect air traffic facilities located east, south, and west of Peotone. A third airport located in Peotone would not be significantly effected by Chicago's air traffic, which is rapidly reaching a saturation point, but instead would aid in alleviating the congestion heading into Chicago.

Another point of interest, which may have been overlooked, is corporate aircraft. The use of corporate aircraft is one of the fastest growing fields in aviation. There are very few, if any airports that can accommodate corporate aircraft in the south Chicagoland area. With the pending closure of Meigs Field in Chicago, the Petone airport would fill the need for another corporate airport crucial to south Chicagoland businesses. Furthermore, suggestions that a third major

airport being located in the immediate Chicagoland area, namely Gary, Indiana, would not alleviate the saturation problem Chicago is already facing.

In closure, I would like to thank all those involved with the Petone Airport project. I am greatly anticipating the future events surrounding this project.

JOHN W. TEERLING,

Lockport, IL, January 18, 1999.

Re A Third Chicago Airport.

Governor GEORGE RYAN,

State Capitol, Springfield, IL.

DEAR GOVERNOR RYAN: My name is John Teerling and I recently retired, after 31.5 years with American Airlines as a Captain, flying international routes in Boeing 767 and 757's. I was based at Chicago's O'Hare my entire career. I have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion midairs were only seconds apart. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.

Cities like Atlanta, Dallas and especially Miami continue to increase their traffic flow, some months exceeding Chicago, and at some point could supersede Chicago permanently. If Chicago and Illinois are to remain as the major Hub for airline traffic, a third major airport has to be built, and built now. Midway, with its location and shorter runways will never fill this void. A large international airport located in the Petone area, complete with good ground infrastructure (rail and highway) to serve Chicago, Kankakee, Joliet, Indiana and the Southwest suburbs, would be win, win situation for all. The jobs created for housing, offices, hotels, shopping, manufacturing and light industry could produce three to four hundred thousand jobs. Good paying jobs.

Another item to consider, which I feel is extremely important, is whether. I have frequently observed that there are two distinct weather patterns between O'Hare and Kankakee. Very often when one is receiving snow, fog or rain the other is not. These conditions affect the visibility and ceiling conditions determining whether the airports operate normally or not. Because of the difference in weather patterns when one airport, say O'Hare, is experiencing a hampered operation, an airport in Peotone, in all probability, could be having more normal operations. Airliners could then divert to the ''other'' Chicago Airport, saving time and money as well as causing less inconvenience to the public. (It's better to be in Peotone than in Detroit).

It is well known that American and United, who literally control O'Hare with their massive presence, are against a third airport, Why? It is called market share competition and greed. A new airport in the Peotone area would allow other airlines to service Chicago and be competition. American and United are of course dead set against that. What they are not considering is that their presence at a third airport would afford them an even greater share of the Chicago regional pie as well as put them in a great position for future expansion.

You also have Mayor Daley against a third airport because he feels a loss of control and possible revenue for the city. This third airport, if built, and it should be, should be classified as the Northern Illinois Regional Airport, controlled by a Board with representatives from Chicago and the surrounding areas. That way all would share in the prestige of a new major international airport along with its revenues and expanding revenue base.

The demand in airline traffic could easily expand by 30% during the next decade. Where does this leaves Illinois and Chicago? It leaves us with no growth in the industry if we have no place to land more airplanes. If Indiana were ever to get smart and construct a major airport to the East of Peotone, imagine the damaging economic impact it would have on Northern Illinois!

Sincerely,

JOHN W. TEERLING.

THE FUTURE OF THE CHICAGO REGION: SMART GROWTH, INFILL REDEVELOPMENT AND REGIONAL BALANCE

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its ''rust-belt'' image and has produced remarkable economic growth.

Between 1990 and 1998, the six-county Chicago area grew by 505,500 persons, a 7 percent increase. While this percent increase is moderate, the numerical increase is equivalent to a city larger than Denver.

Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1970 and 1996, the region (Kenosha to Michigan City) grew by 1.310 million jobs, the fifth largest increase in the nation.

Between 1996 and 2020, the Chicago region is projected to grow by 785,000 persons. This is a city the size of San Francisco.

Between 1996 and 2020, the Chicago region is projected to have the largest growth of any metro area in the U.S., adding 1.118 million jobs.

In spite of these significant regional turnarounds, the City of Chicago continued to lose ground. Between 1991 and 1997, the City of Chicago lost over 27,000 jobs; 11,0000 were from the South Loop. Every one of the City's eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O'Hare International Airport. The Far South, Southwest and South communities experienced the greatest losses.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwest suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (around O'Hare) Counties contributed 194,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business District versus 450,000 in North Suburban Cook County and 150,000 in Northeast Du Page County, the economic center of the region has shifted from downtown to O'Hare.

O'Hare International Airport is, undoubtedly, the great economic engine it is portrayed. But, it has run out of space, both in the air and on the ground. Its enormous attraction, to business and industry, has brought thousands of enterprises, hundreds of thousands of jobs, millions of visitors and billions of dollars, annually, to the Chicago region. On this, we all agree. But, the area surrounding it is choking on the development. Other areas, particularly the South Side, are in great need of both jobs and better airport access. In fact, the two issues are closely related.

The massive development attracted by O'Hare Airport makes airport expansion there costly, time-consuming, difficult and intrusive. Traffic often is brought to a near halt on the expressways leading to O'Hare; future traffic problems would be compounded many times over. O'Hare's neighbors—well-aware of its many economic contributions—also are wary of expansion, weary of noise and traffic, and fearful of possible future compromises on safety. On the opposite side of the region—and the other side of the ledger—are the communities of the Chicago South Side and the South Suburbs. By all accounts, these areas find themselves overlooked and under-served—primarily due to their distance from the region's airports. This economic disparity is clearly evident from the following maps, which show job concentrations in 1960 and 1990. This period marked major declines in manufacturing jobs in the region's South Side; and a rise in both manufacturing and service jobs in the North/Northwest, around O'Hare. Airport access was the difference.

The solution to the region's needs is the Third Chicago Airport. Development of the Third Chicago Airport is a true urbanist's dream: obtaining multiple benefits from one investment. Why, then, is it being ignored? When you have two powerful and thoughtful representatives of the people—Congressman Henry Hyde saying ''we've had enough,'' and Congressman Jesse Jackson, Jr. saying ''let us have some—perhaps we should listen to them. Other representatives—Congressmen Jerry Weller, Bobby Rush, and Tom Ewing, Senator Peter Fitzgerald, Governor George Ryan, Senate President Pate Phillip—plus scores of local mayors, hundreds of local businesses and hundreds of thousands of residents, have joined in the effort to bring the airport to the South Suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, encourage infill development and share the wealth of the region.

THE PLANNING PROCESS: TWELVE YEARS OF FINDINGS

The state agency responsible for planning the region's transportation infrastructure, the Illinois Department of Transportation (IDOT), has been planning for the region's aviation needs for the past twelve years. IDOT, and its aviation consultants, are convinced, without a doubt, that Chicago's aviation demands will more than double by 2020. The Federal Aviation Administration (FAA), the Airports Council International (ACI) and other industry groups have forecasted national growth of similar magnitude. For a brief time, the City of Chicago agreed, as well. The Chicagoland Chamber study predicts a five-fold increase in international traffic. IDOT's studies support the contention that Chicago has an excellent opportunity to be the dominant North American hub for international flights, as well as its premier domestic hub, into the next century. That point has been stated and documented on many occasions by IDOT. The State's forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

The region cannot double its aviation service without building major new airport capacity. O'Hare and Midway are now at capacity. Enplanements already are being affected, with growth limited to increases in plane size or load factor; neither is expected to increase further. The City's $1.8 billion investment in terminals will not increase capacity. But, the adverse impact on the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the USDOT, the GAO and the FAA, itself. Perhaps in response to these obvious constraints, both the Chicagoland Chamber and the Commercial Club of Chicago have begun to address the region's aviation issues. The Chamber calls for O'Hare expansion. The ''Metropolis 2020'' study also recognizes the need for additional aviation capacity, with a call for expansion of O'Hare and land banking of the Third Airport site in Peotone. This call for action comes none too soon. There are many indications that the Chicago region has begun to suffer from capacity constraints.

Ten years ago, Chicago was one of the nation's least expensive regions to fly to, due to its central location. Obviously, its location has not changed; however, now, due to O'Hare's capacity overload and higher fares, it is cheaper to fly from all around the country to many other cities than to Chicago. For instance, according to data supplied by the airlines to the U.S. Department of Transportation, it is now cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O'Hare's airlines are over-charging their patrons by $750 million, annually (the difference between average fares for large U.S. airports and those at O'Hare). This fact is beginning to affect regional development—especially conventions and tourism—but, it also affects every major and start-up business, every individual with family and friends in far-flung places. As is well-known, access to a major airport is one of the top three requirements of a locating or expanding business. But, access must be at competitive fares. Expanding O'Hare will simply buttress the monopolistic behavior of its airlines. Such monopolistic practices currently are a major concern of Congress.

THE DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—and expanded soon—to bring true competition, lower fares and increased service to the region. The alternatives are two: adding runways to O'Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is: ''Will we continue to spend great outlays of public-private funds on an area that is overwhelmed with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?''

As is clearly documented by a recent Chamber study, O'Hare's benefits are conferred, primarily, on the west, north and northwest suburbs. Virtually all of O'Hare's employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values. High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in areas farther removed from the region's central core.

THE TWO SIDES OF THE COIN

While unprecedented growth takes place around O'Hare, to the north, the three million residents of the region who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The consequences, for South Side/South Suburban residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well, (11,000 since 1991; 25,000 since 1983) have compounded the job searches of the South Side's residents. For decades, regional planning agencies have called for the development of moderate-income housing near job concentrations. Instead, let us bring the jobs to the residents.

Recent public forums on the disparity of property tax rates in Cook County's north and south communities have led to the South's designation as the ''Red Zone,'' signifying its concentration of highest property tax rates. This disparity was not always so. It has occurred over the last three decades and proliferated in the last two, as shown below. The ''Metropolis 2020'' study addresses this disparity issue by calling for a sharing of revenues with the ''lesser haves.'' The more-responsive, enduring and—ultimately—more-equitable solution is to provide the South Side with the Economic opportunities generated by the Third Chicago Airport.

Whether the region expands O'Hare or builds a supplemental airport, O'Hare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-relate jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago's role as the center of the region's growth.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.5 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition traditionally have come from the federal government. In this ''Year of Aviation'', these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC's) are expected to increase from $3 to $6. Currently, $1 in PFC's at O'Hare yields $37 million per year. At the Full-Build forecast and $6 rate, the Third Chicago Airport will generate $100 million in PFC's annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport development in the Sought Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

Independent studies have demonstrated overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Needed is a Third Airport that can grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Dampended aviation growth.

Increased and non-competitive fares.

Lost jobs, conventions and other opportunities.

There are two alternatives for meeting the region's demand:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport.

Doubling traffic at O'Hare drives new development farther away from the region's core—the Chicago Central Area—and its residents and businesses to the South.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

THE GROWING IMBALANCE IN THE REGION'S GROWTH, AND ACCESS TO JOBS

1. The Chicago region has grown robustly over the past 25–30 years.

Over 1.310 million jobs (1970–96) for the consolidated area.

Over 275,000 jobs between 1990 and 1997, alone, for the six-county area.

2. This growth has been very uneven. The North has prospered, while the South has languished.

3. The region's center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O'Hare (dependent on autos).

4. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

5. The suburbs grew by 300,000 jobs. The areas to the north, northwest and west (O'Hare-influenced) contributed nearly 200,000 of this growth.

6. With 500,000 jobs in Chicago's CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region has shifted from Downtown to O'Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation's longest. There is little public transit between suburbs.

8. These same residents do have the region's highest tax rates, however; without businesses and industries, the residents, alone, must pay for all their services.

9. New businesses and industries want access to major airports. O'Hare's nearby communities have run out of space to offer. The South Side has ample land, but no airport. The ample land also allows the construction of an environmentally-sensitive airport.

10. To accommodate the economic growth anticipated over the next 20 years, the Chicago region needs additional airport capacity. To balance the economic growth, it needs a South Suburban Airport.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

Background Assumptions for Demand Forecasts

Aviation demand is derived from a few basic factors:

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

The location/desirability of the region for providing connecting flights.

The ability of the region to accommodate this demand depends on:

The capacity of its airports.

The competitiveness of its fares.

National/International Aviation Growth

The FAA forecasts a doubling in aviation growth over a 15 year period.

International enplanements and freight are growing even more rapidly.

The FAA and the Airports Council International have equated this growth to 10 O'Hare Airports.

By 2012, there will be more than 1 billion enplanements, 2 billion passengers in the U.S..

Socio-Economics Create Demand

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations:

In 1990–1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,260 persons.

The regional planning agencies have increased their 2020 forecasts, to reflect this growth. So has NPA, author of forecasts used by City of Chicago.

Woods & Poole Economics (the national forecast used by IDOT), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.:—for 1996–2020, a 1,118,660 job growth—for 1990–2020, a 1,635,570 job growth

Chicago's economy an continue its robust growth only if it can provide excellent aviation access. And it, can serve the region fairly, only if it provides that access to the south suburbs.

Location Drives Connecting Flights

Becuase of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz-Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

O'Hare's current connecting is 54.7%, slightly under its past average. IDOT assumed 50% connecting for O'Hare in 2001; 51% for the region.

Aviation Growth Parallels IDOT Forecasts

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts though 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City and Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for all short- and long-term regional transportation planning.

Other aviation plans (Gary Airport Master Plan; Booz-Allen forecasts for O'Hare International) are consistent with IDOT forecasts.

Capacity Constraints Jeopardize Economic and Aviation Growth

The ability of the region's airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity. These aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Small cities have been dropped from service.

Booz-Allen says the international market is not being well served.

Fares at O'Hare have risen above the average for large airports.

O'Hare's delays have been much greater this year than last; O'Hare's delays are among the nation's highest and cascade throughout the nation's airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

NIPC FINDINGS—NOVEMBER 1996

TALKING ABOUT THE REGION'S FUTURE

We recently asked a cross-section of the region's leaders:

Should water quality protection measures for our rivers, lakes, and streams be implemented even if this means placing development limits on presently undeveloped high-quality watersheds?

Should the region pursue infill and redevelopment strategies that lead to employment and income growth in older communities that have experienced diminished tax base and disinvestment?

Should priority in transportation funding be given to maintenance of the existing system?

Should measures to encourage reclamation of contaminated properties, including tax credits and limits on liability, be enacted?

Yes, said strong majorities of participants in two public workshops conducted by NIPC in June and September of this year. The workshops were held as part of an effort to engage the region in a discussion of growth choices facing us. Participants representing local governments, state and federal agencies, and civic and community organizations were asked to respond to possible future development patterns, their probable consequences, and the tools it would take to bring them about. The broad choice which framed the discussions was this: should anticipated future growth continue along the path of past trends or should efforts should be made to moderate the physical decentralization of the region?

NIPC is not alone in the region in raising these issues. In fact, it is hard to remember a time when the future development of the region has been discussed more widely or fervently. Numerous civic and community organizations have been developing analyses and recommendations on transportation and development and encouraging discussion of regional issues by their members and constituents.

The Commission's immediate purpose in conducting the workshops was to seek public guidance in the development of new demographic forecasts for the region. These forecasts will be used in the preparation of the Regional Transportation Plan for 2020. Draft forecasts will be completed by early 1997. At the same time, the Chicago Area Transportation Study (CATS) will complete a draft transportation plan. After a period of public review, the transportation plan will be tested for conformity with the requirements of the Clean Air Act. Following additional opportunity for public comment, final forecasts will be endorsed and the Regional Transportation Plan for 2020 will be adopted. These actions are scheduled for June 1997.

Beyond the immediate need to support the transportation planning process, this regional discussion advances NIPC's mission of striving for consensus on policies and plans for action which will promote the sound and orderly development of the northeastern Illinois area. The purpose of this newsletter is to inform the region of what we have heard and to encourage continuing deliberation on what kind of region we want to be in the next century.

What We Have Heard

Several general conclusions emerged from the workshops. The first is that there is widespread, though by no means unanimous, belief that the past trend of dispersed, low-density residential and employment growth has had unintended negative consequences which must be moderated to some degree in the interests of environmental quality, prudent public investment, and social equity. There is also substantial support for some public policy measures which could help achieve that moderated growth. These will be described in more detail below. Some measures which could be highly effective in moderating past trends are widely agreed to lack political acceptability in this region. Finally, there is broad support for measures which would improve the quality of local planning and development within either a continued trends or moderated trend approach.

The Forecast: A Growing Region

The preparation of forecasts of future population, households, and employment is one of NIPC's most important responsibilities. These are not simply forecasts of the numbers of people, households and jobs which will be in the region in a future year. People, households, and jobs imply houses, roads, sewers, and parks. The forecasts thus represent the Commission's best estimate of how activities and facilities will be distributed across the region: where new housing will be necessary and old housing may become vacant, where new or expanded streets and sewers will be required, and where streams and wetlands will come under pressure form growing population. The forecasts thus have implicit in them a generalized land use plan for the region. It is critical that they be as realistic as possible in reflecting the trends and constraints of the market, the influences of public policy, and expectations of local governments.

We have previously described the process being used to develop forecasts for the year 2020 (NIPC Reports, January 5, 1996). In March 1994, the Commission endorsed regional forecast totals of 9 million people, 3.4 million households, and 5.3 million jobs in 2020. These figures represent a 25 percent increase in population and a 37 percent increase in employment from 1990 to 2020. By way of comparison, between 1970 and 1990 the region's population increased by only four percent and employment by 21 percent. The amount of land devoted to urban uses, however, increased by 34 percent during that twenty-year period. In view of this finding about land consumption, the forecasted future growth has the potential to add seriously to pressures on the transportation system, air and water quality, and agricultural land. The Commission thus concluded that alternatives to past patterns of growth had to be presented to the region for discussion.

A Preferred Development Pattern in Northeastern Illinois

On June 26, 1996, the Commission conducted the first of two regional workshops on alternative growth scenarios and their

implications. The intent was to assess how much support there might be for different development patterns and how much acceptance of their probable costs. It was hoped that participants would set aside issues of feasibility for the time being and respond to the question of what is the most desirable future for the region. The workshop was attended by 127 people representing a broad spectrum of organizations and interests.

Three general scenarios were presented. Each was designed to illustrate the outcome of a unique combination of public policies with respect to transportation and community development. The broad patterns of new household and job growth to which these scenarios would lead are shown in the maps below. Participants were not asked to express a preference among the scenarios themselves, but to evaluate the relative importantance of the impacts which each would have on communities and the natural environment. Questions to the participants concerned the importance of land development patterns which would (1) help preserve farmland, (2) encourage the use of public transit, (3) protect high-quality watersheds from the impacts of urbanization, and (4) promote affordable housing close to centers of job growth.

Continued Trends. This is the ''baseline'' scenario which assumes the least change, in terms of public policy, from recent conditions. Only limited highway and rail transit capacity would be built beyond what is currently committed for funding. Future demand for aviation service would be met at O'Hare and Midway. The broad pattern of low-density dispersal of jobs and households would continue. Households and jobs in Chicago and some inner suburbs would continue to decline while they would increase in the rest of the region. The largest number of new jobs would be located in suburban Cook County, and DuPage County would gain jobs but as a slower rate. The four outer counties would show the greatest percentage gains in employment. Household growth would be strongest in the middle ring of suburbs. The loss of farmland would be substantial, as would the negative impact of urban densities on lakes and streams. Automobile use would continue to increase and transit use to decline. The separation of affordable housing from low-income jobs would continue to increase.

South Suburban Airport. The central assumption of this scenario is that future need for additional aviation capacity would be provided at the proposed south suburban airport. Otherwise, the scenario makes essentially the same land use and transportation policy assumption as the trends alternative. Employment and population in Chicago would increase, although the city's regional share would decline slightly. Job growth would be lower than under existing trends in the northern and western parts of the region and substantially higher in south Cook and Will counties. Household growth would be similar to that expected under a continuation of trends. Conversion of agricultural land would be extensive, particularly in Will County, as would development pressure on lakes and streams. The development of the airport could have a positive effect on jobs-housing balance and on redevelopment by bringing employment to a portion of the region which is now relatively job-poor.

Redevelopment and Infill. This scenario represents a deliberate attempt to moderate the trend of dispersed development and to encourage reinvestment in mature communities. Like the trends scenario, this alternative assumes limited investment in new surface transportation and satisfaction of future aviation requirements at the existing regional airports. In addition, the scenario assumes (1) implementation of very strong farmland protection policies in the agricultural protection zones in Kane, McHenry and Will counties, (2) intensive population and employment growth within walking distance of selected transit stops in Chicago and the inner suburbs, and (3) high employment growth through redevelopment in certain built-up areas in Chicago, the inner suburbs, Waukegan, and Joliet. Under this scenario, Chicago's loss of population and employment would be reversed. At the same time, the other sectors of the region would all gain both people and jobs, though their rates of growth would be lower than under a continuation of trends. Conversion of farmland for development and urban stress on water resources would be at lower levels than the other two scenarios, but still significant. Similarly, automobile use would increase and transit ridership decrease, but at lower rates. Because both jobs and population would increase in the communities with the greatest low-income population, jobs-housing balance would change only slightly.

The redevelopment scenario was designed to simulate the effect of efforts to moderate the worst unintended consequences of recent trends. Two important conclusions emerge from an examination of the scenario results:

Given NIPC's overall forecasts, economic growth in northeastern Illinois need not be an either-or situation. Even with deliberate efforts to encourage reinvestment in the mature core communities, the balance of the region can sustain a relatively high level of growth.

Under conditions of high overall growth, managing negative environmental consequences will be very difficult even if the trend of decentralized, low-density development is moderated.

Following the presentation of the scenarios, a panel of five experts on aspects of the region's development commented on the alternatives and on issues related to their implementation. These are some of the highlights of their comments:

Barry Hokanson, Director of Planning, Lake County: Lake County is expected to experience high growth under any one of the scenarios. While the county has programs to meet the demands on resources and services generated by growth, the multiplicity of local governments makes the translation of regional projections into coordinated local planning difficult. There are strong voices in Lake County advocating constraint on new transportation capacity as a means of limiting growth and encouraging mature-area reinvestment.

David Schulz, Director, Infrastructure Technology Institute, Northwestern University: The outward movement of households is driven by a variety of forces having to do with the quality of schools, perceptions of safety, tax levels, and job availability. Transportation systems do not induce people to move but influence where they move. Constraining the transportation system will simply force people to move farther out past the perceived zone of congestion and will thus worsen the problem of dispersal rather than curing it.

Rusty Erickson, Director of Development, City of Aurora: Aurora has benefited from the decentralizing trend in the region. Continued growth is necessary to provide quality schools and other services to residents. It is important that new suburban growth be concentrated in areas with full public services. Low-density development in rural areas will destroy the open countryside which is a strong quality-of-life value.

Frank Martin, President, Shaw Homes Inc: There is a market for residential development which integrates the natural and built environments and which provides the resource efficiency and quality of life of a dense community, including access to public transportation, while preserving high-quality natural surroundings. However, developers will find this kind of balanced development hard to do successfully if local government does not address inefficiencies in public services and excessive regulations which work against affordability by raising land values and construction costs.

Benjamin Tuggle, Field Office Supervisor, U.S. Fish and Wildlife Service: Making maximum use of existing intrastructure and established urban areas is an important way of preserving high-quality air, surface water, and wetlands in . . .

IF YOU BUILD IT, WE WON'T COME—THE COLLECTIVE REFUSAL OF THE MAJOR AIRLINES TO COMPETE IN THE CHICAGO AIR TRAVEL MARKET

AN ANALYSIS OF THE PER SE VIOLATIONS OF FEDERAL ANTITRUST LAWS BY MAJOR AIRLINES IN THEIR REFUSAL TO COMPETE WITH EACH OTHER IN FORTRESS HUB MARKETS—WITH METROPOLITAN CHICAGO AS A CASE EXAMPLE—MAY 2000

The Suburban O'Hare Commission

The Suburban O'Hare Commission (SOC) is an inter-governmental agency representing more than one million residents who live in communities surrounding O'Hare Airport. SOC's leadership is made up of mayors and other officials who are both advocates for the quality of life and health of their communities and business persons who are concerned about the economic health of the region. Over the past several years SOC has conducted a number of studies relating to the environmental, safety, public health, and economic issues surrounding air transportation in the Chicago metropolitan region.

This current (SOC) report focuses on one of the significant economic issues relating to air transportation—monopoly power and high monopoly-supported air fares—and the legality of the Fortress Hub system under the nation's antitrust laws. However, as is discussed in the report, the major airlines' drive for preservation and expansion of their Fortress Hub system (especially at Fortress O'Hare)—and their corresponding refusal to compete in each other's Fortress Hub markets—creates serious economic, social, and environmental harm in broad areas of the metro Chicago region.

PREFACE

In the past several years there have been numerous congressional hearings and media stories about a phenomenon in the airline industry known as ''Fortress Hubs'' and the problem of high monopoly supported airfares charged to airline passengers traveling from or through these Fortress Hubs.

However, most of the attention of Congress, the Administration, and the media has focused on two narrow facets of the Fortress Hub problem (1) restrictions on access by so-called ''low cost'' ''new entrant'' carriers to a few of the Fortress Hubs, and (2) the allegations of predatory pricing by a dominant major airline against a new low-cost entrant. But this narrow focus has ignored a much more fundamental question: Does the Big Seven Airlines Fortress Hub geographic allocation of markets—and their corresponding refusal to compete in each other's Fortress Hub markets—violate federal antitrust laws?

Virtually ignored by Congress and the Administration has been the concerted refusal of the major airlines—the so-called ''Big Seven'' (Northwest, United, American, Delta, US Air, Continental, and Trans World)—to compete with their fellow major airlines in each other's Fortress Hub cities. This study, prepared by the Suburban O'Hare Commission (SOC), focuses on the collective refusal

of the Big Seven to compete with each other and examines the question as to whether this geographic allocation of Fortress Hub markets by the Big Seven violates federal antitrust laws. Does the Big Seven's refusal to compete in Metropolitan Chicago—their refusal to use the South Suburban Airport: ''If you build it, we won't come.''—violate federal anti-trust law?

The SOC study also focus on the Metropolitan Chicago market as a case study of the Big Seven's de facto arrangement not to compete with their fellow major airlines in each other's Fortress Hub cities. A glaring example of this concerted refusal by the major airlines to compete in the fellow major airlines' Fortress Hub markets can be found in the decision of the major airlines to boycott the proposed new South Suburban Airport in metropolitan Chicago. The major airlines' ''If you build it, we won't come'' argument is simply a manifestation of the majors' overall horizontal geographic restraint of major markets across the nation—and particularly in metropolitan Chicago.

THE FINDINGS OF THIS STUDY

The study's findings include:

1. De Facto Geographic Allocation of Fortress Hub Markets by the Big Seven. The heart of the monopoly problem in Fortress Hub markets—and the resultant high monopoly-inducted air fares—has been the de facto agreement among the Big Seven to stay out of each other's Fortress Hub markets with any competitively significant level of entry into that market.

2. The Fortress Hub Monopoly Dominance Geographic Allocation by the Big Seven is Likely Costing the Nation's Air Travelers Billions of Dollars Annually. There is an overwhelming body of evidence that—because of the Fortress Hub monopoly dominance of one of two of the Big Seven at many metropolitan areas across the country—the Big Seven airlines are able to charge excessive air fares totaling billions of dollars a year. The principal victims of this monopoly-induced Fortress Hub excess fares are: (1) the time-sensitive business traveler who pays unrestricted coach fares and (2) the so-called ''spoke'' passenger who must connect through one of the ''Fortress Hubs'' monopoly tithe American consumer: billions of dollars per year in excess fares—hundreds of millions per year in metropolitan Chicago alone.

3. The Big Seven's De Facto Geographic Allocation of Major Air Travel Markets in the Nation through the Development of ''Fortress Hubs'' Constitutes a Per Se Violation of Federal Antitrust laws. Little discussion or analysis has been undertaken by Congress or the Administration as to whether this concerted refusal by the Big Seven to compete in their fellow major airlines' Fortress Hub markets—which costs consumers billions annually—constitutes a violation of federal antitrust laws. Based on clear and repeated Supreme Court precedent, it clearly does. The Big Seven's de facto geographic allocation of major air travel markets in the Fortress Hub through the development of ''Fortress Hubs'' constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements to carve up horizontal markets as per se violations of section 1 of the Sherman Act. See e.g., Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990); United States v Topco Associates, Inc., 405 U.S. 596, 607–609 (1972).

4. The Big Seven's Explicit Refusal to Compete In Metropolitan Chicago: If You Build It, we Won't Come. In the metropolitan Chicago air travel market, the illegal collective refusal of the Big Seven to compete is manifested by two actions: (1) the de facto abandonment by members of the Big Seven (other than United and American) of any significant role at O'Hare Airport and (2) the announcement by the Big Seven and its allied in the Air Transport Association that they would refuse to use a new South Suburban Regional Airport. In the popular jargon of the media, the Big Seven have said ''If you build it, we won't come.''

In reality, this collective refusal to use a new regional airport is nothing more than a manifestation of the Big Seven's horizontal market agreement not to compete in any significant way with United and American in their dominant Chicago market. This refusal by major airlines such as Delta, Northwest, USAir, and Continental to use new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an individual example of the per se antitrust violation of allocating geographic markets by the major airlines. ''If you build it, we won't come'' is a blatant violation of the federal antitrust laws.

5. The City of Chicago's Participation in Opposing New Capacity and in Assisting Big Seven in Their Refusal to Use the New South Suburban Airport is Not Immune from Antitrust Law Prosecution. The available evidence is clear that the City of Chicago and its agents have been active participants in helping the Big Seven Airlines in their refusal to compete in the Chicago market and their refusal to use the proposed South Suburban Airport. Absent express approval by the State of the monopolistic practice, political subdivisions of the State—like the City of Chicago—are not free to violate the antitrust laws under the guise of state action.

While Congress has made municipalities immune from damages for violations of the antitrust laws, Chicago and its officials are not immune from prosecution for their attempts to assist the Big Seven in their refusal to compete in the metro Chicago market and in United and American's attempts to monopolize that market.

6. It Appears That Federal Taxpayer Funds May Have Been Used to Suppress Competition and Violate the Antitrust Laws in the Chicago Market. United and American (the dominant carriers at O'Hare)—along with other major airlines through the Air Transport Association—have engaged in a concerted effort to defeat construction of a new South Suburban Airport, an airport that would provide significant capacity opportunities for major new competition to enter the Chicago market. United executives have stated their goal as ''Kill Peotone''.

United and American have been assisted in their ''Kill Peotone'' (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—including Chicago's consultants have been paid several million dollars in fees to assist Chicago and United and American in expanding O'Hare and in obstructing development of a new South Suburban Airport.

Much of the money paid to these consultants has come from either: (1) federal Passenger Facility Charge (PFC) funds, (2) federal Airport Improvement Program (AIP) funds, or (3) federally subsidized municipal airport bonds (''GARBs'' General Airport Revenue Bonds). Thus, we have the following spectacle—not only are the airlines and Chicago engaged in a monopolistic arrangement designed to prevent new competition from entering the Chicago market (i.e., through the new airport)—but much of the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should be asked to conduct an independent audit of all PFC, AIP, and GARB expenditures at O'Hare to determine if any federal funds were used as part of a campaign to ''Kill Petone''—i.e., a campaign to oppose construction of a new South Suburban Airport.

7. Federal Officials Have Participated in and Supported the Big Seven's Illegal Monopolistic Arrangement to Refuse to Compete in the Chicago Market. Not only have federal funds been used to support the major airlines illegal monopolistic arrangement to refuse to compete in the Chicago market, but it appears that federal officials within the Administration have worked with the major airlines and Chicago to assist in this antitrust arrangement to prevent the development of a new airport in metropolitan Chicago. For the last several years, federal administration officials—several of whom are former Chicago officials who worked for the City of Chicago—have blocked development of the new South Suburban Airport through a series of spurious legal claims that federal law requires that there be a ''consensus'' between the State of Illinois and the City of Chicago before a new metropolitan airport can be constructed. No such legal requirement exists.

Because of the active participation of key figures in the current administration in promoting and supporting the continued blockage of new airport development in metropolitan Chicago—in concert with the illegal refusal of the major airlines to compete in the Chicago market by using the new airport—the impartiality and lack of bias of the Administration in conducting law enforcement in this area is legitimately suspect. The Attorney General should be asked to appoint an independent prosecutor to conduct the antitrust investigation and to undertake all appropriate civil legal actions needed to correct the ongoing antitrust violations.

8. Defining the Market Under Monopoly Control and in Need of New Competition—The Hub-and-Spoke Market. The heart of the monopoly overcharges to travelers in the Chicago market is the absence of competition in the ''hub-and-spoke'' market in Chicago. None of the other Big Seven will come into the Chicago market to establish a competitive hub-and-spoke operation.

In an attempt to expand their monopoly and prevent new competition from entering the Chicago market, United and American—along with their surrogate allies—have sought to distract attention by suggesting a south suburban airport in metro Chicago as a ''point-to-point'' airport—not unlike Midway. United and American argue that O'Hare should be the only ''hub-and-spoke'' airport in metropolitan Chicago.

By shaping the argument in this fashion, United and American guarantee that they will be allowed to continue and dramatically expand their Fortress Hub monopoly at O'Hare. According to their arguments, the lion's share of all the origin-destination traffic in the region—and all of the connecting and international traffic—should go to the sole hub-and-spoke airport in the region: O'Hare. Any minor overflow of ''point-to-point'' origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small ''point-to-point'' airport like the South Suburban Airport or Gary.

What United and American gloss over is the fact that there is plenty of competition in the Chicago market in point-to-point service. The real lack of competition in the Chicago market is in the lack of additional hub-and-spoke competition to challenge the hub-and-spoke duopoly of United and American at Fortress O'Hare. It is this market dominance of the hub-and-spoke market—not the point-to-point—where lack of competition gouges the business traveler and those travelers from ''spoke'' cities who must use a single Fortress Hub. There is a desperate need for new competitive hub-and-

spoke service in the Chicago market and the place to put that hub-and-spoke is the new South Suburban Airport.

9. Beyond Antitrust Law Enforcement, Federal Transportation Officials Play a Major Antitrust Policy Role—In Either Promoting Monopoly Abuses or Encouraging Competition—By Their Decisions on the Use of Federal Taxpayer Funds. Not only have federal officials blocked development of new competition by blocking a new airport, federal approval of federal expenditures for major physical changes at O'Hare will exacerbate the monopoly power of American and United in this region.

Chicago's so-called ''World Gateway'' program has been designed in consultation with United and American to enhance and expand United and American's hub-and-spoke system at O'Hare. Chicago's World Gateway proposal is not designed to bring new hub-and-spoke competition into O'Hare or the Chicago market to compete with United and American.

Thus, Chicago's World Gateway proposal will enhance and expand United and American's Fortress Hub monopoly in the Chicago market. Since the physical design proposed by United and American and Chicago can only go forward if federal Transportation Department officials approve federal taxpayer funds to subsidize the project, federal officials are being asked to use billions of dollars in federal taxpayer funds to expand and enhance the illegal Fortress Hub monopoly of American and United at O'Hare. No federal officials appear to be examining whether spending 10 billion dollars (much of it from federal taxpayers) at O'Hare makes economic sense when much more new capacity to support competitive hub-and-spoke operations can be constructed at a new metropolitan airport for less than half the cost. Nor are federal officials examining whether the use of billions of dollars of federal taxpayer funds to expand United and American's hub-and-spoke duopoly at Fortress O'Hare—essentially using federal taxpayer funds to subsidize expansion of monopoly power—is a proper use of federal funds.

10. The Lifting of the Slot Limits at O'Hare Will Not Provide Sufficient Capacity to Allow Significant New Competition to Enter the Chicago Area Market. Much of the debate over the recent passage of the federal reauthorization of the Federal Aviation Program involved the issue of lifting ''slot restrictions'' at LaGuardia and Kennedy airports in New York and O'Hare in Chicago. One of the principal asserted justifications for lifting the slots was to provide access to so-called ''new entrant'' carriers that would presumably provide competition for the dominant carriers at O'Hare and force prices down. Yet FAA's own capacity studies at O'Hare demonstrate that O'Hare is already beyond acceptable limits of capacity and can provide only marginal capacity access—if any.

In addition, as predicted by Senator Peter Fitzgerald and Congressman Henry Hyde, any arguable incremental theoretical capacity at O'Hare will rapidly be consumed by United and American—expanding their monopoly. As stated by the Illinois Department of Transportation, the only effective way to provide sufficient capacity for major new competition in the Chicago market is to build major new capacity in the metropolitan Chicago area.

11. A New Runway at O'Hare is Intended to Increase Capacity to Expand United and American's Monopoly Power. The airlines' current public relations argument is that the lion's share of all the origin-destination traffic in the region (and all of the connecting and international traffic) should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary.

Paralleling this argument is the claim by the airlines' allies that a new runway at O'Hare is needed to ''reduce delays.'' They claim that a new runway would not increase O'Hare capacity but simply reduce delays.

Yet an analysis using FAA's own capacity analysis standards and criteria demonstrates that a new runway at O'Hare would substantially increase the capacity of the airport. This capacity increase at O'Hare would dramatically expand American's and United's hub-and-spoke monopoly at Fortress O'Hare. Further, it would virtually doom the economic justification for the new south suburban airport because the new ''delay'' runway—once built—could easily be used to carry the new additional traffic for which the new airport was intended. Simply by piecemealing incremental expansion at O'Hare, Chicago and American and United can keep the region under the thumb of the Fortress O'Hare monopoly.

12. United's and American's Fight to Preserve and Expand Fortress Hub Monopoly Power at O'Hare Has Grave Social, Economic, Public Health, and Quality of Life Consequences for the Region. Much of the discussion in this paper focuses on the billions of dollars in monopoly induced overcharges inflicted on air travelers—particularly the business traveler—as a result of the Fortress Hub monopoly system. But these monopoly abuses also inflict other serious harm on a variety of important public and social interests.

The consequences of these abuses of monopoly power for the metro Chicago region are stark and severe:

O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion's share of the origin-destination traffic are jammed into an already overstuffed O'Hare. Any new airport—even if built—will simply receive the origin-destination overflow (if any) from a vastly expanded O'Hare and Midway.

South Chicago and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of United and American and the political pique of Chicago's mayor.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O'Hare Commission recommends the following actions:

1. The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub Markets. Included in the investigation should be an examination of the role of third party collaborators in the antitrust violations—including the City of Chicago and other private organizations and individuals who have assisted the Big Seven (including United and American) in perpetrating these violations. Because of the involvement by federal officials in affirmatively assisting the Big Seven and the City of Chicago in keeping significant competition out of Chicago, the Attorney General should be asked to consider the appointment of independent counsel.

2. The United States Attorney General and the United States Attorney should bring a civil action in federal court to enjoin and break up the illegal Fortress Hub geographic market allocation by the Big Seven and prohibit the collective refusal by the Big Seven to compete in each other's Fortress Hub markets. Included in the relief should be a requirement that members of the Big Seven halt their collective refusal to use a new South Suburban Airport in metropolitan Chicago and a requirement that competitive hub-and-spoke operations be established in metro Chicago to compete with United and American.

3. The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven's Fortress Hubs. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

4. The GAO and the Department of Justice should undertake an immediate and detailed audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolital Chicago—particularly the campaign by the airlines and Chicago to ''Kill Peotone.''

5. The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American duopoly at Fortress O'Hare.

6. The House and Senate Judiciary Committees should conduct immediate hearings on these issues.

7. Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to (1) break up the Fortress Hub system—particularly Fortress O'Hare; (2) bring new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress O'Hare overcharges; (4) prevent the Big Seven from continuing to refuse to use the new capacity provided to the South Suburban Airport; and (5) assemble the federal and state resources needed to rapidly build the South Suburban Airport.

8. Our Governor should hold fast to his promise not to permit any additional runways at O'Hare. To do otherwide would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring new competition into the region at the South Suburban Airport.

9. The two candidates for President of the United States—both of whom have likely received large campaign contributions from the Big Seven—should be respectfully asked what they will do to break up the Fortress Hub system nationally and Fortress O'Hare in particular. Vice President Gore in particular should be asked why his administration has for the past eight years looked the other way while the Big Seven has used violations of the nation's antittust laws to literally steal billions of dollars from American consumers. Mr. Gore should also be asked to explain why his administration has literally blocked development of new competitive capacity in metro Chicago—i.e., a new South Suburban Airport—at every turn Finally, Mr. Bush should be asked specifically what he will do to build the South Suburban Airport and break up Fortress O'Hare.

INTRODUCTION—RELEVANT QUOTATIONS

Alfred Kahn, the ''father'' of airlines deregulation:

Anyone who says applying antitrust laws is the same as re-regulation is simply ignorant. To preserve competition we need the antitrust laws and vigorous enforcement of the antitrust laws.

When we deregulated the airlines, we certainly did not intend to exempt them from the antitrust laws.

Gordon Bethune, Chairman and CEO, Continental Airlines:

''Continental chief says hub competition over,'':

Competition among airlines for dominance at major U.S. airports is virtually a thing of the past, the chairman of Continental Airlines said on Monday.

Continental chief executive Gordon Bethune, in a break from the usual industry line that competition reigns supreme, said the large air carriers have staked out their respective hubs and will be difficult to dislodge.

''In the last 20 years, the marketplace of the United States has been sorted out. American (Airlines) kind of controls Dallas-Fort Worth and Miami and we've got Newark, Houston and Cleveland. Delta's got Atlanta,'' Bethune said in remarks to the National Defense Transportation Association annual conference.

U.S. Senator Mike Dewine:

During the last year, there has been rising concern among some of the smaller airlines that the seven largest passenger carriers in the U.S. are no longer competing against each other. Essentially, the argument goes, the ''Big Seven'' have carved up the U.S. aviation market . . .

CEOs of 16 major airlines tell Illinois' Governor that they will not use new airport in metropolitan Chicago:

We are writing to express our concerns about further planning and development of the so-called Third Chicago Airport. It is our understanding that the State of Illinois will not proceed with the construction of a third airport without the support of the airlines. This letter is intended to inform you that the airlines oppose further planning and construction of this facility. . .

USA Today:

In the two decades since deregulation forced the government to stop telling carriers what fares to charge and which cities to serve, the big airlines have built up ''fortress hubs'' where, without meaningful competition, they alone decide where to go, how often to go there and how much to charge.

What travelers suspect is true: Airfares are climbing fast, and nowhere is the situation worse than at the hubs for the nation's largest airlines.

Business travelers have been especially hard hit at hubs.

And almost everywhere, hub fares, especially for business fliers, are soaring.

Even when low-fare carriers enter a hub market, they usually control so little of the traffic that they can't do much to bring fares down.

New York Times:

Business travelers feel particularly abused because they account for more than half of airline revenue. For in the through-the-looking-glass world of airline pricing, the fares paid by leisure travelers, who book as long as a month in advance and stay over a weekend night, have in many cases declined, while last-minute fully refundable fares, which are most often paid by business travelers, are skyrocketing.

''The carriers always say that the business traveler is inelastic,'' said Peter M. Buchheit, director of travel and meeting services for the Black & Decker Corporation, which spent $18 million on air tickets for its American employees last year. ''We need to travel so we will pay whatever it costs. But it has reached a point where we can't pay it anymore.''

The burden of high fares is even greater on small companies. John W. Galbraith, president of Twin Advertising, a small company based in Rochester that had $2 million in billings last year, said he was thinking about dropping clients outside the city because the high cost of visiting them cancels out the profit he makes from having their business.

''Basically, what the airlines have done to companies like ours is kept us from growing,'' he said. (New York Times January 11, 1998)

United States Supreme Court on horizontal market allocations as *per se* violations of federal antitrust law:

One of the classic examples of a per se violation of §1 [of the Sherman Antitrust Act] is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. . . . This Court has reiterated time and time again that '[h]orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' Such limitations are per se violations of the Sherman Act. (The United States Supreme Court in the 1990 decision in Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990).)

Relevant Provisions of The Sherman Act:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §1)

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2)

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. (Title 15 United States Code §4)

[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Title 15 United States Code §15)

1. Focusing on the Elephant in the Corner.

Over the last decade there have been extensive congressional hearings and much media coverage of so-called ''Fortress Hubs. But much of the attention has focused on two aspects of the Fortress Hub phenomenon:

Various ''constraints'' that the so-called ''low-cost'' ''new-entrant'' airlines (e.g., Spirit Vanguard) say have prevented these new entrants from entering and competing in Fortress Hub markets; and

In those instances where the new low-cost airlines could physically enter the Fortress Hub market, the dominant hub airlines are alleged to have engaged in predatory pricing to drive the so-called ''low-cost'' ''new-entrant'' competitors out of the market.

But while Congress and the Administration have focused on these elements, they have ignored what might be called ''the elephant in the corner'' aspect of the Fortress Hub issue. Virtually ignored in these debates has been the role of the so-called ''major'' airlines—i.e., the so-called ''Big Seven'' controlling members of the trade group known as the Air Transport Association (ATA)—in creating and maintaining the Fortress Hub system. While Congress and the U.S. DOT talked about the anti-competitive aspects of keeping the new ''low-cost'' airlines out of the Fortress Hub market, little attention has been directed toward the issue of whether the Big Seven's Fortress Hub system is itself a violation of the nation's antitrust laws.

The purpose of this study is to: (1) analyze the known facts of the Fortress Hub system; (2) determine if the known facts demonstrate the existence of a violation of federal antitrust laws, (3) examine the role of the ''Big Seven's'' conduct in the Chicago air travel market as a case study illustration of their collaborative conduct nationally in maintaining the national Fortress Hub network, and (4) propose remedial action.

The findings of this study unequivocally demonstrate that the Fortress Hub system maintained by the Big Seven—alone and through their trade organizations, the Air Transport Association—is an illegal cartel in violation of the Nation's antitrust laws.

2. Geographic Market Allocation through Fortress Hubs—Mutual Protection of Fortress Hub Dominance Against New Competition from Other Big Seven Airlines.

There is overwhelming and incontroverible evidence that, since ''deregulation'' in 1978, the market airlines have carved up major areas of the Nation into territories of geographic market dominance known as ''Fortress Hubs''. Under this Fortress Hub arrangement, one or two major airlines are ceded geographic market dominance and other major airlines tactitly agree not to compete in that geographic market.

Thus Delta has Fortress Hubs at Atlanta and Cincinnati, USAir at Pittsburgh, Northwest at Minneapolis and Detroit, American at Dallas-Ft. Worth, American and United at Chicago O'Hare, etc. The other Big Seven airlines—either implicitly or by explicit agreement—have agreed to stay out of each other's Fortress Hub markets in any significant way. Thus, for example, Delta remains unchallenged by United, Northwest, and others in Atlanta. In turn, Delta doesn't provide significant challenge to United and American at O'Hare or to Northwest at Minneapolis and Detroit. Similar de facto, quid pro quo non-compete accommodations by the major airlines can be found at virtually every Fortress Hub where one or two airlines have dominant control of the local market.

As stated by one congressional witness:

''The major airlines . . . developed high market share hubs in large sections of the country. Given the market power that they have developed, the major airlines have raised prices far above the competitive level in their market hubs (as study after study has shown). Furthermore, the major airlines defend their high price hub markets with predatory pricing. These markets are descriptively called 'fortress hub's'.

''There are two things the major airlines are doing to monopolize large segments of the country. First, they work hard to see that entry to their large markets remains closed or difficult. Second, if a discounter

enters a few of their markets they use predatory pricing to drive the discounters out of business.''

The broad reach of this Fortress Hub system is illustrated in a table prepared by the National Association of Attorneys General.

CITIES WHERE FORTRESS HUBS ARE LOCATED

City and Dominant Airline

Atlanta, Delta; Chicago O'Hare, United and American; Cincinnati, Delta; Dallas, American; Detroit, Northwest; Houston International, Continental; Minneapolis/St. Paul, Northwest; Denver, United; Pittsburgh, US Air; St. Louis, TWA.

3. Monopoly Fare Premiums at Fortress Hubs.

There is a large body of evidence and expert opinion—as articulated by the General Accounting Office, USDOT, business travel organizations, and the Illinois Department of Transportation—that the dominance of these major markets by one or two carriers results in a monopolistic ability to raise fares beyond the air fares that would exist if there was strong competition in these Fortress Hub markets. As stated by the GAO as far back as 1990:

''Airports where one or two carriers handle most of the enplaning traffic have higher fares than airports where the traffic is less concentrated. Moreover, the data show that fares tend to rise as concentration increases. While many factors can influence fare changes, the evidence that we have collected strongly suggests that fares and concentration at an airport are related. Fares are higher at concentrated airports than at relatively less concentrated ones, and the evidence suggests that the gap is increasing.''

Subsequent studies by GAO since 1990 have confirmed the problem of higher fares at Fortress Hubs—higher than would exist in a competitive environment. See e.g., Barriers to Entry Continue in Some Markets (GAO/T–RCED–98–112; March 5, 1998); Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets (GAO/RCED–97–4, Oct. 18, 1996); Domestic Aviation: Barriers to Entry Continue to Limit Benefits of Airline Deregulation (GAO/RCED–97–120, May, 13, 1997); Airline Competition: Higher Fares and Less Competition Continue at Concentrated Airports (GAO/RCED–93–141, July 15, 1993); Airline Competition: Effects of Airline Market Concentration and Barriers to Entry on Airfares (GAO/RCED–91–101, Apr. 26, 1991).

While repeatedly emphasizing the problem of higher monopoly fares caused by lack of competition, GAO continued to emphasize the lifting of slot restrictions at three of the nation's airports as a partial solution to the problem. GAO's prime emphasis has been to obtain access to airport capacity for the so-called ''low-cost'' new entrant airlines into the Fortress Hub markets.

But GAO has never analyzed the issue of the ''capacity'' of these slot-restricted airports to service new competition—even if the slot restrictions were lifted. As discussed below, the FAA has repeatedly emphasized that the practical capacity of an airport is limited (see discussion, infra.) and that as traffic growth approaches the physical limits of the airport's capacity, aircraft delays rise geometrically—essentially leading to gridlock.

As the analysis contained in the 1995 DOT report A Study of the High Density Rule, and this study show, there simply is not enough capacity at O'Hare—even with the slots lifted—to all significant new competition to enter the Chicago market. This is why the Big Seven's collective refusal (discussed infra) to use and support the major new capacity that would be provided by the new South Suburban Airport is a central component in the preservation of the Fortress Hub problem in metropolitan Chicago. Moreover, any arguable minor increment of available capacity at O'Hare will rapidly be consumed by United and American. There simply is not enough room at O'Hare to allow a major new competitor to gain the ''critical mass'' to compete with United and American.

The Illinois Department of Transportation has repeatedly emphasized its opinion that monopoly dominance at O'Hare results in higher airfares paid by Chicago area travelers and that major new regional airport capacity is essential to breaking the monopoly stranglehold of Fortress O'Hare:

''There are numerous examples besides these to demonstrate that without the competition of a new entrant, the fares at Chicago are increasing or remain inordinately high.''

''We encourage and support your [USDOT's] focus on anticompetitive practices that are injuring commerce, smaller cities, and consumers in Illinois and throughout the region serviced by O'Hare Airport as the hub of United Airlines and American Airlines. We strongly urge, however, that the enforcement policies should be part of a broader initiative that will insure that there will be airport capacity available in the Chicago area that will provide new airline entrants the opportunity to compete with United and American. Additional airport capacity is vital to restoring airline competition in the Chicago, Illinois, and Midwestern markets.''

''There is simply no room at O'Hare for new entrant airlines to pose competitive challenges to the dominant airlines.''

4. Time Sensitive Business Traveler Biggest Loser in Fortress Hub Monopoly System.

The air travel consumer most seriously harmed by this horizontal Fortress Hub market allocation is the business traveler—particularly the small to medium size business traveler who cannot negotiate bulk fare discounts and who must make time sensitive business trips at unrestricted coach fares.

The Illinois Department of Transportation estimates this monopoly based fare penalty at O'Hare alone exceeds several hundred million dollars per year. Nationally, the loss to the traveling public from these monopoly premiums at Fortress Hubs is likely to exceed several billion dollars annually.

As stated in major articles on the subject by USA Today and the New York Times:

What travelers suspect is true: Airfares are climbing fast, and nowhere is the situation worse than at the hubs for the nation's largest airlines.

Business travelers have been especially hard hit at hubs

And almost everywhere, hub fares, especially for business fliers, are soaring. (USA Today February 23, 1998)

Business travelers feel particularly abused because they account for more than half of airline revenue. For in the through-the-looking-glass world of airline pricing, the fares paid by leisure travelers, who book as long as a month in advance and stay over a weekend night, have in many cases declined, while last-minute fully refundable fares, which are most often paid by business travelers, are skyrocketing.

''The carriers always say that the business traveler is inelastic,'' said Peter M. Buchheit, director of travel and meeting services for the Black & Decker Corporation, which spent $18 million on air tickets for its American employees last year. ''We need to travel so we will pay whatever it costs. But it has reached a point where we can't pay it anymore.''

The burden of high fares is even greater on small companies. John W. Galbraith, president of Twin Advertising, a small company based in Rochester that had $2 million in billings last year, said he was thinking about dropping clients outside the city because the high cost of visiting them cancels out the profit he makes from having their business.

''Basically, what the airlines have done to companies like ours is kept us from growing,'' he said. (New York Times January 11, 1998)

Put bluntly, the Big Seven has used their monopoly power at Fortress Hubs to literally extort billions of dollars annually from captive travelers—most often time sensitive business travelers living in these airlines' own Fortress Hub communities.

5. The Second Biggest Loser in the Fortress Hub Monopoly System is the ''Spoke'' Passenger.

The second biggest loser from this Fortress Hub monopoly system is the so-called ''spoke'' passenger in the small to medium size community that serves as the ''spoke'' to a single large metropolitan Fortress Hub. Because the dominant Big Seven airline at a Fortress Hub has no competition at its hub, it is free to charge the spoke passenger—who must use the hub to get to his or her destination—excessive monopoly fares.

The Illinois Department of Transportation—again emphasizing the lack of capacity to handle both new competition and service to smaller and mid-size communities—has stated the problem as follows:

''The dominant airlines are diminishing and even abandoning service to smaller Illinois and Midwestern cities in favor of routes that are more lucrative or that increase the power of their hub networks.''

Because the dominant O'Hare airlines prioritize the limited capacity at O'Hare to service the flight operations with the highest profitability, the small community ''spoke'' traveler gets harmed on two levels. First, he loses service when the cominant airlines cut small community service to use the limited capacity to service more lucrative long-haul or international traffic—eliminating less profitable small community service. Second, as to the small community traffic that the dominant airlines still service, they are able to charge exorbitant rates—knowing that the small community spoke traveler is at their mercy.

6. The Big Seven's Fortress Hub Geographic Market Allocation is a Per Se Violation of the Antitrust laws.

Neither the Administration nor the Congress appears to have critically examined a central question: Does the Big Seven's Fortress Hub geographic market allocation violate the Nation's antitrust laws? Based on clear and repeated Supreme Court precedent, it clearly does.

The major airlines general de facto geographic allocation of major air travel markets in the nation through the development of ''Fortress Hubs'' constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements to carve up horizontal markets as per se violations of Section 1 of the Sherman Act. See e.g., Palmer v. BRG Group of Georgia, 498 U.S. 46, 49 (1990); United States v. Topco Associates, Inc., 405 U.S. 596, 607–609 (1972).

Virtually all laymen and most lawyers shy away from antitrust law as an economic morass difficult to understand. But there is one area where the United States Supreme Court has been clear and unequivocal: horizontal arrangements to carve up geographic markets are an automatic—a ''per se''—violation of the federal antitrust laws. Because this law is so-clear and unambiguous—and recognizing that the airlines will claim that the law can be ignored—we believe it important to quote the United States Supreme Court on this subject:

''While the Court has utilized the 'rule of reason' in evaluating the legality of most restraints alleged to be violative of the Sherman Act, it has also developed the doctrine that certain business relationships are per se violations of the Act without regard to a consideration of their reasonableness. In Northern Pacific R. Co. v. United States, 356 U.S. 1, 5, 78 S.Ct. 514, 518, 2 L.Ed.2d 545 (1958), Mr. Justice Black explained the appropriateness of, and the need for, per se rules:''

'' '(T)here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of per se unreasonableness not only makes the type of restraints which are prescribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine at large whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken.' ''

''It is only after considerable experience with certain business relationships that courts classify them as per se violations of the Sherman Act. See generally Van Cise, The Future of Per Se in Antitrust Law, 50 Va.L.Rev. 1165 (1964). One of the classic examples of a per se violation of §1 is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. Such concerted action is usually termed a 'horizontal' restraint, in contradistinction to combinations of persons at different levels of the market structure, e.g., manufacturers and distributors, which are termed 'vertical' restraints. The Court has reiterated time and time again that '(h)orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' White Motor Co. v. United States, 372 U.S. 253, 263, 83 S. Ct. 696, 702, 9 L.Ed.2d 738 (1963). Such limitations are per se violations of the Sherman Act. See Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 20 S.Ct. 44 L.Ed 136 (1989), aff'g 85 F. 271 (C.A.6 1898) (Taft, J.); United States v. National Lead Co., 332 U.S. 319,67 S.Ct. 1634, 91 L.Ed. 2077 (1947); Timken Roller Bearing Co. v. United States, 341 U.S. 593, 71 S.Ct. 971, 95 L.Ed. 1199 (1951); Northern Pacific R. Co. v. United States, supra; Citizen Publishing Co. v. United States, 394 U.S. 131, 89 S.Ct. 927, 22 L.Ed.2d 148 (1969); United States v. Sealy, Inc., 388 U.S. 350, 87 S.Ct. 1847, 28 L.Ed.2d 1238 (1967); United States v. Arnold, Schwinn & Co., 388 U.S. 365, 390, 87 S.Ct. 1856, 1871, 18 L.Ed.2d 1249 (1967) (Stewart, J., concurring in part and dissenting in part); Serta Associates, Inc. v. United States, 393 U.S. 534, 89 S.Ct. 870, 21 L.Ed.2d 753 (1969), aff'g 296 F.Supp. 1121, 1128 (N.D.Del.1968).'' (United States v. Topco Associates, Inc., 405 U.S. at 607–608 (emphasis added))

The Big Seven's carving up of geographic markets into the current Fortress Hub system is nothing more than a naked horizontal restraint repeatedly condemned by the Supreme Court as a per se violation of the Sherman Act.

Put in terms the average citizen understands—Could McDonald's tell Burger King: We won't compete in Atlanta if you won't compete in Chicago? Could Ford tell GM: We won't sell Fords in Michigan if you won't well Chevys in Illinois? The answer is clearly no. Each would be a horizontal market restraint and a per se violation of the Sherman Act just as the Big Seven's Fortress Hub system—and their refusal to compete in each other's hub market—is a horizontal market restraint and a per se violation of the Sherman Act.

The law is equally clear it is not necessary to demonstrate a formal written agreement among the Big Seven to carve up the geographic Fortress Hub market in order to find a conspiracy in violation of the Sherman Act. The existence of such an agreement or arrangement can be inferred from the course of conduct of the members of the industry. Norfolk Monument Company v. Woodlawn Memorial Gardens, 394 U.S. 700, 704 (1969); American Tobacco Company v. United States, 328 U.S. 781, 809–810 (1946); InterstateCircuit v. United States, 306 U.S. 208, 221, 226–227 (1939).

7. The Metropolitan Chicago Market: An Egregious Example of the Geographic Market Allocation and Refusal to Compete—''If You Build It, We Won't Come.''

A particularly egregious implementation of this horizontal agreement not to compete in each other's Fortress Hub markets can be found in the major airlines' announced refusal to use a new major airport in the metropolitan Chicago. The most visible manifestation of their refusal to compete in the Chicago market an be found in letters written by sixteen Chief Executive Officers (CEOs) of the major airlines to Illinois Governor Jim Edgar and his successor George Ryan. In those letters—drafted in coordination with representatives of the City of Chicago and the Air Transport Association—the major airlines tell the Illinois Governor that they will refuse to use the proposed new metropolitan Chicago airport:

''We are writing to express our concerns about further planning and development of the so-called Third Chicago Airport. It is our understanding that the State of Illinois will not proceed with the construction of a third airport without the support of the airlines. This letter is intended to inform you that the airlines oppose further planning and construction of this facility . . .

Chicago area news media have characterized the major airlines' refusal to use a new airport as ''If you build it, we won't come.'' In reality, this collective refusal to use a new regional airport is nothing more than a manifestation of the major airlines' horizontal market agreement not to compete in any significant way with United and American in their dominant Chicago market. This refusal by major airlines such as Delta, Northwest, USAir, and Continental to use new metropolitan Chicago airport capacity to compete in metropolitan Chicago is but an individual example of the per se antitrust violation of allocating geographic markets by the major airlines.

8. The Fortress Hub System and the Big Seven's Collective Refusal to Compete in Each Other's Fortress Hub Markets—as Illustrated by Their Collective Refusal to Use the New South Suburban Airport—Represent Serious Violations of Federal Law.

These clear violations by the Big Seven airlines in creating and maintaining the Fortress Hub system and the refusal of the Big Seven to compete in each other's markets represent serious violations of the antitrust laws. If the GAO and IDOT estimates are accurate, nationally the Fortress Hub system literally illegally steals several billion dollars per year from the nation's air travelers—several hundred million dollars in the Chicago area alone.

Because these antitrust violations are so blatant, it is important for the public to know the significant sanctions and remedies available to cure these violations.

Section 1 of the Sherman Act provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §1 (emphasis added))

Section 2 of the Sherman Act provides:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2 (emphasis added))

Section 4 of the Act provides civil injunction remedies and mandates the Department of Justice to ''institute proceedings in equity to prevent and restrain such violations'':

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. (Title 15 United States §4 (emphasis added))

Section 15 provides that any person injured by the violations of the antitrust laws can recover treble (triple) damages for the monetary losses caused by the violations.

[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Title 15 United States Code §15)

In summary, the statutory sanctions for these antitrust violations are significant. Thus far, federal Department of Justice officials have been unwilling to initiate antitrust enforcement proceedings to break up the Fortress Hub monopoly of the Big Seven.

9. The Major Airlines Geographic Market Allocation—A Per Se Violation of the Antitrust laws—Is Not Immunized by the ''Noerr-Pennington'' Doctrine.

The major airlines' have engaged in this de facto Fortress Hub geographic market allocation scheme for more than a decade. It is likely that the airlines will assert that their collective refusal to compete in the metropolitan Chicago market—and the manifestation of that refusal by their letters to Governors Edgar and Ryan—is immunized from antitrust law enforcement by the ''Noerr-Pennington'' doctrine. That doctrine immunizes antitrust violations where the principal vehicle for achieving the monopolistic goal is political expression—i.e., lobbying government.

But the post-Noerr-Pennington case law makes clear that where a business arrangement—that otherwise violates the antitrust laws—has one component that involves the exercise of First Amendment speech, there is no immunity from antitrust enforcement under the ''Noerr-Pennington'' doctrine. See Allied Tube & Conduit Corp. v. Indian Head,

Inc., 486 U.S. 492, 505–506 (1988); FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411, 423–426 (1990); Sandy River Nursing Care v. Aetna Casualty, 985 F.2d 1138, 1142–43 (1st Cir. 1993); In re Brand Name Prescription Drugs Antitrust Litigation, 186 F.3d 781, 788–789 (7th Cir. 1999).

10. The Major Airlines Geographic Market Allocation—A Per Se Violation of the Antitrust laws—Is Not Immunized by the ''State Action Doctrine''.

It is common for those accused of antitrust violations to claim that their monopolistic practices are immunized from antitrust liability under the so-called ''state action'' doctrine of Parker v. Brown, 317 U.S. 341 (1943). The Supreme Court's rationale in Parker for ''state action'' immunity was the Congress had not intended in the Sherman Act to control the activities of states in engaging in conduct directed by the state legislature. 317 U.S. at 351–352.

But the Supreme Court has severely limited the availability of ''state action'' immunity when invoked by private parties such as the airlines in an attempt to immunize conduct clearly violative of the antitrust laws. The Supreme Court has established two requirements for ''state action'' immunity where private parties participate in the antitrust violation: 1) the monopolistic activity must be clearly expressed and affirmatively adopted as being the policy of the State, and 2) the monopolistic activity must be actively supervised by the State itself. Federal Trade Commission v. Ticor Title Insurance Co, 504 U.S. 621, 633–634 (1992); Patrick v. Burget, 486 U.S. 94, 101–102 (1988); California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105–106 (1980).

In the case of Fortress O'Hare and the collective campaign of United, American and Chicago to keep significant new hub-and-spoke competition from coming into the metro Chicago market, there is no question that the ''state action'' defense does not apply. First, the State of Illinois has not authorized the Fortress O'Hare monopoly maintained by United and American and has actively spoken out against the monopoly problem there. Second, the State is not actively supervising and approving the anticompetitive conduct by United and United and American and Chicago.

11. Federal Taxpayer Funds May Have Been Used to Suppress Competition and Violate the Antitrust Laws in the Chicago Market.

As stated above, other major airlines through the (ATA), United and American (the dominant carriers at O'Hare) have engaged in a concerted effort to defeat construction of a new South Suburban Airport, an airport that would provide significant capacity opportunities for major new competition to enter the Chicago market. United executives have privately stated their goal as ''Kill Peotone''.

United and American have been assisted in their ''Kill Peotone'' (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—including Chicago's consultants. Chicago's consultants have been paid several million dollars in consulting fees to assist Chicago and United and American in expanding O'Hare and in obstructing development of a new South Suburban Airport.

Much of the money paid to these consultants has come from either: (1) federal Passenger Facility Charge (PFC) funds (2) federal Airport Improvement Program (AIP) funds, or (3) federal tax subsidies for municipal for municipal airport bonds (''GARBs'' General Airport Revenue Bonds). Not only are the airlines and Chicago engaged in a monopolistic arrangement designed to prevent new competition from entering the Chicago market (i.e., through the new airport), but much of the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should be asked to conduct an independent audit of all PFC, AIP, and GARB expenditures at O'Hare to determine if any federal funds wee used as part of a campaign to ''Kill Peotone'' and to assist in the violation of federal antitrust laws.

12. Federal Officials Have Participated in and Supported the Big Seven's Illegal Monopolistic Arrangement to Refuse to Compete in the Chicago Market.

Not only have federal funds been used to support the major airlines illegal monopolistic arrangement to refuse to compete in the Chicago market, but it appears that federal officials within the Administration have worked with the major airlines and Chicago to assist in this antitrust arrangement to prevent the development of a new airport in metropolitan Chicago. For the last several years, federal administration officials—several of whom are former Chicago officials who worked for the Chicago Aviation Department—have blocked development of the new South Suburban Airport through a series of spurious legal claims that federal law requires that a ''consensus'' must exist between the State of Illinois and the City of Chicago before a new metropolitan airport can be constructed. No such legal requirement exists.

Because of the active participation of key figures in the current administration in promoting and supporting the continued blockage of new airport development in metropolitan Chicago—in concert with the illegal refusal of the major airlines to compete in the Chicago market by using the new airport—and impartiality and lack of bias of the Administration in conducting law enforcement in this area is suspect. The Attorney General should be asked to appoint an independent prosecutor to conduct the antitrust investigation and to undertake all appropriate actions needed to correct the ongoing antitrust violations.

13. Defining Essential Remedies—A New Regional Airport With Sufficient Capacity to Support New Competitive Hub-And-Spoke Operations.

There have been two ''remedies'' asserted to eliminate the monopoly dominance of Fortress O'Hare in the Chicago market. The first—eliminating slot restrictions at O'Hare—was proposed and passed by Congress this year. According to proponents of lifting the slot limits, elimination of slot controls would bring new competition into O'Hare.

A. Lifting the Slot Limits Was an Unmitigated Disaster.

At the time the federal laws lifting the slot limits was passed, Illinois Senator Peter Fitzgerald and Congressman Henry Hyde both voted against the bill. They argued that the slot limitations were not an artificial constraint but a recognition of the already exhausted limited capacity of O'Hare. They argued that lifting the slots would be a disaster because: (1) added flights should lead to a massive delay gridlock at O'Hare, and (2) that even if there were any additional capacity, that capacity would be rapidly consumed by American and United. Under these circumstances, they argued that lifting the slot limits would simply expand United's and American's monopoly—not increase competition.

Senator Fitzgerald and Congressman Hyde can rightfully say: I told you so. On April 20, 2000 United and American announced their intent to add 400 new daily flights to O'Hare. The sad reality is that O'Hare does not have the capacity for these 400 new flights. But Fitzgerald's and Hyde's point was made; whatever arguable minor incremental capacity exists at O'Hare (if any), it has been rapidly consumed by United and American—not used by new competition. Instead of reducing the monopoly, the new federal law has helped United and America expand the monopoly.

United's and American's actions—coupled with the limited capacity of O'Hare—illustrate's salient point. There simply is not enough capacity at O'Hare to bring any significant new competition into O'Hare. Any new competitive entry will be token at best and not provide meaningful competition to the hub-and-spoke dominance of United and American.

Lifting the slot limit, coupled with United and American's actions to jam more than 400 new flights into O'Hare also means massive new delay increases for the traveling public this Summer. To illustrate these points and to demonstrate why the recently passed federal legislation makes matters much worse at O'Hare requires a brief analysis of the related issues of capacity and delay at airport—particularly O'Hare.

FAA, the airlines, Chicago and IDOT define capacity as the number of operations that can be processed at an airport at an acceptable level of delay. There is a recognition that there is a difference between absolute maximum physical throughput and a lower level of operations that can be put through without experiencing intolerable levels of delay and cancellations. As stated by the City of Chicago:

''The practical capacity of an airfield will be defined as the maximum level of average all-weather throughput achievable while maintaining an acceptable level of delay.''

''Ten minutes per aircraft operation will be used at the maximum level of acceptable delay for the assessment of the existing airfield's capacity, subject to future levels of forecast demand. This level of delay represents an upper bound for acceptable delays at major hub airports.''

This relationship between maximum physical throughput and practical, delay-sensitive capacity is illustrated in a FAA chart copied from an FAA report on the subject, Airfield and Airspace Capacity/Delay Policy Analysis, FAA–APO–81–14.

This relationship holds true whatever the input data as to the level of demand or whatever the capacity of the airport under study. Once the demand reaches a point approaching the physical capacity of the airport the delay levels for all traffic at the airport rise geometrically. The acceptable or ''practical capacity'' of the airport is that level where delays are acceptable. To push more traffic beyond that point is a certain invitation to massive delays, major cancellations, and gridlock.

At one point FAA defined the acceptable level for practical capacity of an airport as four minutes average annual delay. That translated into about a 30-minute delay in peak periods. Now FAA, IDOT and Chicago defined the acceptable level of delay to define practical capacity as 10 minutes average annual delay. This translates (in equivalent terms) into more than an hour delay in peak periods.

What is important to emphasize is that all FAA and chicago—and most likely Booz-Allen and United and Ameican—runs of the SIMMOD model for O'Hare show average annual delay at O'Hare is currently in excess of 10 minutes average annual delay—already above acceptable capacity limits without adding more flights. FAA and Chicago and United and American all know that a push 400–500 new flights per day into O'Hare is going to lead to: (1) massive increases in delays and (2) widespread cancellations. FAA (USDOT) A Study of the High Density Rule

illustrates the massive delay increase that adding just a few flights at O'Hare beyond the slot limits will do to all passengers at O'Hare. This analysis shows that adding 400–500 flights per day will lead to disastrous delays for all passengers—more than doubling the delays for all passengers, not just those who are on the new additional flights.

We anticipate that FAA and United and American will claim that the delay and capacity results of DOT in 1995 have been changed because of capacity improvements at O'Hare in intervening years. But if so, a few questions need answering. What are the capacity improvements since 1995? How much new capacity has been provided? What will be the capacity/delay numbers (comparable to DOT's 1995 analysis) with the new capacity? Why were there no public hearings and environmental disclosure on these capacity improvements?

We suspect the answer is that there have not been any capacity changes at O'Hare since 1995 and DOT's numbers remain valid. Conversely, if there have been capacity changes, FAA has failed to inform both affected elected officials (e.g., Congressman Hyde and Senator Fitzgerald) and they have failed to tell the public and give the public an opportunity to be heard.

There is another important point to emphasize about this throughput/delay relationship shown on the FAA charts. Where the airport is at the limits of acceptable delays—i.e., the practical capacity limit—very small shifts in either traffic demand or capacity can dramatically increase delays for all passengers. Thus a small increase in traffic demand beyond the practical capacity limit will generate huge increases in delays for all passengers. Similarly, a slight decrease in capacity—such as experienced this past year when regional jet pilots were refusing Land-And-Hold-Short for safety reasons—can dramatically increase delays with little or no increase in throughput. The point here is that O'Hare is already at the breaking point—brought there by the resistance of Chicago and the Fortress Hub airlines at O'Hare (United and American) to the building of a new regional airport. O'Hare cannot handle 400–500 new flights per day and United and American know it. Their own SIMMOD analysis tells them that.

Why then do United and American announce a literally foolhardy plan to jam 400–500 flights into O'Hare—an announcement made the same day that United's and American's front organization (the Civic Committee) calls for a new runway at O'Hare? By deliberately creating chaos at O'Hare, United and American will then be able to say that delays are at crisis levels and we must immediately build a new runway at O'Hare.

B. The ''Point-To-Point'' Shell Game: Building the South Suburban Airport as a ''Point-To-Point'' Airport Will Not Break the Hub-And-Spoke Monopoly of Fortress O'Hare.

The heart of the monopoly overcharges to travelers in the Chicago market is the absence of competition in the hub-and-spoke market in Chicago. None of the other Big Seven will come into the Chicago market to establish a competitive hub-and-spoke operation.

United and American propose using close to 10 billion dollars (much of it in federal funds) to expand United and American's hub-and-spoke empire at Fortress O'Hare. In an attempt to expand their monopoly and prevent new competition from entering the Chicago market, United and American (along with the ''Civic Committee'' and the Chicagoland Chamber) have sought to distract attention by suggesting a south suburban airport in Chicago as a ''point-to-point'' airport—not unlike Midway. United and American argues that O'Hare should be the only ''hub-and-spoke'' airport in metropolitan Chicago.

By shaping the argument in this fashion, United and American guarantee that they will be allowed to continue and dramatically expand their Fortress Hub monopoly at O'Hare. According to their arguments, the lion's share of all the origin-destination traffic in the region—and all of the connecting and international traffic—should go to the sole hub-and-spoke airport in the region: O'Hare. Any minor overflow of ''point-to-point'' origin-destination traffic that Midway could not handle could be addressed in a small ''point-to-point'' airport like the South Suburban Airport or Gary.

What United and American gloss over is the fact there is plenty of competition in the Chicago market in point-to-point service. The real lack of competition in the Chicago market is in the lack of additional hub-and-spoke competition to challenge the hub-and-spoke duopoly of United and American at Fortress O'Hare. It is this market dominance of the hub-and-spoke market—not the point-to-point—where lack of competition gouges the business traveler and the traveler from ''spoke'' cities. There is a desperate need for new competitive hub-and-spoke service in the Chicago market and the place to put that hub-and-spoke is the new South Suburban Airport.

No federal administration officials appear to be examining whether spending 10 billion dollars (much of it from federal taxpayers) at O'Hare makes economic sense when much more new capacity to support competitive hub-and-spoke operations can be constructed at a new metropolitan airport for less than half the cost. Nor are federal officials examining whether the use of billions of dollars of federal taxpayer funds to expand United and American's hub-and-spoke duopoly at Fortress O'Hare—essentially using billions of dollars of federal taxpayer funds to subsidize expansion of monopoly power—is proper use of federal funds.

C. A New Runway at O'Hare is Intended to Increase Capacity to Expand United and American's Monopoly Power.

As discussed above, the airlines' current public relations argument is that the lion's share of all the origin-destination traffic in the region (and all of the connecting and international traffic) should go to the sole hub-and-spoke airport in the region (O'Hare). Any minor overflow of point-to-point origin-destination traffic that a dramatically expanded O'Hare and Midway could not handle (if any) could be addressed in a small point-to-point airport like the South Suburban Airport or Gary.

Paralleling this argument is the claim by the airlines allies that a new runway at O'Hare is needed to ''reduce delays''. They claim that a new runway would not increase O'Hare capacity but simply reduce delays.

Yet an analysis using FAA's own capacity analysis standards and criteria demonstrates that a new runway at O'Hare would substantially increase the capacity of the airport. As discussed above, the concepts of capacity and delay are closely interrelated. The FAA and Chicago both define capacity as that level of aircraft operations that can be processed at an airport at an acceptable level of delay.

The FAA's published graphic showing the relationship of capacity and delay illustrates a how a so-called ''delay reduction'' at one level of traffic results in an increase in capacity at the airport to accommodate additional levels of traffic.

This capacity increase at O'Hare—by building a runway to ''reduce delay''—would dramatically expand American's and United's hub-and-spoke monopoly at Fortress O'Hare. Further, it would virtually doom the economic justification for the new south suburban airport because the new ''delay'' runway—once built—could easily be used to carry the new additional traffic for which the new airport was intended. Simply by piecemealing incremental expansion at O'Hare, Chicago and American and United can keep the region under the thumb of the Fortress O'Hare monopoly.

14. United's and American's Fight to Preserve and Expand Fortress Hub Monopoly Power at O'Hare has Grave Social, Economic, Public Health, and Quality of Life Consequences for the Region.

In their passion to expand Fortress O'Hare and defeat the prospect of new hub-and-spoke competition coming into a new airport, United and American have disregarded safety, public health, and quality of life for the communities around O'Hare. All parties are in agreement that growth in air traffic should be accommodated with major increases in new airport capacity in the metropolitan Chicago region.

The choices are stark: (1) a new regional airport which will have an environmental land buffer three times the size of O'Hare and plenty of capacity to accommodate new hub-and-spoke competition or (2) an overstuffed O'Hare with no land buffer and continued dominance of the metropolitan hub-and-spoke market by United and American. But for the addiction to monopoly revenues at Fortress O'Hare, the decision is simple—send the traffic growth to a new environmentally sound, competitively open new regional airport.

Instead we have United and American and their political surrogates urging more air pollution, more noise, and more safety hazards be imposed on O'Hare area communities—simply to protect and expand the Fortress O'Hare monopoly. We now live in a bizarre world where the desire to protect and expand violations of antitrust law and illegal overcharges trumps protection of public health, safety and quality of life.

The consequences of these abuses of monopoly power for the metro Chicago region are stark and severe:

O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion's share of the origin-destination traffic are jammed into an already overstuffed O'Hare. Any new airport—even if built—will simply receive the origin-destination overflow (if any) from a vastly expanded O'Hare and Midway.

South Chicago and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of United and American and the political pique of Chicago's mayor. Residents of South and South Suburban Chicago legitimately ask why United and American oppose the hundreds of thousands of jobs and billions in economic benefits that would accrue to this area if the new airport is built. Some attribute United and American's position to racial intent. More accurately, United and American are willing to ignore the severe economic harm their monopolistic position inflicts on an area with a significant African-American population if that harm is a necessary consequence of preserving and expanding their monopoly at Fortress O'Hare. In a world of pure economic rationality, monopoly power and the social and economic injustices incident to that monopoly power might be excused as central to the maximization of profit. However, in a world of

law and justice—where political leaders must account for their failure to correct these abuses—such destructive monopoly power should not be tolerated.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Suburban O'Hare Commission recommends the following actions:

The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub Markets. Included in the investigation should be an examination of the role of third party collaborators in the antitrust violations—including the City of Chicago and other private organizations and individuals who have assisted the Big Seven (including United and American) in perpetrating these violations. Because of the involvement by federal officials in affirmatively assisting the Big Seven and the City of Chicago in keeping significant competition out of Chicago, the Attorney General should be asked to consider the appointment of independent counsel.

The United States Attorney General and the United States Attorney should bring a civil action in federal court to enjoin and break up the illegal Fortress Hub geographic market allocation by the Big Seven and prohibit the collective refusal by the Big Seven to compete in each other's Fortress Hub markets. Included in the relief should be a requirement that members of the Big Seven halt their collective refusal to use a new South Suburban Airport in metropolitan Chicago and a requirement that competitive hub-and-spoke operations be established in metro Chicago to compete with United and American.

The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven's Fortress Hubs. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

The GAO and the Department of Justice should undertake an immediate and detailed audit of all federal funds that may have been used to further the refusal of the other members of the Big Seven to compete with United and American in metropolitan Chicago—particularly the campaign by the airlines and Chicago to ''Kill Peotone''.

The United States Department of Transportation should withhold any further approvals of federal funds for expansion of the United and American duopoly at Fortress O'Hare.

The House and Senate Judiciary Committees should conduct immediate hearings on these issues.

Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to (1) break up the Fortress Hub system—particularly Fortress O'Hare; (2) bring new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress O'Hare overcharges; (4) prevent the Big Seven from continuing to refuse to use the new capacity provided by the South Suburban Airport; and (5) assemble the federal and state resources needed to rapidly build the South Suburban Airport.

Our Governor should hold fast to his promise not to permit any additional runways at O'Hare. To do otherwise would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring in new competition into the region at the South Suburban Airport.

The two candidates for President of the United States—both of whom have likely received large campaign contributions from the Big Seven—should be respectfully asked what they will do to break up the Fortress Hub system nationally and Fortress O'Hare in particular. Vice President Gore in particular should be asked why his administration has for the past eight years looked the other way while the Big Seven has used violations of the nation's antitrust laws to literally steal billions of dollars from American consumers. Mr. Gore should also be asked to explain why his administration has blocked development of new competitive capacity in metro Chicago—i.e. a new South Suburban Airport—at every turn. Finally, Mr. Bush should be asked specifically what he will do to build the South Suburban Airport.

CONCLUSION

The monopoly abuses of the Fortress Hub system—and especially the abuses of Fortress O'Hare and the refusal of the Big Seven to compete in metropolitan Chicago—are a national disgrace. It's time to end it.

SUBURBAN O'HARE COMMISSION—EXECUTIVE SUMMARY

A study prepared by the Suburban O'Hare Commission concludes that the major airlines have committed per se violations of federal antitrust laws by refusing to compete with each other in Fortress Hub markets, such as in the metro Chicago region now dominated by ''Fortress O'Hare''.

The glaring example of these monopolistic practices are documented by the major airline's letter to former Illinois Gov. Jim Edgar which, in effect, said if the state builds a new airport in Chicago's southern suburbs, ''we won't come.''

That leaves United and American airlines, which control over 80 percent of the air traffic at O'Hare in an unchallenged market position. It would be as if Ford Motor Company told General Motors, ''If you agree not to sell cars in Chicago, we will agree not to compete with you in Los Angeles.''

SOC's major findings include:

The de facto agreement among the ''Big Seven'' airlines—Northwest, United, American, Delta, US Air, Continental and Trans World—not to compete in each others hub market is the heart of the monopoly problem.

The resulting fortress hub monopolies are costing American air travelers billions of dollars annually in monopoly induced higher fares, especially the fares charged to time-sensitive business travelers and ''spoke'' passenger who must connect through the hub to get to their ultimate destinations.

The Big Seven's geographic market allocation violates the nation's antitrust laws, based on clear and repeated Supreme Court decisions which have roundly condemned arrangements to carve up geographic markets horizontally.

In Chicago, the clear violation of the antitrust law is demonstrated by the abandonment by major airlines of meaningful competition to United and American at O'Hare and the announcement that they would not use a South Suburban Airport if built.

The airlines can't defend their anti-competitive practices with the ''Noerr-Pennington'' doctrine, which asserts that petitioning the government to help the industry engage in antitrust actions is protected under Free Speech guarantees. Case law doesn't protect anti-competitive practices that have evolved independent of any government authorization, as in the present case.

Nor can the airlines or Chicago defend themselves by the ''state action'' doctrine, which allows states, as a matter of federalism, to consciously participate in monopoly practices. For this defense to succeed, Supreme Court decisions require that the state must clearly endorse and supervise the monopoly practices. Here there has been no such approval of the Fortress Hub monopoly abuses by the State of Illinois.

Chicago and its officials are not immune from antitrust law liability for helping the major airlines avoid competing with the United/American cartel at O'Hare.

Federal taxpayer funds may have been used to suppress competition and violate antitrust laws in the Chicago market.

The Clinton administration has not only looked the other way in not bringing antitrust enforcement action to break up the Fortress Hub system, but has affirmatively assisted Chicago and United and American in blocking significant new competition from entering the region by blocking development of a new regional airport in metro Chicago.

The lifting of slot limitations will not allow significant competition to enter the Chicago market. Instead—as predicted by Senator Fitzgerald and Congressman Hyde—the lifting of the slots will be accompanied by massive increase in delays and by United and American simply expanding their monopoly control at the airport.

Construction of a new runway for ''delay reduction'' is simply subterfuge to expand the size of United and American's Fortress Hub operation at O'Hare. Building a new runway at O'Hare will make the monopoly problem—and resultant air fare overcharges—even worse. Moreover, it will doom the economic viability of the New South Suburban Airport.

Recommendations

Based on these findings, SOC recommends:

Investigations by the U.S. Attorney General and U.S. Attorney for Northern Illinois into activities by the airlines, the city of Chicago, consultants and other third parties which have been used to protect and expand the Fortress Hub system nationally—and in particular to prevent new airport development in the metro Chicago region.

Civil action by the Attorney General and U.S. Attorney here to break up the Fortress Hub system and to compel the major airlines to stop their refusal to compete in metro Chicago.

Action by state attorneys general to recover treble damages for fliers who were charged billions of dollars in excess fares as a result of the Fortress Hub system.

A Government Accounting Office and Department of Justice audit of federal taxpayer funds to subsidies that abetted the antitrust violations, particularly efforts to kill the South Suburban Airport.

Governor Ryan should hold fast to his promise not to permit any additional runways at O'Hare. To allow additional runways would simply enhance and expand the monopoly power of Fortress O'Hare and doom the opportunity to bring in new competition into the region by the South Suburban Airport.

The withholding of U.S. Transportation Department of any more federal funds for expansion of the United and American duopoly at Fortress O'Hare.

An explanation and action by Illinois' highest elected officials as to what they will do to break up the Fortress O'Hare monopoly and provide for a new south suburban airport.

A clear statement by Republican and Democratic candidates for president to state their positions on Fortress Hubs, especially O'Hare and the role of the federal government in either breaking up Fortress O'Hare or building new capacity for new competition at the South Suburban Airport.

STUDY FINDS MAJOR AIRLINES AND CHICAGO VIOLATE FEDERAL ANTITRUST LAWS TO SUPPORT HIGH MONOPOLY FARES AND BLOCK NEW COMPETITION

BENSENVILLE, IL, May 21, 2000.—The nation's major airlines have committed serious violations of U.S. antitrust laws by refusing to compete with each other in ''Fortress Hub'' markets, including Chicago, a study by the Suburban O'Hare Commission concludes.

The study (entitled ''If You Build It, We Won't Come: The Collective Refusal of the Major Airlines to Compete in the Chicago Air Travel Market'') calls for an investigation by the Justice Department into the anti-competitive practices by the airlines, and also by the city of Chicago, its consultants and third party allies, which have been complicit in the antitrust violations. Based on the study, SOC officials also called for:

U.S. Attorney General Janet Reno to begin civil action to break up the hub monopolies.

State attorneys general to recover treble damages for fliers who have been billed billions of dollars in excessive fares made possible by the monopolistic practices. The U.S. Transportation Department to withhold any more federal funds for the expansion, and further strengthening, of the United and American airlines' cartel at O'Hare Airport in Chicago.

General Accounting Office and Department of Justice audits of funds that have been used to abet the antitrust violations, including the airlines' and Chicago Mayor Richard M. Daley's efforts to kill a proposed hub airport in Chicago's south suburbs.

Governor Ryan to hold to his firm commitment not to permit new runways at O'Hare since such runways would expand United's and American's Fortress Hub monopoly at O'Hare and would doom the economic justification for the new South Suburban Airport.

SOC is a government agency representing more than 1 million residents who live in communities surrounding O'Hare airport. The study alleges that the airlines, the city of Chicago, its consultants and allies have used millions of dollars of taxpayers' money to thwart a south suburban airport that would bring competition to the United and American airlines' cartel at O'Hare and to expand the Fortress Hub monopoly at O'Hare.

''The antitrust violations are as clear and as egregious as if Ford said to General Motors, 'We won't compete against you in Chicago, if you agree not to compete against us by selling cars in Los Angeles' '' said John Geils, SOC chairman and mayor of Bensenville, which borders O'Hare Airport. ''The major airlines even went so far as to write two governors of Illinois, in their infamous 'If you build it, we won't come' letters that they would not use a south suburban airport. This extraordinarily pubic flaunting of the nation's antitrust laws simply cannot be tolerated.''

The heart of the antitrust violations, according to the study, is found in the de facto agreement among the big seven airlines—Northwest, United, American, Delta, US Air Continental and Trans World—to not significantly compete in each others' hub markets. The resulting domination by these airlines of their ''own'' airports (such as Delta in Atlanta, TWA in St. Louis and Northwest in the Twin Cities), forces fliers, especially time-sensitive business travelers, billions of dollars in unwarranted and additional fares, government studies have shown.

''Taxpayers should be concerned that millions of dollars of federal money, raised in part through taxes on every passenger using O'Hare, among other airports, have gone towards financing costly public relations and political lobbying campaigns to support this restraint of trade,'' said Craig Johnson, vice president of SOC and mayor of Elk Grove Village. ''At every turn, the recommendation of expert panels to relieve the pressure on O'Hare and the national aviation system by building an airport in Chicago's south suburbs has been stymied by this campaign. It begins with two airlines' insatiable desire to dominate the Chicago market and is abetted by other major airlines interested in protecting their own turf. And it is carried out by a compliant Chicago mayor who is dependent on the political spoils of a monopolistic O'Hare airport and those who share in those spoils—contractors, political consultants, big public relations firms, concessionaires and their friends in corporate board rooms and the media.''

Said Geils: ''The antitrust movement 100 hundred years ago was aimed at breaking up precisely this sort of attack on the public and consumers. After a century, we don't need new laws. What we need are responsible public officials who won't look the other way, who will carry out the sworn duties of their office.''

The hub-and-spoke airline market was made possible by aviation deregulation two decades ago, which gave commercial carriers the right to compete where, when and at what price they wanted. But instead of the robust competition that deregulation was intended to spawn, it led to increasing concentrations of power of separate airlines at separate ''Fortress Hub'' airports. While the industry will argue that this leads to economies of scales that are passed along to some air travelers in the form of price savings, government and independent studies show that large numbers of travelers—especially time-sensitive business travelers—are actually paying billions more.

The costs, said Geils, are paid in more than just higher fares. ''They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on O'Hare area communities—simply to protect and expand the Fortress O'Hare monopoly. We now live in a bizarre world where the desire to protect and profit from illegal overcharges trump the protection of public health, safety and quality of life.''

[From The Sun Times, May 20, 2000]

GORE'S INTEREST HARDLY PUBLIC

(By Jesse Jackson, Jr.)

At a recent Democratic fund-raiser hosted by Mayor Daley, Al Gore, the vice president and presumptive Democratic nominee, said: ''The Department of Transportation has said at the present time it's a bit premature to build a third airport . . . and I have agreed with that. What happens in the future depends on the best public interest. I know there is a strong public interest in making sure that the health of O'Hare remains very strong.''

Let's look at Gore, O'Hare and the public interest.

First, is the ''best public interest'' served through local or national control of federal transportation policy? Gore came before the Congressional Black Caucus and said that ''federalism'' would be an important issue in the 2000 campaign. Since George W. Bush is openly a ''states' righter,'' I assumed that the vice president was appealing to us for support by saying, as president, he would fight for federal policies that contributed to the public interest. Gore did that in the South Carolina flag issue, but in the case of Elian Gonzalez in Florida and a third airport in Chicago he, too, deferred to the locals.

Gore is right that the DOT has recommended against building a third airport now. However, Gore did not share the rationale for the DOT's recommendation. Did he draw his conclusion after a thoughtful series of dispassionate, hard-nosed government studies? Or were 2000 political considerations uppermost? President Clinton has told some Chicagoans privately that, ''Jesse Jr. may be right about the airport, but this is an election year.'' However, at Daley's request, the Clinton-Gore administration in 1997 took Peotone off the nation's planning list, making it ineligible for federal funds. Thus, one is led to conclude that, in Chicago, local politics control federal aviation policy, rather than the public interest. O'Hare is the new patronage system in Chicago—which includes lucrative no-bid contracts, jobs and vendor access.

Is unbalanced growth in the public interest? Chicago eventually plans to spend at least $15 billion to gold-plate O'Hare (and Midway) and build additional runways at O'Hare. For considerably less money—$2.3 billion—one could build four runways and 140 gates and, more important, achieve balanced economic growth. A recent downtown business study said current plans will add $10 billion to the economy around O'Hare and 110,000 new jobs. Such a plan will meet Chicago's transportation needs for the foreseeable future and ''keep the health of O'Hare . . . very strong,'' as Gore desires. But such a policy will kill Peotone and its potential 236,000 new jobs, and will lead to increased class and caste segregation in the Chicago metropolitan area—a community already well known for such patterns. Was that understanding part of Gore's calculation of the ''public interest'' when he affirmed O'Hare and negated Peotone?

The top 11 businesses in the 2nd Congressional District, with nearly 600,000 residents, employ a mere 11,000 people—one job for every 60 people. By contrast, more than 100,000 people go to work in Elk Grove Village, a city of 36,000 people—three jobs for every person. The effect of Gore's position on O'Hare will only add to this disparity. Apparently, Gore sees the option as either a ''zero sum'' game—if we build Peotone it will hurt O'Hare—or he is willing to accept the consequences of unbalanced growth that would make the southern part of Chicago and Cook County even poorer, blacker, more segregated and dependent on government and taxpayers. Is Gore claiming that such economic imbalance and racial segregation are in the public interest?

Are increased class and caste disparities in the political interests of Gore? Quite naturally, politicians representing areas of excess private jobs will want lower taxes and less government—the Republican agenda. My area, in desperation, will turn to the government as the lifeboat of last resort to keep it afloat at a subsistence level, even as crime soars, social needs rise, services fail and hardworking, middle-class taxpayers revolt against ''welfare cheats and free-loaders.'' With nowhere else to go, these African Americans and poor people who vote will turn to Democrats to save them. Thus, it will perpetuate a Democratic image as the party of big government and undermine Gore's efforts to downsize and ''reinvent'' government.

Balanced economic growth better serves the entire region. In Gore's own political interests, he should look anew at O'Hare and Peotone and make another assessment of what is truly in the public interest.

MEMORANDUM—JULY 13, 2002

To: Senator Peter Fitzgerald, Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Re: Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

Sandy Murdock asked me to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with §47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a ''certificate of approval'' from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville before seeking a certificate of approval. In testimony at the July 9, injunction hearing before Judge Webster, the lead IDOT official in charge of the IDOT approval process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT's approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition and consider this harm as a basis of its decision—but only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire by condemnation or otherwise all of Bensenville, Wood Dale, Elk Grove Village (thousands of homes and businesses) and any other municipality—without any need for a prior certificate of approval from IDOT under §47.

Thankfully, Judge Webster rejected Chicago and IDOT's claims and applied and enforced the plain language of the statute—prohibiting Chicago from acquiring and demolishing homes and businesses in another municipality without first obtaining a certificate of approval from IDOT.

It is important for you to understand that the preemption approach of the Lipinski Bill (as well as Durbin's) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. Under the Illinois Constitution, Chicago has only that condemnation authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (''Dillon's rule'' followed in almost all of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed against assertions of authority by the municipality.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes in the Illinois Municipal Code) (65 ILCS 5/11–102–4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code (65 ILCS 5/11–102–10) that this grant of authority to condemn must be in accordance with the requirements of the Illinois Aeronautics Act.

3. Acquisition of land by Chicago without complying with the Illinois Aeronautics Act is thus not only a violation of the Illinois Aeronautics Act, such failure constitutes an unlawful *ultra vires* action by Chicago in violation of the Illinois Constitution and the Illinois Municipal Code. Without compliance with the Illinois Aeronautics Act, Chicago has no authority under either Article VII, Section VII of the Illinois constitution and no authority under the Illinois Municipal Code to acquire land in other municipalities.

The Lipinski (and Durbin) legislation seeks to ''preempt'' and destroy the Illinois Aeronautics Act, but in doing so the Lipinski (and Durbin) legislation attempts to destroy and rewrite the framework created by the Illinois Constitution and the Illinois Municipal Code. Why not just abolish state constitutions and state statutory codes altogether and let Congress rewrite the state constitutions and state statutory codes of all 50 states?

Beyond the enormous legal implication of such action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to condemn land in other municipalities even though no such authorization exists for Chicago to do so under the Illinois Constitution or Illinois Municipal Code.

2. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to engage in unfettered condemnation authority with the ability to acquire and destroy thousands of homes and businesses in many other municipalities—all in violation of the limits on Chicago's state constitutional and state Municipal Code authority imposed by the Illinois Constitution and Illinois General Assembly.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago unfettered ability to condemn properties outside the City of Chicago. If applied in other states, it would ''authorize'' one municipality (whichever municipality Congress chose) to disregard the limits on that municipality's delegated powers created by that state's constitution and state statutory code) and to condemn land in any other municipality in that state—in total federal preemption of that state's constitution and municipal code.

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal ''authorization'' to one municipality in a state to run roughshod over other municipalities in that state in violation of the state constitution and municipal statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt §38.01 of the Illinois Aeronautics Act, 620 ILCS 5/38.01. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the State of Illinois to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O'Hare, the Lipinski (and Durbin) legislation will literally ''open the chicken coop'' to widespread potential for corruption.

July 24, 2001.

Hon. DON YOUNG,
Chairman, Transportation and Infrastructure Committee,
Washington, DC.

DEAR CONGRESSMAN YOUNG: I am writing to you about the grave concerns I have with H.R. 2107, The End Gridlock at Our Nation's Critical Airports Act of 2001. I share the concerns of Congressmen Henry Hyde, Jerry Weller and Philip Crane, who have sent a virtually identical letter to you under separate cover. I agree that in H.R. 2107—the attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise

state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court.

[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those Acts. New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added)

It is incontestable that the Constitution established a system of ''dual sovereignty.'' Printz v. United States, 521 U.S. 898, 918 (1997) (emphasis added)

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991)

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personnel and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Commissioners of Highways, 653 F.2d at 297

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Very truly yours,

JESSE L. JACKSON, JR.
Member of Congress.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE—THURSDAY, MARCH 21ST, 2002 WASHINGTON, DC

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago's airports. As you know, I sent a letter to each of you stating my opposition to this bill. Many Members responded favorably, and for that I thank them. Today, my position has not changed.

As you know, my commitment to resolving Chicago's aviation capacity crisis predates my days in Congress. I ran on this issue in my first campaign. I won on this issue. It remains my first priority. It was the subject of my first speech in Congress. And it was the topic of my first debate in Washington.

I am elated that this issue—my issue—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolving this regional and national crisis, I must say that HR 3479 as amended falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing O'Hare's problems. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal precedence. And about constitutionality.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide to you.

FEDERAL STUDY CONFIRMS AIRPORT DEAL SHORTCHANGES PEOTONE

An analysis released today by the independent, non-partisan research arm of Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport agreement puts O'Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the Congressional Research Service concludes that the proposed National Aviation Capacity Expansion Act puts the two projects on separate and unequal tracks.

The CRS analysis states that the Federal Government ''shall construct the runway redesign plan'' at O'Hare but would merely ''review'' and give ''consideration'' to the Peotone Airport project.

In reaction to the release of today's report, Congressman Jackson reiterated his opposition to the measure. ''This study unmasks the bare truth about the agreement between the Mayor and the Governor. For those claiming that the deal is good for the Third Airport, it's not. The masquerade ball is over,'' Jackson said.

''Peotone has been stuck in the paralysis of analysis for 15 years. We don't need any more reviews. We need a Third Airport,'' Jackson said. ''Peotone can be built faster cheaper, safer, and cleaner than expanding O'Hare, and presents a more secure and more permanent solution to Illinois' aviation crisis. This is shortsighted legislation and a bad deal for the public.''

The CRS report states that the Lipinski-Durbin bill ''specifically states that the (FAA) Administrator 'shall construct' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport.''

CRS concludes that the bill ''provides for the Administrator's review of the Peotone Airport project (and) provides for the expansion of O'Hare. The provisions appear to operate independently of each other and are

not drafted in parallel language, and provide different directions to the Administrator.''

CONGRESSIONAL RESEARCH SERVICE
MEMORANDUM—FEBRUARY 6, 2002

To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour

From: Douglas Reid Weimer, Legislative Attorney, American Law Division

Subject: Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act

BACKGROUND

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division. Your staff has expressed interest in certain provisions of H.R. 3470, the proposed National Aviation Capacity Expansion Act (''bill''). These provisions are examined and analyzed in the following memorandum.

The bill contains various provisions relating to the expansion of aviation capacity in the Chicago area. Among the provisions contained in the bill are provisions relating to O'Hare International Airport (''O'Hare''), Meigs Field, a proposed new carrier airport located near Peotone, Illinois (''Peotone''), and other projects. Your office has expressed repeated concern that the news media and various commentators have reported that the bill would apparently implement the various projects in a similar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited concerning the bill tend to report the various elements of the bill without distinguishing the bill language and the differences as to the means in which the various projects may be implemented.

ANALYSIS

The chief purpose of the bill it so expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other issues. Your staff has focused upon the interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

''(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political Subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport.''

If enacted, this bill language would relate to the federal funding for the proposed airport to be constructed at Peotone. The ''Administrator'' refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application (''application'') submitted by Illinois, or a political subdivision for the construction of the ''south suburban airport'' the proposed airport at Peotone.

The Administrator is given specific directions concerning the application and for the time consideration of the application. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure and/or to compel that the Administrator will comply with the Congressional mandate, if the Administrator does not choose to follow the Congressional direction. Congress possesses inherent authority to oversee the project, as well as the Administrator's compliance with the statutory requirements, by way of its oversight and appropriations functions. Congress and congressional committees have virtually plenary authority to elicit information which is necessary to carry out their legislative functions from executive agencies, private persons, and organizations. Various decisions of the Supreme Court have established that the oversight and investigatory power of Congress is an inherent part of the legislative function and is implied from the general vesting of the legislative power of Congress. Thus, courts have held that Congress' constitutional authority to enact legislation and appropriate money inherently vests it with power to engage in continuous oversight. The Supreme Court has described the scope of this power of inquiry as to be ''as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.''

Specific interest is focused on the language ''shall consider'' used in the second sentence of the subsection. In the context of this subsection, it should not necessarily be considered to mean the implementation of an accelerated approval/construction process for the airport. While these events may occur, such a course of action is not specifically provided by the legislation.

Your staff has also focused on subsection (f), dealing with the proposed federal construction at O'Hare. The bill provides:

''(f) FEDERAL CONSTRUCTION.—

(1) On July 1, 2004, or as soon as practicable thereafter, the Administrator shall construct the runway redesign plan as a Federal project, if—

(A) the Administrator finds, after notice and opportunity for public comment, that a continuous course of construction of the runway design plan has not commenced and is not reasonably expected to commence by December 2, 2004;

(B) Chicago agrees in writing to construction of the runway redesign plan as a Federal project without cost to the United States, except such funds as may be authorized under chapter 471 of title 49, United States Code, under authority of paragraph (4);

(C) Chicago enters into an agreement, acceptable to the Administrator, to protect the interests of the United States Government with respect to the construction, operation, and maintenance of the runway redesign plan;

(D) the agreement with Chicago, at a minimum provides for Chicago to take over ownership and operations control of each element of the runway redesign plan upon completion of construction of such element by the Administrator;

(E) Chicago provides, without cost to the United States Government (except such funds as may be authorized under chapter 471 of title 49, United States Code, under the authority of paragraph (4)), land easements, rights-of-way, rights of entry, and other interests in land or property necessary to permit construction of the runway redesign plan as a Federal project and to protect the interests of the United States Government in its construction, operation, maintenance, and use; and

(F) the Administrator is satisfied that the costs of the runway redesign plan will be paid from sources normally used for airport development projects of similar kind and scope.

(2) The Administrator may make an agreement with the City of Chicago under which Chicago will provide the work described in paragraph (1), for the benefit of the Administrator.

(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property necessary for the runway redesign plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in this subsection.''

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago provides, without cost, the land, easements, right-of-way, rights of entry, and other interests in land/property as are required to allow the construction of the runway plan as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the redesign plan costs will be paid from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator ''may'' make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word ''may'' would appear to make this language optional, and would not necessarily require the Administrator to enter into such agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the Federal Government those property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator ''shall construct'' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport in subsection (e). The provisions of the subsections appear to be independent of each other and provide very different directions to the Administrator, Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is concerned primarily with the review and the consideration of an airport construction plan.

It is possible that the Administrator's actions concerning the implementation of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administrative behavior. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency's action/inaction. The Administrative Procedure Act (''APA'') provides general guidelines for determining the proper court in which to seek relief. Some statutes provide specific review proceedings for agency actions. Subsection (h) of the bill provides

for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. § 46110.

If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that ''nonstatutory review'' may occur. When Congress has not created a special statutory procedure for judicial review, an injured party may seek ''nonstatutory review.'' This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case ''arising under'' the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator's review of the Peotone Airport project. Subsection (f) provides for the expansion of O'Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator to compel the Administrator to fulfill the statutory responsibilities provided by the bill.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1ST, 2001 WASHINGTON, DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we're here. I won my first term in a special election and on December 14th, 1995 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new Member. He told me then: ''Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign.''

Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word to block a third airport.

It is this rigid stance by many Chicago officials that's allowed a local problem to escalate into a national crisis. Once the nation's best and busiest crossroads, O'Hare is now its worst choke point—overpriced, overburdened and overwhelmed.

And to think it was avoidable. This debate dates back to 1984 when the Federal Aviation Administration determined that Chicago was quickly running out of capacity. The FAA directed Illinois, Indiana and Wisconsin to conduct a feasibility study for a new airport. The exhaustive study of numerous sites concluded almost 10 years ago that gridlock could be best avoided by building a south suburban airport. The State of Illinois then drafted detailed plans for an airport near Peotone.

Unfortunately, despite the FAA's dire warning and the State's best efforts, I watched in amazement as the City of Chicago went to extremes to thwart and delay any new capacity.

In the late 1980s, Mayor Daley mocked the idea of a third airport. By 1990, the City did an about-face and proposed building a third airport within the City. The City even initiated federal legislation creating the Passenger Facility Charge (PFC) to pay for it. But two years later the City reversed itself again and abandoned the plan, yet continued to collect $90 million a year in PFCs. This summer, the City told the Illinois Legislature that O'Hare needed no new capacity until the year 2012, then, in yet another reversal, three weeks ago declared O'Hare needed six new runways.

As the City was spending hundreds of millions of dollars on consultants to tell us that the City didn't, did, didn't, did need new capacity, it continued to be consistent on the one thing—fighting to kill the third airport.

Sadly, that opposition was never based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals and the status quo. In fact, earlier this year the Chicago Tribute won a Pulitzer Prize for documenting the ''stench at O'Hare.''

Still, for eight years, City Hall leveraged the Clinton FAA to stall Peotone. The FAA, ignoring its own warnings of approaching gridlock, conspired with the city to:

(1) Mandate ''regional consensus,'' thus requiring Chicago mayoral approval for any new regional airport;

(2) Remove Peotone from the NPIAS list in 1997, after it emerged as the frontrunner. Peotone had been on the NPIAS for 12 years;

(3) Hold up the Peotone environmental review from 1997 to 2000.

In short, the same parties who created this aviation mess are now saying ''trust us to clean it up'' with H.R. 2107. But their hands are too dirty and their interests are too narrow. Proponents of this legislation claim to be taking the high road. But this is a dead end.

Fortunately, there is a better alternative. Compared to O'Hare expansion, Peotone could be built in one-third the time at one-third the cost—both important facts given that the crisis is imminent and that the public will ultimately pay for any fix.

Site selection aside, however, there is yet another, even bigger problem with H.R. 2107. It is the United States Constitution.

H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the ''reserved powers'' clause of the 10th Amendment.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake an activity, nor can it intrude upon Illinois' prerogative to exercise or delegate its power. As stated by the United States Supreme Court: ''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.'' [New York v. United States, 1992]

Supporters have cited the Commerce Clause in defending his legislation. But the Supreme Court in Printz v. United States specifically emphasized the 10th Amendment barrier to Congress intruding on a state's sovereignty by saying that it could not be avoided by claiming either, one, that congressional authority was pursuant to the Commerce Power, or, two, that federal law ''preempted'' state law under the Supremacy Clause.

Chicago has acknowledged Illinois' authority to build and operate airports by express statutory delegation through the Illinois Aeronautics Act, including the requirement that the State approve any airport alterations. Under the 10th Amendment, if Congress strips away a key element of the Illinois law, Chicago's attempt to build runways would likely be ultra vires (without authority) under Illinois law.

Moreover, H.R. 2017 converts the concept of dual sovereignty into tri-sovereignty, by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

Indeed, H.R. 2107 sets federalism on its head. It makes about as much sense as putting the local police department in charge of national defense.

Such legislation won't improve aviation services. In fact, it increases the likelihood for a constitutional challenge that will further prolong this crisis.

So, from a practical standpoint, I urge the subcommittee to reject this measure, to reject cramming more planes into one of the nation's most overcrowded airport, to reject turning O'Hare into the world's largest construction site for the next 20 years, and to reject sticking the taxpayers with an outrageous bill.

I strongly urge the committee to reject this unprecedented, unwise and unconstitutional attack against our fifty states and our Founding Fathers. Thank you.

SUBURBAN O'HARE COMMISSION, FEBRUARY 13, 2002—A BETTER PLAN FOR CURING THE O'HARE AIRPORT BOTTLENECK

Chicago—A plan for relieving the Chicago aviation bottleneck was unveiled today that costs less, is more efficient, less destructive and can be realized quicker than a ''compromise'' plan that Chicago Mayor Richard M. Daley and Illinois Gov. George Ryan are trying to rush through Congress.

The plan was crafted by the Suburban O'Hare Commission, a council of governments representing a million residents living around O'Hare Airport.

The plan includes runway, terminal and other improvements at O'Hare International Airport, to make it more efficient, competitive and convenient. The plan also includes alternatives to the costly and destructive ''western access'' proposed in the Daley-Ryan plant. The centerpiece of the plan remains, as it has for well over a decade, a major hub airport in the south suburbs that had been urged by experts and government officials from three states, and would be operational now if not for obstruction from Chicago Mayor Richard M. Daley. The plan provides for many more flights to the region, and, consequently, many more jobs.

''We always have been in favor of a strong O'Hare Airport because of its importance to

our communities and to the regional economy,'' said John Geils, SOC Chairman and president of the Village of Bensenville. ''This will come as a surprise only to those who have been taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O'Hare zealots, willing to damage or even destroy O'Hare. Our plan will expand the region's aviation and economic growth; the Daley-Ryan plan will stifle that growth.

''The claimed benefits—including delay reductions, job increases, improved safety, greater competition and less noise—of the Daley-Ryan O'Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends.'' Geils said.

Among the improvements are a realistically modernized O'Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western access and a bypass route would be built on airport property, skirting O'Hare to the south—as originally planned, thus avoiding the destruction of uncounted homes and businesses, as under the Daley-Ryan plan.

The SOC Solution also would increase competition at O'Hare, through terminal and other facilities improvements so that air travelers using the competition are not treated as second-class customers. Funding of O'Hare improvements would be disconnected from a complicated bonding scheme that allows United and American airlines to become more entrenched and to continue to charge anti-competitive fares. In addition, some of the lucrative gambling revenues, now going to enrich political insiders, would be used for a competitive makeover of O'Hare.

SOC's plan also would provide better safety and environmental protections. Every home impacted by noise at O'Hare and Midway would be soundproofed, instead of a select few as provided under the current, flawed standards adopted by Chicago. O'Hare neighbors would be spared the concentration of air pollution brought by a doubling of flights at what is already the state's largest single air polluter. Under the Daley-Ryan plan, O'Hare neighbors would find themselves in federally required crash zones at the end of runways, forcing them to either give up their homes or live in devalued property in great risk. Because most of the region's air traffic growth would use the South Suburban airport where pollution and safety buffers are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate ''reliever'' airport as envisioned under the Daley-Ryan plan. Just as New York City and Washington, D.C. have more than one hub airport, a true regional airport in the South Suburbs would give Chicago the kind of potential it needs with three hub airports (O'Hare, Midway and Peotone) to maintain its aviation dominance for decades. Despite the long-made assertions by entrenched interests, such as United and American airlines, that the Chicago area didn't need a second hub airport, Midway already is developing into a hub simply because of market forces. With Midway reaching capacity in just a few years, and O'Hare already at capacity, the sounds of ''no one will come to Peotone'' no longer are heard.

Finally, the SOC Solution will protect taxpayers by creating an oversight board of improvements at all airports, including the south suburban airport and Midway.

''The SOC Solution is not a fragmented plan that simply focuses on O'Hare, which under the Daley-Ryan proposal is merely an instrument for extending the political and economic might of a select few,'' said Geils. ''Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public.''

COMPARISONS OF THE DALEY-RYAN PLAN AND THE SOC SOLUTION

	Daley-Ryan O'Hare plan	SOC Plan
Provides Immediate Solution to the Delay Problem at O'Hare?	No—runways will not be built for years and by the time they are built, delays will increase with increased traffic growth.	Yes—delays addressed immediately by FAA recommended demand management techniques such as proposed for LaGuardia.
Which Plan Provides Greatest Capacity Growth for Region?	Max increase of 700,000 operations; likely much less	1,600,000 operations capacity at South Suburban Airport—far more than Daley-Ryan plan.
Which Plan Produces Greatest Opportunity for New Competition and Lower Fares?.	Daley-Ryan O'Hare plan solidifies and expands United-American monopoly dominance—hundreds of millions in losses to Chicago travelers each year.	Wide open opportunity for major competition—both at O'Hare and at South Suburban Airport.
Which Plan Provides Greater Job Growth?	Daley-Ryan O'Hare plan job growth of 195,000 jobs dependent on 700,000 new operations capacity at O'Hare—real capacity unlikely and far less jobs.	Suburban O'Hare Commission plan provides 1.6 million new operations capacity in addition to O'Hare—far more jobs than Daley-Ryan O'Hare plan.
Which Plan Makes Peotone A Reality?	No provision in Daley-Ryan O'Hare plan to actually fund and build Peotone—an exercise in political rhetoric with little likelihood of success.	SOC plan borrows from idea by Senator Patrick O'Malley to use huge excess gambling income now going to political insiders to fund Peotone construction.
Which Plan Produces Less Toxic Air Pollution Impact on Surrounding communities?.	Daley-Ryan O'Hare plan makes toxic emissions at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects public health and prevents residential exposures.
Which Plan Produces Less Noise Impact on Surrounding communities?	Daley-Ryan O'Hare plan makes aircraft noise at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects against residential noise exposure.
Which Plan is Safer?	Daley-Ryan O'Hare plan reduces safety margins at O'Hare—more congested airspace, less safety on runways and taxiways, occupied runway crash zones.	SOC plan much safer because South Suburban Airport site can address runway safety concerns much easier than O'Hare because much more land available.
Which Plan Provides Justice and Equity for the South Side and South Suburbs?	Daley-Ryan O'Hare plan guarantees exactly what Daley wants—an empty cornfield at Peotone.	SOC plan insures construction of major new airport with adequate funding.
Which Plan Preserves State Law protections?	Daley-Ryan O'Hare plan destroys state law protections for public, health, the environment, the consumer.	SOC plan preserves and protects state law safeguards for our environment, public health and the consumer.
Which Plan Provides Greatest Economic Benefits Over Costs?	Daley-Ryan O'Hare plan has huge costs that likely far exceed the economic benefits. (which are far less than claimed).	SOC plan provides much greater regional capacity, eliminates the delay problem in the short and long term, and can be built far faster, with far less cost. Also provides much greater potential for new competition and lower fares. A much greater economic bang for far less bucks.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY

Daley-Ryan O'Hare Plan Claims	Reality
Delay Reduction Untrue. Daley-Ryan O'Hare plan claims it reduces bad weather delays by 95% and overall delay by 79%.	Total bad weather and good weather delays will increase dramatically under Daley-Ryan O'Hare plan.
Delay Savings Untrue. Daley-Ryan O'Hare plan claims it will produce delay savings of $370 million annually and passenger delay savings of $380 million annually.	Daley-Ryan O'Hare plan will increase total delay costs by hundreds of millions of dollars annually.
Cost Claims Untrue. Daley-Ryan O'Hare plan says cost is: $6.6 billion	Real Costs—$15 billion to $20 billion.
Capacity Claims Untrue. Daley-Ryan O'Hare plan claims it will meet aviation needs of Region	Real Capacity of Daley-Ryan O'Hare plan:
Increase O'Hare passenger ''enplanements'' (boarding passengers) from current 34 million to 76 million	Falls far short of 76 million passenger capacity and far short of capacity of 1,600,000 operations.
Increase O'Hare operational capacity from 900,000 to 1,600,000 operations	Leaves region with huge capacity gap for both passengers and aircraft operations.
Peotone Claim untrue. Daley-Ryan O'Hare plan says they will build Peotone	Daley-Ryan O'Hare plan destroys economic rationale and funding for Peotone: If Daley-Ryan O'Hare plan meets its capacity claims, no economic justification for Peotone—not needed. If Daley-Ryan O'Hare plan falls short of capacity, $15 billion to $20 billion spent at O'Hare will exhaust federal and state funding resources.
Jobs Claims untrue. Daley-Ryan O'Hare plan says it will create 195,000 jobs	Actual jobs fall far short of the 195,000 jobs claimed because of enormous capacity shortfall; much greater job growth under SOC alternative.
Financial Claims Untrue. Daley-Ryan O'Hare plan says there is plenty of federal and airlines money to expand O'Hare and pay $15 billion to $20 billion cost.	Daley-Ryan O'Hare plan will bankrupt federal airport aid trust fund and United and American cannot afford billions in bonds.
Hiding the Data and Information. Daley-Ryan O'Hare plan claims based on slick Power Point Slides—no backup information provided.	Daley and Ryan O'Hare plan stonewall on documents and data backing up their claims—refuse to produce documents in Freedom of Information requests.
Monopoly Overcharge Problem. Daley-Ryan O'Hare plan makes no mention of monopoly overcharge problem at O'Hare—costing Chicago based travelers hundreds of millions of dollars per year. As Governor-Elect George Ryan said, monopoly overcharges at O'Hare gouged travelers over $600 million per year.	Daley-Ryan O'Hare plan will expand and strengthen the monopoly hold United and American have on Chicago market—costing Chicago business travelers hundreds of millions annually in overcharges.
Where is the Western Ring Road? Daley-Ryan O'Hare plan say western ring road is needed for O'Hare expansion; yet refuse to disclose location, cost, and impact on local jobs, industry, housing.	Western Ring Road route pushed west by Daley-Ryan O'Hare plan into valuable and important industrial and residential areas of Elk Grove Village and Bensenville—leading to huge losses in jobs, tax revenues, economic development and residential quality of life.
Where are all the Terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O'Hare plan.	Daley now says all but one of the new terminals shown on the Daley-Ryan O'Hare plan (new Terminals 4 and 6) needed for existing runways and that new (as yet unidentified terminals will be needed for Daley-Ryan O'Hare plan—no locations shown, unidentified billions of dollars in additional unstated costs.
Noise—the Daley Ryan New Math. Daley-Ryan O'Hare plan says noise will be less at 1,600,000 operations than at 900,000 operations.	There will be significantly more noise at 1,600,000 operations than at 900,000 operations.
Toxic Air Pollution. Daley-Ryan O'Hare plan makes no mention of toxic air pollution yet Ryan as Governor said O'Hare should not be expanded because of toxic air pollution problem.	There will be significantly more toxic air pollution at 1,600,000 operations than at 900,000 operations.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY—Continued

Daley-Ryan O'Hare Plan Claims	Reality
Benefit-Cost Analysis. Daley-Ryan O'Hare plan says it meets federal benefit-cost analysis requirements—including requirement that federal government chose the alternative that produces greatest net benefits.	Reality is that benefits of Daley-Ryan O'Hare plan may not exceed the huge costs. It is also clear that placing the new capacity at the new South Suburban Airport rather than an expanded O'Hare produces far grater economic benefits at far less cost than the Daley-Ryan O'Hare plan.
Increased Safety Hazards. Daley and Ryan say their plan is safe	Daley-Ryan O'Hare plan creates major safety hazards, including: increase in traffic incursions (collision risk), destruction of safest runways for bad weather winter storm conditions (14/32s), high congestion in O'Hare area air space, risky runway protection (crash zones) in occupied areas.
Compliance With State Law. Daley and Ryan say that their plan complies with state law and that they are seeking federal preemption of state law only to prevent upsetting Daley-Ryan deal by a future governor.	Daley and Ryan both know that they (not some future governor) have both violated state law by failing to meet the requirements of the Illinois Aeronautics Act; purpose of bill is to immunize this illegality.
$15 Billion into the O'Hare Money Pit: Problems of Corruption in Management of O'Hare. Daley and Ryan make no mention of the history of rampant corruption and kickbacks to Daley friends and cronies in O'Hare contracts or the need for safeguards and reforms to insure the integrity of the process.	Putting $15 or more billion dollars into the corrupt contract management system that infects Chicago public works awards—especially at O'Hare, is pouring public resources into a cesspool. The First Commandment of Chicago O'Hare contracts is that the contractor has to hire one of Daley's friends or political associates on contract awards.
Economic Equity and Justice for the South Side and South Suburbs. Daley-Ryan O'Hare plan offers little but empty rhetoric for Peotone and south suburban economic development.	Daley-Ryan O'Hare plan calls for putting virtually all of the economic growth of aviation demand at O'Hare—leaving South Side and South Suburbs either empty promises, or a white elephant token airport.

GRAVE CONCERNS NEAR O'HARE

(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

''Maybe the federal law might come to our aid,'' said Bob Placek, a member of Resthaven Cemetery's board who estimates 40 of his relatives, all German and German-American, are buried there. ''The dead folks out there aren't trying to be obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history.''

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

''Primarily, the legislation applies to federal lands and tribal lands,'' said Claricy Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal money, the most Resthaven proponents could probably hope for is a short delay, a say in how any disinterment takes place and, if they are Indian, the opportunity to claim the bodies of Native Americans.

''They've got a hard road,'' Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those familiar with local history.

''Ma used to talk about Indians being buried at Resthaven,'' said the 44-year-old Placek, who believes the Indians share a mass grave. His mother, who died in 1996, also is buried at Resthaven. ''I used to hear as a little kid Potawatomi'' were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to get involved.

''It's concerning,'' said Clarice Ritchie, a researcher for the community of about 1,000 who hadn't heard about the issue until contacted by a reporter.

''At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance in many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives,'' she said. ''We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of.''

''I guess we'd have to keep our mind broad as to what would be done,'' Ritchie said. ''Naturally we don't like to see graves disturbed, but somebody has already disturbed them once. . . . I guess what I'd probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done.''

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits may not look kindly on those who move remains.

''It's not good to do that—move a cemetery or just plow over it,'' he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's $6 billion project, said this is the first he's heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

''I have no reason to doubt them at this time, but I have no independent knowledge,'' he said. But ''whether they're Indians or not, we would exercise an extreme level of sensitivity in the interest of their survivors.''

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the west side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described ''advocate for the dead'' Helen Sclair has heard there might be Indians buried at Resthaven, but she suspects not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

''We don't have much of a positive attitude toward cemeteries in Chicago,'' Sclair said. ''Do you know why? Because the dead don't pay taxes or vote. . . . Well, technically they don't vote.''

ROSEMARY MULLIGAN,
STATE REPRESENTATIVE 55TH DISTRICT,
Des Plaines, IL, July 5, 2002.

Hon. JESSE L. JACKSON, JR.,
U.S. House of Representatives, Washington, DC.

SUBJECT: VOTE ''NO'' ON H.R. 3479

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make a personal plea on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains gross misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that ''Chicago'' O'Hare Airport is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is the only major city airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a ''deal'' between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O'Hare would become. Unfortunately, the amount of land dedicated to the airport set its fate long before the current crisis. Plainly speaking, there isn't enough room to expand.

For the past several years, I and other legislators have introduced nearly a dozen measures in the Illinois General Assembly to conduct environmental studies, provide tax relief for soundproofing, defend suburban neighborhoods from unfair ''land grabs,'' require state legislative approval of any airport expansion and to generally protect the people we represent whose residences abut airport property. Because of the political make-up of our body and the great influence of Chicago's mayor, we have been unsuccessful. Our efforts and the health and safety of our constituents are ignored because of politics.

Please, before you vote on HR 3479, consider the following facts:

1. If the people who surround this airport could vote for the mayor of the City of Chicago, an agreement to expand O'Hare could not have been made. Whoever is mayor would have to take into consideration his immediate constituency.

2. Thorough environmental studies are being blocked. There are many documented health concerns related to current pollution levels. 800,000 additional flights will nearly double the environmental hazard.

3. The State of Illinois' rights are being trampled. The House of Representatives vote is setting a precedent that may impact your home state at some later date.

4. The safety of this plan has been questioned, particularly with its inadequate FAA Safety Zones. The lack of land does not allow for significant changes. It jeopardizes surrounding schools, homes and businesses.

5. No matter what configuration or expansion moves forward, O'Hare's Midwest location means it will always be impacted by weather from many directions.

6. Proponents claim a 79 percent decline in delays with reconfiguration of runways. However, when the increase of 800,000 flights is factored in, delays will increase to above their current levels.

Notwithstanding the economic benefits proponents subscribe to this project, the responsibility of elected officials must be first to the health, welfare and public safety of the people we represent.

Lastly, there exists a glaring discrepancy between the legislation before you and what has been told to Illinoisans. A simpler answer to all of the O'Hare congestion problems exists in the development of a third regional airport. The legislation has downgraded the priority of this solution and will further delay any true relief for our nation's transportation woes. This fact is omitted from news reports and official proponent propaganda.

With all due respect, I ask that you vote ''no'' on HR 3479. Let this remain a state's rights issue. Please feel free to contact me anytime if you have any questions at (847) 297–6533. Thank you for your time.

Respectfully,

ROSEMARY MULLIGAN,
Illinois State Representative, 55th District.

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION,
CHICAGO O'HARE TOWER,
Chicago, IL, November 30, 2001.

Hon. PETER FITZGERALD,
U.S. Senate, Washington, DC.

SENATOR FITZGERALD, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200′) they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000′ and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated at one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200′ apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000′ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another aircraft is landing or departing. They are caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has lead the nation in runway incursions for several years. A large part of that incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts, clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into these new runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't, the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BURZYCH,
Facility Representative, NATCA-O'Hare Tower.

HOUSE OF REPRESENTATIVES,
Washington, DC, January 31, 2001.

Re Key Points Why The Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Best Interests.

Hon. ANDREW H. CARD,
Chief of Staff to the President,
The White House, Washington, DC.

DEAR ANDY: A matter of great importance to us is the need for safe airport capacity expansion in the metro Chicago region. At your earliest convenience, we would like to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views. We are convinced that we must build a new regional airport *now* and, for the same reasons, we believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

As set forth in that memorandum:

Most responsible observers agree that the Chicago region needs major new runway capacity now.

The question is where to build that new runway capacity—1) at a new regional airport, 2) at O'Hare, 3) at Midway, or 4) a combination of all of the above. An assessment of these alternatives reaches the following conclusions:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare.

5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.

6. The selected alternative cannot be expansion at O'Hare *and* construction of a new airport. New runways at O'Hare would doom the economic feasibility of the new airport, guarantee its characterization as a ''white elephant'' and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these objectives in a low-cost, environmentally sound manner.

Again, we would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE,
JESSE JACKSON, JR.

To: White House Chief of Staff Andrew Card.
From: Congressman Henry Hyde, Congressman Jesse Jackson, Jr.
Re: Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Aviation Best Interests
Date: January 31, 2001.

This memorandum summarizes our views in the debate over the need for airport capacity expansion in the metro Chicago region. For the reasons set forth herein, we are convinced that we must build a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple question and answer format.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure to build capacity will only get worse, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build the new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build a new runways at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Simply from the standpoint of physical construction (as well as paper and regulatory planning) the new runways can be built faster at a ''greenfield'' site than they can at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway. Given the space limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at either O'Hare and Midway. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a ''greenfield'' site than they can at either O'Hare or Midway. Given the enormous public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the overall costs of building the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no ''environmental buffer'' between the airports and the densely populated communities surrounding these airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, of the environmental harm and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) fares at ''Fortress O'Hare'' and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant competition allow American and United to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the existing ''Fortress O'Hare'' business fare dominance of United and American?

The State of Illinois has stated that existing ''Fortress O'Hare'' business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the new airport. Certainly the design of Chicago's proposed World Gateway program—designed in concert with United and American to preserve and expand their dominance at O'Hare—does not offer opportunities for major competitors to come in and compete head-to-head with United and American.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. The dominant O'Hare airlines are pushing their suggestion: add another runway at O'Hare and allow a ''point-to-point'' small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it presumes massive growth at O'Hare, as it is based on the assumption that all transfer traffic growth—along with the origin-destination traffic to sustain the transfer growth—stays at O'Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic assumed to stay at O'Hare will necessitate not one, but two or more additional runways. This increase in traffic at O'Hare will have serious environmental and public health impacts on surrounding communities.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O'Hare, there would be no economic need for the new airport.

Third, assuming the new airport is built anyway, as a ''compromise'', this alternative guarantees that the new airport will be a ''white elephant''—much as the Mid-America airport near St. Louis is today because of the Fortress Hub practices of the major airlines and as was Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATED QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O'Hare, then much of the 5–6 billion dollar terminal and roadway expansion proposed for O'Hare may be justified.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternative of putting the new runways in at O'Hare, what is the full cost of expanding O'Hare as opposed to constructing a new airport? If others wish to explore the alternative of an expanded O'Hare as the place to build the new runways capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the airlines already know what the components of an expanded O'Hare would be.

These components are laid out in Chicago's ''Integrated Airport Plan and include a new ''quad runway'' system for O'Hare and additional ground access through ''western access''.

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the ''slot'' restrictions at O'Hare and other major ''slot'' controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a ''Camp O'Hare'' where air traffic is managed by cancellation rather than by adequate service.

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the slot controls and chaos ensued.

But just because our warnings were ignored doesn't mean that practical solutions should continue to be ignored. The delays and congestion were predictable and certain—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as the congestion was brought on by overstuffing O'Hare with more aircraft operations than it can handle, the congestion and delay can immediately be reduced to acceptable levels by reducing the scheduled air traffic to the level that can be easily accommodated by O'Hare without the risk of unacceptable delays. The delay chaos was self-inflicted by ignoring the flashing warnings put

out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desire to overscheduled flights.

Should the short-term ''fix'' to the delays and congestion include ''capacity enhancement'' through air traffic control devices? Absent new runways, the FAA has encouraged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. These procedures—known as ''incremental capacity enhancement''—focus on putting moving aircraft closer together in time and space—to squeeze more operations into a finite amount of runways. Typically, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots sure have not:

''We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion *mid-airs were only seconds apart*. O'Hare is at maximum capacity, if not over capacity. It is my opinion that *it is only a matter of time until two airliners collide making disastrous headlines*.'' Captain John Teerling, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1999 letter to Governor Ryan (emphasis added)

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements *as threats to safety*. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they *reduce safety margins*, particularly at multiple runway airports, to the point that they invite a *midair collision*, a *runway incursion* or a *controlled flight into terrain*. Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such ''enhancement'' procedures as the recently announced ''Compressed Arrival Procedures'' and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their safety to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overscheduled levels of traffic is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O'Hare (and Midway) generate levels of toxic air pollutants that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the field of air pollution and public health to conduct a preliminary stud of the toxic air pollution risk posed by O'Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O'Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounding Residential Communities (August 2000), found that current operations at O'Hare—based on emission data supplied by Chicago—created levels of toxic air pollution in excess of federal cancer risk guidelines in 98 downwind communities. The highest levels of risk were found in those residential communities that O'Hare uses as its ''environmental buffer''—namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged Chicago, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O'Hare's emissions on downwind residential communities. And that does not mean simply listing what comes out of O'Hare. The downwind communities are entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the concentrations of O'Hare toxic pollution when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities.

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternatives?

What about the monopoly problem at Fortress O'Hare and what should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for the new runway capacity. But the monopoly problem of Fortress O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current market dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O'Hare Commission report, If you Build It We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were low fares for reservations far in advance. The major business travel organizations representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that they charge extremely high ''lock-step'' fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is ''competitive'' with fares charged to business travelers in other Fortress Hub Markets. That statement ignores the fact that all the major airlines are gouging captive business travelers in all their own Fortress Hub markets. Indeed, a repeated anecdote is the fact that a passenger from a ''spoke'' city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O'Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of ''compromise'' that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all homes experiencing 65 DNL (decibels day-night 24-hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Result: Chicago is only soundproofing less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise monitors to collect ''real world'' data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program—because it is so limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one ''hub'' airport operating in the same city? Faced with the potential inevitability of a new airport, the airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. That simply is not correct:

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington, D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is simply and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was to collect PFCs at O'Hare and use them for the new airport.

But United and American claim that the PFC revenues are ''their'' money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer dollars than the similar ''AIP'' tax charged to air travelers. These funds don't belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds ''Chicago's'' money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O'Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O'Hare to Gary and the same way he proposed getting federal funds collected at O'Hare to the Lake Calumet project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posited some answers for the President's and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O'Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region's air transportation needs:

1. Let's stop the paper shuffling and build the new airport. The program we outline is this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fast-track planning and construction program for a new airport could see the new airport open for service in 3–5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal antitrust laws. Let's put together a federal-state partnership to get the job done.

3. Give the O'Hare suburbs guaranteed protection against further expansion of O'Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O'Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air toxics emissions from O'Hare.

6. Fix the short-term delay and congestion at O'Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion now experienced at O'Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into that airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortress Hub anti-competitive phenomenon—both at O'Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the disbursal of massive federal subsidies.

8. The entire World Gateway Program should be exmained in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mintea at your convenience.

HOUSE OF REPRESENTATIVES,
Washington, DC.

FIVE REASONS TO OPPOSE THE NATIONAL AVIATION CAPACITY EXPANSION ACT (HR 3479)

DEAR COLLEAGUE: This legislation to expand O'Hare International Airport is fatally flawed because it will:

1. SET A TERRIBLE PRECEDENT: This bill will allow the federal government to preempt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature. Will your state legislature be next to lose its power to decide local airport matters?

The bill also will lead to a rash of demands from various localities for priority standing for airport funding, bypassing reasonable administrative planning and environmental review processes.

2. THREATEN SAFETY AND THE ENVIRONMENT: This legislation attempts to superimpose what amounts to an airport the size of Dulles International on a land-locked airport the size of Reagan National—an absurd idea on its face. Former U.S. Department of Transportation Inspector General Mary Schiavo has called this proposal ''a tragedy waiting to happen.''

Putting 1.6 million planes a year into the O'Hare airspace already overcrowded with 900,000 flights doesn't make sense. It increases the risk of a serious accident and it jeopardizes surrounding schools, homes and businesses.

A third regional airport that can be built in one-third of the time and at one-third of the cost of expanding O'Hare.

O'Hare is already the largest polluter in the Chicago region. With expansion, noise and air pollution will increase exponentially.

3. UPROOT THOUSANDS OF FAMILIES: This legislation will destroy the single largest concentration of federally assisted affordable housing in one of the nation's most affluent counties. These are the homes that low-income people and other minorities, particularly Hispanics, depend on.

Up to 1,500 or more homes will be destroyed. These homes will be condemned or taken by eminent domain, leaving those homeowners few options to find affordable housing elsewhere.

4. THREATEN THOUSANDS OF JOBS; This legislation will destroy as much as one-third of the nation's largest contiguous industrial park, threatening tens of thousands of jobs. How many jobs will be created by the airport expansion? That remains a great mystery.

5. COST TOO MUCH: This legislation will require the expenditure of $15 billion or more once the entire infrastructure, relocation, soundproofing and other costs are figured in. This is much more costly than the $6.6 billion that supporters keep touting.

Commits Chicago, Illinois and federal taxpayers to a plan whose costs have not been adequately detailed. We have requested documentation of the costs, but have been rebuked. That is why a Freedom of Information lawsuit is pending in Illinois court.

Mr. Speaker, I reserve the balance of my time.

[From the Chicago Tribune, March 20, 2001]

DALEY AND THE STENCH AT O'HARE

Maybe after 12 years in office the mayor of Chicago thinks he owns the chair.

And why not. Richard M. Daley's decision to let his pals run wild, and put the best interests of citizens a distant second makes sense.

After all those years of worrying about appearance, who wouldn't let his buddies bend a few rules? Who wouldn't get tired of staring cameras and pretending that every decision is being made for the good of Chicago? And who wouldn't be fed up with annoying questions from the newspaper gnats about ethics?

Truth is, the growing trail of pols and pals who use their connections with Daley to get rich—and to trash the mayor's reputation in the process—is a marvel. So is the chutzpah that leads the boodlers to think they won't be found out.

Unless, with their millions already stuffed in their pockets and Daley as their see-no-evil patsy, the boodlers just don't care any more.

The latest to be outed is Jeremiah Joyce, an old Daley buddy who reportedly has been exploiting his connections to line his pockets. Joyce is a player—a richly paid one at that—in an increasingly—seamy drama: ''Why the Mayor Doesn't Want a Third Airport.''

Unless, of course, it's a city-owned third airport, not some paved-over cornfield outside Chicago. If Daley's cronies had three airports to play with, they could do an even better job of cashing out their friendships with the mayor. Sure, they look bad, hiring on as fixers to help companies land contracts from Daley's puppets at the city Aviation Department. But so what? There's big money to be made. And if Daley doesn't care about his good name, why should they?

Joyce's rental of his name and reputation reported Monday by the Tribune's Laurie Cohen and Andrew Martin. In 1992, McDonald's Corp. bid on a contract to handle concessions at O'Hare Airport's new international terminal. McDonald's didn't get the deal. But a few months later McDonald's and Duty Free International hired Joyce. Voila!—the O'Hare contract was up for grabs again, and the companies landed a deal worth millions. The arrangement appears to have earned Joyce $1.8 million last year alone.

But not to worry. Everyone denies everything. Joyce denies using his contacts at City Hall to help the companies win their exclusive O'Hare business just one month after they retained him. What role did his clout play? ''I would say none,'' Joyce says. ''I would say zero.''

David Mosena, then the city's aviation commissioner, agrees. ''The significance of Jerry Joyce in the deal was nil,'' Mosena says.

The Daley administration probably wants to deny the obvious. But the mayor's people say they just can't find the public documents that would explain how the O'Hare pact came together. Don't you hate it when things get lost?

This fiction that nobody knew nothin' about deals at O'Hare is familiar. Power pal Oscar D'Angelo gets at least $480,000 for lobbying on behalf of a contractor, even though he doesn't register as a lobbyist. D'Angelo lobbies the city on behalf of a company that uses a subcontractor run by two women with ties to Maggie Daley, the mayor's wife. Most recently, Victor Reyes, the mayor's former political henchman, winds up in the middle of a billion-dollar O'Hare construction deal just weeks after leaving Daley's payroll. At every turn, nobody knew nothin'.

Mr. Mayor, spare all of us the calls for a tougher ethics ordinance and the angry glare when you deny that you knew about the Joyce deal. Hey, maybe you didn't know about the Joyce deal.

What you did know, and have known for years, is that your pals are oinking at the O'Hare through. And they can oink all they want, because nobody wills top them. This game has only two rules; Don't get caught. And don't say ''Peotone.''

The rest of us now see O'Hare for the economic engine it really is. Not just for shrewd contractors and patronage hacks, but for the select few who call the mayor of Chicago by his first name.

[From the Chicago Tribune, Nov. 21, 2000]

POLITICS SNARL O'HARE

STALEMATE BLOCKS NEW AIRPORT, MORE RUNWAYS

(By Andrew Martin and Laurie Cohen)

The parochial and petty politics that have turned O'Hare International Airport into a treasure trove for concessionaires and contractors also are at the heart of why the transportation hub is a quagmire of delays, hassles and heartaches.

The political self-interests that have gotten in the way of expanding the world's second-busiest airport—or building a new airfield—are quietly on display on the vaulted corridors of the United Airlines terminal.

Buy a carton of cigarettes at the duty-free shop and some of your money finds its way into the pockets of Jeremiah Joyce, who has been one of Mayor Richard Daley's key political strategists.

Need a book or a magazine to pass the time? The airport's bookseller, W.H. Smith, has paid for political advice from mayoral pal Oscar D'Angelo, and its partners include Grace Barry and Barbara Burrell, friends of the mayor's wife.

Satisfy a sweet tooth and you're patronizing the candy shop partially owned by Rev. Clay Evans and Elzie Higginbottom, both influential supporters of the mayor in the African-American community.

Now, take a look at the passengers killing time because of delays or sleeping on rollaway cots because of cancellations. They're where they are because of politics too.

The hidden motives that determine everything from contracts to projections for growth at O'Hare have created an airport that works for the politicians, their friends and the airport's two major airlines, but not for the public.

Political wheeling and dealing at the airports extends to the debate over new runways and a new airport, though with much higher stakes and a wider impact on the tens of thousands of passengers traveling through O'Hare each day.

Daley seems determined to protect the cookie jar of jobs, concessions, contracts and economic largesse that is O'Hare. His administration, the Tribune has found, has manipulated statistics to downplay the need for a new airport near the Will County town of Peotone. At the same time, Delay has benefitted from a friendly Clinton administration, which has stalled the Peotone proposals.

Opposing him are a Republican governor and other politicians trying to transform a soybean field in Peotone into another major airport that almost certainly would alleviate some gridlock and would placate constituents who live on the edge of O'Hare and are weary of airport noise and pollution.

At a time when other parts of the country are achieving political compromises to facilitate a surging number of the travelers with new runways and air travelers with new runways and airports, the stalemate in Illinois is especially vexing.

U.S. Sen. John McCain (R. Ariz.) in September blamed local political squabbling for sacrificing the interests of the entire Chicago region and the nation.

''I say pox on all of them,'' McCain said recently in an interview. ''Chicago is one of the most gridlocked places in America and a critical transportation hub. We can't get O'Hare expanded, and we can't build another airport. And those are the only two options.''

Political dealmaking—the airport that clout built

O'Hare has been inexorably, linked with politics and the Daleys since the day the airport—formerly a military airfield and orchard—opened in 1955. Its transformation into an aviation crossroads provides a lesson in Machiavellian politics and lucrative dealmaking.

The late Mayor Richard J. Daley was instrumental in breaking a long impasse between the city and the airlines, which had been reluctant to move from Midway Airport, then the nation's busiest, and cover the costs of a new airport.

Daley also resolved the sticky issue of how the City of Chicago could control an airport outside its borders. The solution: The city annexed 5 miles of Higgins Road, creating a controversial ''O'Hare corridor'' that linked the city with its new airport.

From the start, O'Hare was used by City Hall as a means to reward political allies. Richard J. Daley's administration, for instance, gave the right to sell flight insurance to a company that had hired Daley's City Council floor leader, Thomas Keane, and it handed millions of dollars in construction work to another company that employed Keane.

Since then, as annual flights have grown to about 900,000 and City Hall has received vastly more money to spend at the airport, the basic formula at O'Hare hasn't changed much.

O'Hare's budget for the coming year is $511 million, which is paid for by airline landing fees, terminal rentals, concessions charges and parking revenues—though not by property taxes. Another $506 million is set aside for construction projects, paid for by bond issues, federal grants and a passenger ticket tax.

O'Hare helps Daley at election time. Airport vendors, concessionaires and other business tied to O'Hare—and their executives and lobbyists—donated about $360,000 to Daley's campaign in an 18-month period beginning in July 1998. Daley was re-elected in February 1999.

And Daley's political machine, as well his loyalists and friends, benefits from the jobs at O'Hare. Due to the length of Dailey's tenure, he has hired nearly 60 percent of the 1,900 employees who work for the city's Department of Aviation, which managers O'Hare, Midway and Meigs Field, according to a Tribune review of payroll records.

His administration has hired campaign workers and the sons, wives, nephews and brothers of City Hall insiders. For instance, the City employed the son of Cook County Sheriff Michael Sheahan, also named Michael Sheahan, in 1992. A campaign worker for Daley, the younger Shealan is now the $65,000-a-year coordinator of security projects at O'Hare and Midway.

The city has also brought; in the brother of Ald. Patrick Levar (45th), who heads the City Council's Aviation Committee. Hired in 1990, Michael Levar is now a $77,500 supervisor of construction and maintenance at O'Hare.

Dominic Longo, a longtime Democratic operative who was convicted of vote fraud in 1984, was hired to supervise truck drivers at the airport one year after Daley was elected in 1989. He was moved to another city department five years later amid allegations that he had sold jobs and pressured workers to buy tickets to campaign events for Daley and others. Longo has denied the charges.

But the money paid for salaries is a fraction of the dollars paid to contractors for everything from engineering and architecture to snow removal: For example, the Aviation Department has contracts with 29 architectural and engineering firms totaling $356 million, $36 million worth of contracts for snowmelting and removal, and $660,000 for seasonal decorations.

Landrum & Brown, the city's long-time aviation planning consultant, provides a case study in how politics and contracts mingle at O'Hare.

The Cincinnati-based firm, which is now paid $12 million a year and has played a crucial role in the city's efforts to block Peotone, operated on the same no-bid city contract from 1968 to 1995, when it got another no-bid deal.

Besides donating to the mayor's campaign and charities overseen by Daley's wife, the firm hired Oscar D'Angelo as its political adviser shortly after Daley took office. It also has handled subcontracts to companies owned by Daley allies. Former campaign manager Carolyn Grisko helps with public relations, Democratic fundraiser Niranjah Shah does engineering work, and Chicago Housing Authority Chairwoman Sharon Gist Gillian is a computer consultant.

United States has used a similar formula. The biggest airline at O'Hare, United States relies on the city for long-term, exclusive gate leases.

Besides donating hunreds of thousands of dollars to city-sponsored events, charities favored by the Delays and political campaigns. United has hired the mayor's younger brother and his former chief of staff as lobbyists.

William Daley lobbied for United before he became U.S. secretary of commerce in the Clinton administration, and Gery Chico, now chairman of the Chicago school board, lobbies for United States at City Hall.

A long battle—the fight for a third airport

Given the success of O'Hare—as an important hub in the nation's air traffic system, as an economic engine and as a source of patronage and contracts—it's not surprising that both Daleys wanted new airports, so long as they were subject to mayorial control.

But the push for a third airport has always bogged down in politics, statistical sleight of hand and mixed signals from Washington, D.C.

In the late 1960s, the elder Daley proposed building a major jetport on land-fill in Lake Michigan, an indea that never flew because of cost and environmental concerns.

The idea of a third airport didn't gather steam again until the mid-1980s, when state officials were looking for sites for a third airport to relieve O'Hare, on the orders of the Federal Aviation Administration. The sites considered were in rural areas south of Chicago, including Peotone.

City officials had publicly argued that O'Hare and Midway could handle the region's aviation growth. But, privately, consultants were urging city officials to immediately find a Chicago site for a third airport so they wouldn't lose out to the surburbs.

A suburban airport probably would be controlled by a regional authority consisting of state officials, local lawmakers and, perhaps, Daley appointees.

In 1990, Daley dropped a bombshell, announcing plans for a $5 billion new airport at Lake Calumet on the city's Southeast Side.

The mayor argued that the new airport would take pressure off O'Hare and appease the northwest suburbs that were opposed to O'Hare expansion. He proposed to pay for the airport with a new $3 passenger ticket tax that Chicago Democrats pushed through Congress.

But the Lake Calumet proposal immediately hit turbulence because of concerns over its spiraling costs and resistance from South Siders who didn't want Midway shuttered. The airport plan fell apart after Republicans helped kill it in the state Senate in summer 1992, and Daley abandoned the idea.

By focusing attention on Lake Calumet, the city ''succeeded again in preventing [the state] from making any meaningful progress towards developing a new airport in a suburban location,'' Landrum & Brown President Jeff Thomas wrote in a memo to city officials.

''Thus the city has conducted & protracted but successful guerrilla war against the state forces that would usurp control of the city's airports.''

It also left Daley with a huge new pot of money, the passenger ticket tax, which has funneled more than $600 million into the city's coffers since it was passed by Congress in 1990. The city has spent the money on runway resurfacing, terminal upgrades and consultants' fees, but not on new runways or a new airport.

Lake Calumet was dead, but the battle for Peotone was just beginning. At the end of President George Bush's tenure, in 1992, the FAA approved $2 million to start the planning process for building an airport in Peotone.

But after President Clinton took office with some key campaign help from the Daley family, the Peotone proposal ground to a virtual standstill in Washington.

Under the Clinton administration, some of the mayor's staffers assumed key positions in the U.S. Department of Transportation and the FAA with over-sight over new airports. For instance, Susan Kurland, former chief counsel for the city's Department of Aviation, was an associate administrator for airports for the FAA from 1996 to 1999.

Catherine Lang, a former assistant commissioner in the Department of Aviation, is now director of the FAA's Office of Airport Planning and Programming, which oversees the passenger ticket tax and approval for new airport projects. And Frank Kruesi, Daley's first chief of policy, was assistant secretary in the U.S. Department of Transportation from 1993 to 1997. He now heads the Chicago Transit Authority.

Daley and other Illinois Democrats also played a key role in the appointment of Clinton's first FAA administrator, David Hinson, former head of Midway Airlines.

A few months after Hinson's appointment, the Clinton administration pulled planning funds for the Peotone study, citing a lack of ''regional consensus.''

Illinois Transportation Secretary Kirk Brown—who handles the push for a Peotone airport under Gov. George Ryan, a Republican—recalled that Hinson told him he had favored Peotone but would ''have to consult with the mayor'' before he proceeded with the airport plan.

Hinson, in an interview, said he didn't remember that conversation with the mayor, though he recalled that Daley objected to a Peotone airport.

Four years later, while Kurland oversaw the program, the FAA quietly pulled the Peotone airport proposal off a list of planned airport projects eligible for federal funding. The Peotone project had been on the planning list since 1986.

Republican leaders maintain the Daley administration has used its influence in Washington to block airport approval.

''It's the mayor through his political influence,'' said state Senate President James ''Pate'' Philip. ''He's been able to stop it.''

The FAA denies that politics have affected its decisions on Peotone, and Kurland declined to comment.

Contributing to the lack of progress toward a Peotone airfield was fierce opposition from United and American Airlines, which dominate O'Hare and vowed not to use a third airport.

In 1995, United spearheaded a ''Kill Peotone'' campaign that included a letter from 16 airline executives to then-Gov. Jim Edgar voicing their displeasure, according to records.

American also sent a representative to Downstate chambers of commerce to recruit allies in its opposition to Peotone. The airline also has urged its employees who live in the northwest suburbs to press local officials to drop out of the Suburban O'Hare Commission, a coalition of suburbs that staunchly oppose O'Hare expansion.

The status quo benefits the airlines because they control 85 percent of the flights at O'Hare and, without a new airport, none of the other large carriers has an entree into the Chicago market.

But, once again, passengers are the losers in this economic equation. Many studies, including those by the U.S. General Accounting Office, have shown that passengers pay substantially more at airports dominated by one or two major airlines.

Statistical shell game—ups and downs

The City of Chicago's political success in holding off a Peotone airport can also be traced to a powerful tool: questionable statistics.

For years, Chicago officials have engaged in a statistical shell game to mask the need for a new airport and to hide O'Hare's capacity woes.

As Jay Franke, Daley's first aviation commissioner, said in an interview, ''Forecasts are generally made to order.'' Franke was ousted in 1992.

In the debate over airports, the key numbers are forecasts of how many passengers are expected to fly out of an airport. By comparing predicted demand to an airport's capacity—how many flights an airport can handle without excessive delays—airport officials try to determine whether a new runway or a new airport is needed.

Forecasts by City Hall's own aviation consultants have repeatedly indicated since 1980 that O'Hare is running out of room. But this became a problem when Peotone emerged as the leading option.

City officials have used a grab bag of tricks to fix the problem. They have changed the formula for devising forecasts and tossed aside forecasts that didn't match their arguments.

And they have insisted that O'Hare can handle more flights because of anticipated improvements in air traffic control that haven't yet materialized, records show.

For example, a 1993 forecast by Landrum & Brown showed that O'Hare would be out of capacity in two years.

''If this is the case, then why build anything at all except a new airport?'' wrote Doug Trezise, another city consultant in a 1993 memo to Chicago aviation officials.

The solution was simple: Change the formula.

The original calculation was based on how many passengers would use O'Hare if enough runways were built to meet the demand. City officials asked Landrum & Brown to base the new forecast on how many passengers would use O'Hare given its existing capacity.

The resulting numbers were much more palatable.

The numbers game continued two years later. Landrum & Brown came out with new forecasts that were uncomfortably close to predictions that state officials were using to tout the need for Peotone. But this presented a problem for the city.

''Clearly the similarities between the L&B numbers and those developed by the [state's consultants] will make it more difficult for the city to debate the third-airport issue on the basis of demand forecasts,'' consultant Ramon Ricondo wrote in a 1995 letter to a top aviation official.

The Daley administration didn't change its position. It simply chose not to release the 1995 forecasts, the Tribune learned from court records.

Then, in 1998, the Daley administration pulled its best statistical stunt yet, again with the help of Landrum & Brown.

The consultants finally delivered a forecast that the city could not only live with but trumpet. The new figures were 25 percent lower than the previous prediction.

The forecasting change was made possible, in part, by careful manipulation of the numbers. Landrum & Brown plugged a population forecast into its formula that was lower than many other population estimates.

The lower number—which called for the Chicago area's population to grow at about half the rate of previous years—had the effect of dampening the aviation forecast.

Where Landrum & Brown had forecast 61 million passengers for the year 2015 in its 1995 study, it now predicted only 46 million passengers in its revised forecast. (Last year, about 36.3 million passengers boarded planes at O'Hare.)

''A realistic forecast proves a new rural airport is not necessary for the region,'' Landrum & Brown concluded in a summary of its findings.

Though it's too soon to say if Landrum & Brown's prediction is off the mark, one thing is certain: The population number it used was far too low. Already, the population in the Chicago region has exceeded the forecast for 2007 that Landrum & Brown used for its study, according to estimates by the U.S. Census Bureau.

''What L&B did was just go looking for low numbers,'' said Suhail al Chalabi, a state aviation consultant. ''Nobody has used numbers this low before.''

Officials at Landrum & Brown declined to comment.

Despite some misgivings, the FAA accepted the city's low forecasts for O'Hare, even though its forecasts show that the number of passengers at O'Hare will grow twice as fast in the next 15 years as the city predicts.

''The problem is one of political intrusion into the technical process,'' U.S. Rep. Jesse Jackson Jr. (D–Ill.) wrote in a Sept. 20 letter to Transportation Secretary Rodney Slater. ''Mayor Daley has argued that there is no need for new runways, not at O'Hare and definitely not in the south suburbs.

''He has made sure the statistics agree,'' wrote Jackson, who believes a Peotone airport would help his district. ''The aviation planning process in Chicago, once a national model, is being corrupted and is truly a technical disgrace.''

Changing positions—running from runways

The latest position out of City Hall is that it won't stand in the way of Peotone—''They can go build it,'' the mayor now says—and that new runways at O'Hare are unnecessary.

The Daley administration now says it can meet demand at O'Hare through a $3.2 billion building program called World Gateway that is under review by the FAA. It calls for new terminals, parking spaces and expanded light-rail service.

It does not call for new runways, and city officials contend O'Hare has sufficient capacity through 2012. Officials, however, decline

to say exactly how many planes the airport can handle, and some experts think O'Hare is out of room now.

''On the whole, the system works awfully well,'' Aviation Commissioner Thomas Walker said in a recent interview. ''We will have to get used to the occasional inconveniences.''

Though it might be logical for the city to lobby heavily for additional runways at O'Hare, it would be bad politics.

If Daley were to argue for a new runway, his Republican foes likely would pounce on that as evidence that a new airport in Peotone is needed.

Also, the Republicans hold all the cards when it comes to O'Hare expansion. Final approval for new runways rests with the governor's office, and a Republican has been governor since 1977.

To make room for the runway, Daley would have to use the city's condemnation powers to take a significant chunk of Bensenville, a leader in the efforts to block an expansion of O'Hare. Among the properties the city would bulldoze are the Garden Horseshoe neighborhood—home of more than 2,000 people—as well as 28 businesses, a cemetery near St. John's Catholic Church and a water tower.

While Daley remains noncommittal on runways, his longtime supporters in the business community now say they are crucial to the future of O'Hare and the local economy. United Airlines and the Civic Committee of the Commercial Club of Chicago, an influential business group, say there is an immediate need for a new runway at O'Hare.

The Republican opposition to new O'Hare runways has been staunch. With political power bases in the airport's shadows, Philip, U.S. Rep. Henry Hyde (R–Ill.) and state Atty. Gen. Jim Ryan have fought on behalf of constituents who don't want jet noise to increase in their communities.

A suburban airport, which is supported by Gov. George Ryan and other key Republicans, also would give Republicans access to the aviation jobs and contracts that Daley now solely controls.

While Chicago remains mired in political gridlock, mayors and other governmental officials across the nation have risked the political capital to increase capacity at their airports.

Since 1995, relatively little airport expansion took place nationally—a total of four new runways, five runways extensions and one runway reconstruction at nine of the 27 hub airports.

However, over the next eight years, the pace of construction will triple. Seventeen of the hubs are building or have plans for 17 new runways, 12 extensions and one reconstruction, all to be completed by 2008.

One important reason for the shift in to high gear is that the opposition of neighboring municipalities to airport expansion is now being blunted or overridden. For decades, complaints about noise and pollution have kept airport expansion projects in check.

But increasingly, court officials and legislators are deciding those concerns are outweighed by the importance of the air traffic system to the U.S. economy and the needs of millions of air travelers.

''Virtually every other major airport in the country has added or is adding ground capacity,'' said R. Eden Martin, president of the Civic Committee of the Commercial Club of Chicago, whose members include the major airlines and which has opposed a major airport in Peotone.

''Why don't we do in Chicago what an enlightened airline industry, business community and political leadership was able to do in Atlanta?'' Martin said.

In Atlanta, city, regional and state leaders came together in support of a new runway at Hartsfield International Airport, which is now outdistancing O'Hare as the world's busiest airport. Yet, in winning expansion, Hartsfield had one huge advantage over O'Hare: Partisan politics was never an issue because nearly all major political players in Atlanta and Georgia are Democrats.

Even so, negotiations took nearly a decade, and it wasn't until late last year that a key compromise was reached with College Park, a municipality that borders the airport and will be truncated by the new runway. The town got money to move a convention center and develop hotels, office buildings and car rental facilities. In return, it will lose 100 businesses and the homes of 2,500 people to demolition.

That's the same sort of price that Bridgeton, a middle-class suburb of St. Louis, is going to pay because of plans to expand Lambert-St. Louis International Airport.

Unlike College Park, Bridgeton has been in court, fighting the plans that would level six schools, at least two parks, six churches, 75 businesses and nearly 2,000 homes. But, in April, the Missouri Court of Appeals overruled the municipality's objections to the expansion, concluding, ''The substantial benefits conferred by the operation of the airport on the public clearly outweigh the interest of Bridgeton. The expansion of Lambert Airport is essential to its survival.''

Among the 27 hub airports in the U.S., O'Hare is the only one that hasn't built a new runway and has no plans to do so.

Former Gov. Edgar, a Republican who participated in the airport feud during his eight years in office, now says the time has come to forget politics and address a critical issue for the region.

''There's a good case for a new runway at O'Hare,'' Edgar said. ''There's a good case for a new airport in the south suburbs. The longer we wait, the more acute the problem is going to be.''

THE THIRD CHICAGO AIRPORT FACT SHEET

The Federal Aviation Administration has called for a major expansion of U.S. airports to meet increased demands on aviation. In 2020, Chicago's regional demand will be two and a half times that of 1993, double that of 1999. By 2001, over 7.1 million projected enplanements in the Chicago region will not be accommodated unless the South Suburban Airport is built.

Five independent studies on the need for an additional airport in the Chicago region concluded a third airport should be built. The studies concluded the third airport will have no negative impact on either Midway or O'Hare Airports. Instead, it would bring over $9 billion, annually, to our region, above and beyond that of the existing airports by 2010; over $16 billion by 2020.

The initial study, the Chicago Airport Capacity Study, concluded that neither Midway nor O'Hare Airports could be expanded to meet Chicago's long-term air transportation needs. With the release of the state's 1994 and 1995 demand forecast studies, it became clear that Midway and O'Hare Airports would be at or near capacity by the year 2000. By 1999, we have watched capacity constraints cause major delays at O'Hare; and, by ripple effect, throughout the nation.

Building a new airport ensures that Chicago remains the nation's prime aviation hub into the next century. It also creates a wide array of airport-related jobs and contributes major revenues to state and local governments. A third airport means 236,000 new jobs and $5.1 billion in annual wages, by 2020.

IDOT studies state that capacity constraints at O'Hare will, first, cause airlines to eliminate commuter air service and, then, all aviation services to cities within 150 miles of Chicago. This trend began in 1992, with airlines increasing fares to downstate communities, resulting in less passenger traffic. The airlines then cut commuter service and, eventually, may eliminate all service to downstate communities; many already have lost service. Eventually, the ability of the Chicago region to attract and retain businesses, jobs and residences would be affected. In 1998 and 1999 some of these lost services were restored, due to adverse publicity, intensive lobbying by officials, and pending Federal legislation.

In 1996, IDOT stated that, in order for the Chicago region to continue as a major transportation and commercial center in the 21st century, the South Suburban Airport should be ready by 2001. However, political maneuvers have kept the project in limbo. But capacity constraints and their impacts continue to multiply. O'Hare already operates, for safety reasons, under FAA restrictions on the number of flights; but Congress is planning to lift these caps. Midway cannot be expanded to include more or longer runways, barring the displacement of surrounding homes and businesses. Although it will not increase capacity, more than $2 billion will be spent on landside improvements at these airports.

Over the next 20 years, employment in the 14-county region is expected to grow by almost two million jobs. With the new airport, jobs from Chicago's three airports will grow to 674,000, almost 10 percent of the region's total employment in 2020. Without the new airport, projected job growth in the 14-county region will be reduced by 535,000. In the six-county region, the reduction would be 415,000 jobs. The economies of many cities within 150 miles of Chicago will be adversely affected as their traditional businesses, financial and personal ties are cut or strained and transferred to competing regional hubs.

The location selected for the third airport is 23,845 acres of land 15 miles south of the Chicago city limits. The new airport will result in a better distribution of jobs to the existing population; improved accessibility to jobs for minority populations: and a more-balanced regional growth. The site is the closest feasible to the Chicago urban area and has no significant environmental concerns.

The proposed Third Airport would bring jobs and development to a mature portion of the region, hard hit by industrial automation. It makes use of an in-place transportation infrastructure and provides access to nearby inexpensive land for development. It will allow residents of the South Side to reduce both travel time and costs to their jobs. It will bring revenues to municipalities with the highest tax assessments in the region. It is smart growth.

[From Crain's Chicago Business, Jan. 29 2001]

HIGH COST OF GRIDLOCK

STALEMATE OVER AIRPORT EXPANSION IS STARTING TO INFLICT DAMAGE

(BY GREG HINZ)

Gov. George Ryan had barely dispatched his bagel and eggs when members of the Illinois Business Roundtable gave him cause for indigestion.

Chicago's economic crown jewel, its once world-leading aviation system, is in trouble, the audience of leading corporate executives bluntly told the governor at the private breakfast meeting late last fall. O'Hare International Airport is not being taken care of, the executives asserted.

In fact, O'Hare now is so beset by delays, congestion and cancellations that financial services giant Household International Inc.

is locating new jobs out of state, Chairman and CEO William Aidinger informed Mr. Ryan. When Prospect Heights-based Household has been expanding, he said, it's been expanding someplace else.

That message is every bit as ominous as it sounds for the Chicago-area economy. A decade of scorched-earth political warfare over O'Hare is beginning to take a toll, threatening the city's status as the nation's transportation center and its draw as a corporate headquarters and services center.

Now, the engine that has generated an estimated 500,000 jobs and $35 billion a year is at risk of losing momentum. And continued constraints at O'Hare could cost the region up to $10 billion a year in lost economic activity—from business meetings to larger-scale corporate investment—according to one recent study.

Clearly, business, jobs and investment aren't coming to Chicago—at least not to the extent they might be, had government leaders resolved the fight over whether to add runways at O'Hare or build a new airport in Peotone. In the end, they may have to do both. In the meantime, cities such as Denver are nabbing marketshare.

''Could Chicago lose critical mass as a business services center? It's a strong possibility,'' says William Testa, senior economist and vice-president of the Federal Reserve Bank of Chicago. ''Everything that's growing (in the Chicago economy) is dependent on that engine called O'Hare Airport.''

Already in a hole

The situation is so troublesome that former Gov. Jim Edgar for the first time is revealing that he tried to cut an airport expansion deal just before he left office two years ago. Pressure is rising fast on Mr. Ryan and Mayor Richard M. Daley to finish the job.

Most of the evidence of damage is so far circumstantial. Few business people will talk about why they chose to locate a new facility elsewhere. But as former Chicago Aviation Commissioner Jay Franke puts it, ''By the time you know for sure you've been hurt in this business, it's too late. It will take 15 years to dig out the hole.''

How deep is the hole? Though some data are debatable, a general trend is clear:

The city is losing marketshare in the nationwide aviation business, with O'Hare passenger volume growing at just two-thirds the national rate in the past four years and domestic enplanements—the number of people boarding planes—down two years in a row.

''The picture at O'Hare continues to deteriorate,'' says Robert Baker, vice-chairman of American Airlines, which is buying Trans World Airlines and intends to expand TWA's St. Louis hub. ''Unless O'Hare is operated better than it has been and is allowed to grow with the rest of the economy, its competitiveness will decline.''

O'Hare's connecting, or hub business, is moving elsewhere, dropping from 60 percent of domestic enplanements in 1993 to a projected 52 percent by early in the next decade, according to the Department of Aviation.

The loss of hub traffic means that O'Hare stands to lose the large number of destinations and flights that make Chicago such a draw for corporate meetings, trade shows and even business expansion. That loss could jeopardize O'Hare's far more lucrative long-haul domestic and international business, which draws on passengers from feeder cities.

''The challenges Chicago is facing give us an opportunity to pick up some of their traffic,'' says Amy Bourgeron, deputy manager of aviation at Denver International Airport, a key and fast—growing hub for Elk Grove Township-based United Airlines. ''We have the ability to grow.

Decisionmakers say that O'Hare's reputation as a good place from which to do business is down—way down—with congestion costing Chicago businesses an estimated $3 billion last year in lost time and expenses, according to an analysis by Deloitte & Touche LLP (Crain's, July 31).

Terrible reputation

''In the marketplace, the perception is that Chicago is a horrible place to go through,'' says Stephen Stoner, a facilities location expert who heads the U.S. real estate consulting practice for Arthur Andersen LLP. ''If I were the mayor, I'd be nervous. ''

Confirmation that a problem exists comes from a surprising source—Mr. Edcrar, a Republican known for his supposed anti-Chicago attitude and support for a third airport at Peotone.

The former governor says he quietly attempted to negotiate a pact with Mr. Daley at the end of his term in 1998 in which he would have agreed to a new runway at O'Hare, in exchange for the mayor signing off on construction of a Peotone airport using state and federal funds.

Mr. Daley says such a conversation never occurred. But Mr. Edgar says he made the previously unreported offer because he concluded that airport gridlock is costing Illinois. ''If we don't do something now, we're going to be in trouble in years to come,'' he says. (See story, this issue.)

National political leaders, too, are getting involved. ''We either expand O'Hare Airport, or we build another airport, or both,'' Sen. John McCain, R-Ariz., declared during a Senate Commerce Committee hearing last summer.

Capacity issue is critical

The shortage of runway space—''capacity constraints'' is the industry label—obviously isn't the only cause of O'Hare's woes. Labor strife and technological snafus, bad weather and federal limits on the number of flights all have contributed to the airport's declining stature.

But at the center of the problem is the need for one or more runways, which would offset or ease the other constraints as O'Hare gears up for possible expansion with the scheduled lifting of flight slot controls in 2002.

''The region needs new runway capacity,'' argues Chicago attorney Joseph Karaganis, who has made a career fighting O'Hare but does not dispute the notion that something must be done. ''The question is where to put them.''

Two major studies in recent years concluded that the local economy would take a big hit if the airport capacity problem were not solved. The first was a 1996 Dallas/Fort Worth review by the Regional Economics Applications Laboratory (REAL), a joint venture between the University of Illinois and the Federal Reserve Bank of Chicago.

REAL concluded that allowing airport capacity here to grow as much as the market demands would create up to 55,000 jobs in aviation-related fields alone by 2018, and add $15.7 billion in direct value to the metropolitan-area economy.

Geoffrey Hewings, one of the chief authors of that study, says he has not since attempted to measure whether capacity constraints indeed have begun to exact a toll, but believes they're ''starting to. We were suggesting, that, by 2001 or 2002, we'd begin to see a 1 percent or 2 percent loss (of potential growth).''

Two subsequent studies by the Chicago office of Booz Allen & Hamilton, a consulting firm commissioned by the Civic Committee of the Commercial Club of Chicago, reached similar conclusions. Even if some version of Peotone is built, ''artificially constraining O'Hare at the current levels of 900,000 (flights a year) could cost $10 billion annually'' in direct spending on passenger services and indirect benefits from economic activity such as corporate meetings, the study concluded.

Incentives disappearing

Booz Allen derived that number by making a key but logical assumption: When capacity is limited, airlines will focus on the most profitable side of their business here and ignore less lucrative traffic.

As Booz Allen saw it, high-margin international passengers are the most valued, worth $2,310 each to the regional economy. Next in line are Chicago-area residents flying to or from other North American cities—known as origin and destination (O&D) passengers—worth $1,200 each. Last in the priority queue: those flying here from smaller Midwestern cities, and connecting passengers who can be dispatched to other hubs, such as Atlanta, Dallas and Denver; they're worth $430 each.

Over time, connecting traffic and flights to smaller cities will tend to be displaced, Booz Allen concluded. If enough of those go, there eventually will be ''less incentive for airlines to focus international growth investments on Chicago.''

The reason: Why should, say, Iberia Airlines run service to Chicago rather than Detroit if Detroit has more flights to smaller American cities where Iberia's passengers live?

Right now, international traffic is perking along nicely at O'Hare, rising nearly 50 percent in just the past four years. But the process of dumping short flights in favor of long flights, and connecting traffic in favor of O&D business, has begun, according to Suhail and Margery at Chatabi, principals in Chicago-based at Chalabi Group, the state consultant on the proposed Peotone airport.

While Chicago once was an aviation leader known for above-average growth, O'Hare operations have been flat in recent years, and domestic enplanements actually are down, Ms. al Chalabi notes. ''The airlines are putting more of their (connecting) schedule in other hubs.''

Consistent with that loss of hub traffic, Mr. al Chalabi points to figures he's derived from federal reports that suggest O'Hare is indeed losing marketshare. O'Hare enplanements were up just under 9.0 percent between 1995 and 1999, those data indicate—compared with an average 13.5 percent increase for the nation's 68 largest airports, and well below increases at rival hub airports such as Dallas/Fort Worth (17.2 percent), Denver International (15.3 percent) and Atlanta Hartsfield (29.7 percent).

If booming Midway Airport is included, the metro-Chicago hike is slightly more than 13 percent, near the 9 national average, Mr. al Chalabi concedes- But Midway soon will hit capacity and be unable to capture O'Hare overflow, he argues, and the O'Hare increase largely is driven by international, not domestic, business.

Aviation Department reports indicate that O'Hare's domestic business almost certainly fell for the second year in a row in 2000, down 1.2 million passengers, or nearly 2 percent, and that the number of O&D enplanements is at its lowest level since 1995. Remarkably, that flat-to-down performance came during, a period of unparalleled prosperity, when air travel nationally was rising 2 percent to 3 percent a year.

Runways not the key, city says

But City Aviation Commissioner Thomas Walker reads the figures differently. Chicago's aviation market is ''mature,'' he insists, and O'Hare won't need any O'Hare is losing new runways until at least 2012.

O'Hare has been held back not by a runway shortage but by federal slot rules, argues Mr.

Walker, whose boss, Mayor Daley, has made it clear the city does not want to discuss runways now. In fact, Mr. Walker says, ''the runway capacity we have isn't matched'' by the number of available gates, taxiways and other ground facilities needed to handle the planes that do land.

O'Hare plans to remedy that situation with its $3-billion World Gateway plan, which will add two terminals and up to 32 gates, Mr. Walker says. Even so, O'Hare will grow more slowly than other U.S. airports, he concludes. ''There just aren't that many more destinations to serve, or that many which are underserved.''

Ramon Ricondo, a consultant who works for O'Hare and other airports around the country, says it's ''too soon'' to worry about recent weakness in O'Hare's domestic business. ''You could have any number of things going on,'' he says, with one major carrier or another temporarily moving traffic to suit its particular needs.

''If O'Hare was less desirable,'' Mr. Ricondo concludes, ''you wouldn't see United and American fighting so hard to get more oates here.''

But other data released by Mr. Walker's department indicate that O'Hare's hub business has been down over an extended period, dropping from 60 percent of the airport's domestic enplanements in 1989 to 55.5 percent in 1995. The figure has recovered a bit in the intervening years, but the city projects it will fall to 51.8 percent by 2012.

Additionally, while O'Hare continues to attract non-stop service to new destinations, many of them overseas, it is losing flights to smaller Midwestern cities.

Between December 1996 and December 2000, O'Hare added non-stop service to 32 new locations—including Hong Kong; Istanbul, Turkey; Osaka, Japan, and Krakow, Poland—according to Official Airline Guides, an Oak Brook-based division of Britain's Reed Elsevier plc Group. During the same period, the airport lost non-stop service to 15 cities, including Decatur, Danville and Sterling, Ill. Terre Haute, Ind., and Mason City and Sioux City, Iowa.

Future performance a concern

Industry experts say there is reason for Chicago to be concerned.

American Airlines' Mr. Baker says he worries that O'Hare's performance will further deteriorate when carriers try to add more flights after the slot cap is lifted in 2002. He points to the chaos that enveloped New York's LaGuardia Airport last summer when slot controls were lifted temporarily there.

''There's no way to add Chicago capacity without dragging (performance) down,'' says Mr. Baker, who was interviewed before American announced plans to buy TWA. ''That would affect Chicago's viability.''

Thomas Hansson, one of two chief authors of the Booz Allen report, concurs that O'Hare operations are ''at capacity.''

Walter Aue, American's vice-president for capacity planning, confirms that his airline's expansion here will be ''focused internationally,'' even though it also would like to add service from Chicago to the East Coast.

Other carriers' decisions in recent years to open hubs in cities such as Cincinnati and Detroit are a sign of what's occurring, he adds. ''They're a reflection that O'Hare hasn't grown in 20 years. O'Hare should be growing at a greater rate than it is,''

Howard Putnam, a former United vice-president who later headed Southwest Airlines and the now-defunct Braniff Airways, says he hears one statement a lot from top airline pros: ''We don't have enough concrete'' in Chicago.

Mr. Putnam says he hasn't examined the latest data on whether O'Hare is losing marketshare, and notes that the data likely can be interpreted in various ways, but he's nonetheless made up his mind about O'Hare: ''I haven't been there in three years. I go anywhere else I can to avoid it.''

Even Chicago's hometown airline, United, is avoiding Chicago to some degree. Though its headquarters is on the north edge of the airport, the carrier confirms that other hubs like Denver are getting business that O'Hare can't handle. (See story, this issue.)

Things are so tight here that a labor action or bad weather has a ripple effect—for example, the stranding of thousands of United passengers last summer.

As serious as O'Hare's problems are, the more basic question for Chicago is whether the airport wars have begun to claim victims throughout the broader economy.

Some say not yet, but they're worried.

''There is such a solid base of business here that they see themselves surviving in spite of O'Hare,'' says Laurie Stone, president of the Greater O'Hare Assn. of Industry and Commerce, a 1,200-member business group. ''I don't see very much political leadership.''

Marginalizing O'Hare

Others—particularly in growing, transit-dependent fields such as law, accounting and banking—have begun to adjust their work habits, or fear they will have to soon.

Diane Swonk, chief economist at Chicago's Bank One Corp., crew so fed up with O'Hare that she began flying, out of much smaller, but more dependable, Midway. Once there, she discovered that a lot of other bankers already had made the move.

Michael Krauss, chief marketing officer at DiamondCluster International Inc., says employees at his Chicago-based high-tech consulting firm survived last summer's flying, woes by, among other things, making more conference calls.

But some companies already have decided to sidestep O'Hare.

Michael Lynch, director of public affairs at Illinois Tool Works Inc., says flying personnel to Detroit for a weekly meeting with big, auto clients became such a hassle that the Glenview-based manufacturer has cut way back on trips. Instead, the firm taps the teleconferencing network it recently built at 20 locations worldwide.

In fact, the company is so fed up with O'Hare that it almost located a new manufacturing facility near St. Louis, deciding on Ottawa, in LaSalle County, at the last minute only because of other factors, Mr. Lynch says. ''O'Hare is being, marginalized.

No. I priority

That view is being expressed more and more.

Lester Crown, the industrialist and financier who heads the Civic Committee's aviation panel, says that when he speaks with his colleagues from other cities, they say two things about Chicago It's ''a wonderful place to be,'' and ''O'Hare is a mess. What a shame.''

For those who want to keep the region prosperous, he adds, ''nothing, could be of more benefit'' than ending Chicago's air gridlock. ''Anything else pales in comparison.''

IS POLITICAL BREAKTHROUGH ON THE RADAR?

Amid the harsh words and political flak that dominate Chicago's airport wars, a surprise is emerging: the outline of a potential compromise.

At first glance, airport peace seems as likely as a Cubs World Series sweep. After all, O'Hare's politically powerful neighbors, led by the Suburban O'Hare Commission, not only want to cap growth but also complain bitterly about noise and air pollution. And Mayor Richard M. Daley, by all accounts, is unwilling to even acknowledge that an airport capacity problem exists, much less sit down and bargain.

But after a decade of dogfights over O'Hare and Peotone, there are signs the region may be at a critical turning point. With a new president, a governor perhaps in search of a legacy and a business establishment that's increasingly vocal about O'Hare's importance to its growth, the logjam could break.

The wild card is Mr. Daley and whether he's willing to push when pushing might work. Asked repeatedly in various forums about the airport problem, Mr. Daley dismisses discussions about the need for additional runway space. As for Peotone, the mayor usually responds, ''If they want to build it, they should go buy the land.''

There are reasonable compromises out there,'' says U.S. Rep. William O. Lipinski, D-Chicago, who holds a crucial bargaining post as the ranking Democrat on the House Aviation Subcommittee. ''Whether there are people out there who are reasonable, I don't know.''

Another top Democrat may be jumping into the fray. Illinois House Speaker Michael Madigan is considering forming a committee on aviation, aides to the Chicago Democrat confirm. The panel would give Mr. Madigan a platform to raise his profile on the subject of runway and airport expansion.

One sign auguring in favor of the obvious compromise—a runway or two plus new western ground access at O'Hare, and a small airport at Peotone—is that the public positions of some of the major players are closer than is generally realized.

For instance, while Suburban O'Hare Commission lawyer Joseph Karaganis argues that Peotone will be a financial flop unless limits are imposed on O'Hare operations, state Transportation Secretary Kirk Brown, Peotone's original patron, disagrees.

He says Peotone ''absolutely'' needs neither caps at O'Hare nor a portion of O'Hare-generated passenger fees: ''You don't need to take traffic from O'Hare.'' Mr. Brown wants the state to build a $500–million starter field at Peotone using state and federal funds.

The goal is to build an airport with point-to-point flights, not a hub, that would start out slowly and build, like Midway,'' he says.

Such a position should please executives such as Robert Baker, vice-chairman of American Airlines. He says American does not want to be forced to pay for dual hubs at O'Hare and Peotone, since the vast majority of its passengers live closer to O'Hare, but concedes that ''some small amount of local service might work'' at Peotone.

The Midway factor

Another example: City gripes that building Peotone could kill Midway Airport appear to be overblown, at least legally.

It is true that leases signed by Southwest Airlines and other Midway carriers allow them to leave under certain conditions. But those conditions are limited to cases in which the city itself develops another airport within 50 miles, or in which someone else does and thereby forces ''material limitations on operations'' at Midway, according to the city's lease with Southwest.

One well-placed city official concedes that the language is ''intentionally vague.'' And Southwest's director of property, Peter Hampton, acknowledges that mere competition from Peotone would not be enough to cancel the lease, but argues that the meaning of ''material limitations'' might have to be resolved in court.

Driving a possible compromise: political change. The relationship between Mr. Daley and Gov. George Ryan is as congenial as the relationship between Mr. Daley and former Gov. Jim Edgar was icy—and both officials

are under increasing pressure to work things out now, while they still can.

Though the mayor flatly denies that he met with Mr. Edgar to discuss airport issues in 1998, Arnold Weber, who was president of the Civic Committee of the Commercial Club of Chicago, says the big-business lobbying group helped arrange the meeting and that Mr. Edgar briefed him on its outcome two or three days later.

I never ever had a conversation with him on that subject,'' Mr. Daley says. Asked if he could work with Mr. Ryan on a compromise, he says, ''I don't know. This is the governor's standoff.''

Why the mayoral reticence?

Some say Mr. Daley never got over his bad airport experience of several years ago, when the proposed Lake Calumet field was quickly shot down, and is unwilling to expend more political capital. Other political insiders say Mr. Daley's mind is on a more practical matter: tens of millions of dollars in jobs and contracts that friends and associates control at O'Hare.

But the mayor may not be able to duck much longer. With Republicans, rather than the anti-Peotone Clinton White House, now running the U.S. Department of Transportation, Mr. Daley runs the risk of the GOP winning crucial federal approval to build Peotone without giving O'Hare anything.

The pressure on Mr. Ryan is even more acute. A dealmaker par excellence, Mr. Ryan could cut the mother of all deals on Chicago airports, State law gives him the power to unilaterally approve more runways at O'Hare. But with federal prosecutors having badly damaged his reputation, Mr. Ryan's time in office may be running short.

Hastert could weigh in

There is one other key figure: U.S. House Speaker J. Dennis Hastert, R-Yorkville.

Unlike powerful DuPage County politicians such as Illinois Senate President James ''Pate'' Philip and U.S. Rep. Henry Hyde, R-Addison, he tends to favor O'Hare expansion because his district is far enough from the airport to be insulated from noise problems but close enough to share its economic benefits. If the city, as part of a runway deal, agrees to add a western entrance to O'Hare—just minutes away from Mr. Hastert's district—the speaker might bite, insiders say.

Bottom line: ''A deal is possible. There's probably as good a chance now as ever,'' says one top Springfield insider. ''At some point, I think the governor will be willing to talk.'' But will Mr. Daley talk, too?

DENVER'S SKIES FRIENDLIER AS UNITED EXPANDS

With 450 departures a day from O'Hare International Airport and its corporate headquarters just a few blocks away from the terminals, United Airlines might be said to have a major investment in Chicago's aviation system. But when it comes to growing its mid-continent hubs, United's rising star is located a thousand miles away from its hometown, in Denver.

United has added dozens of flights at Denver International Airport since 1995, while its O'Hare operations and passenger flow have barely edged up.

''Our ability to grow (O'Hare) has been limited,'' says Kevin Knight, United's vice-president in charge of route development, blaming a shortage of gates that will be only partially alleviated by O'Hare's pending expansion, about-to-expire federal slot rules and a shortage of runways that shows no sign of easing.

''One of the major challenges we face is getting airplanes out of the airport,'' he say. ''That means runways.''

The carrier's pending acquisition of US Airways Group Inc., with its coveted East Coast routes that will provide a lucrative feed for long-haul domestic and international flights, will enable United to grow faster than before. But with O'Hare's current constraints, it's possible that Chicago won't reap the benefits of a larger, more powerful United.

The numbers tell a simple story.

At the 6-year-old Denver International, where United and its United Express feeder line are dominant, operations have been rising about 4 percent a year for the past five years—about the same as in other airlines' mid-America hubs, such as Detroit, according to Mr. Knight. Much of that service is provided by increasingly popular regional jets, which carry fewer passengers but require almost as much runway space as large aircraft.

But at O'Hare, United's operations and enplanements—the number of passengers boarding planes—are up just 1 percent, Mr. Knight says.

Since United still wants to grow its high-margin international business in Chicago and to serve as many local residents as possible an their domestic trips, something has had to give. The something is connecting hub service, in which out-of-towners fly here to get a flight to a third city. That service has begun to head elsewhere.

''The percentage of our passengers that are local in Chicago has been increasing,'' Mr. Knight says, jumping from 38 percent in 1994 to 44 percent in 1999. That means connecting passengers are down, to 56 percent from 62 percent.

''While we continue to serve the local Chicago market very effectively, we are increasing local service at the expense of connections,'' Mr. Knight concedes. ''Some of that traffic that could go to Chicago is going elsewhere.''

Mr. Knight doesn't identify any particular flight or city that's vanished from United's service roster. He insists that United's recent decision to drop non-stop service from Chicago to Honolulu—O'Hare passengers now have to change planes in Los Angeles or San Francisco en route to Waikiki, just like the folks from Des Moines—was based on other factors.

But there are big smiles in Denver, where the total number of passengers leapt 21 percent to an estimated 39.2 million last year from 32.3 million in 1996, far surpassing Chicago's modest 5 percent increase to an estimated 72.4 million in the same period.

United already has added 50 flights a day in Denver since the city's old Stapleton Airport closed in early 1995, and United Express service is up 25% in three years. The airline has agreed to lease 10 more gates in Denver—more than the eight additional spots it will get under O'Hare's pending World Gateway expansion—and announced last June that it's building a $100-million, 36-gate regional concourse there.

''They are growing here. We like that,'' says Amy Bourgeron, Denver's deputy manager of aviation. ''We have competitive advantages over other airports that have congestion and traffic problems.''

Mr. Knight does have a little good news for O'Hare. For at least the next five years, it will remain United's single largest hub.

Meanwhile, he has a sharp reply to contentions by city officials that Chicago is a ''mature'' market in need of little new service: ''I couldn't agree with that. This is a viable, growing market.''

[From the Chicago Sun-Times, Feb. 17, 2001]

MAYOR STANDS EXPOSED ON AIRPORT

(By Jesse L. Jackson, Jr.)

Mayor Daley's erratic posturing on a third airport in Chicago reminds me of the fabled emperor with no clothes.

No matter what the emperor said, believable or not, his followers displayed blind loyalty.

In the late 1980s, Daley mocked the idea of a third airport, calling it unnecessary. In 1990, he did an about-face and proclaimed that Chicago needed another airport or else the city would ''continue to lose business to Denver, Dallas, Atlanta and others.'' Two years later, in another reversal, Daley declared that Chicago had enough airport capacity for another 20 years.

So, throughout the '90s, the city paid hundreds of millions of dollars to consultants, lobbyists and public relations firms to force-feed incorrect data to the public and the federal government, supporting the mayor's bogus claim that the city needed no new capacity. All the while, O'Hare was choking on congestion, delays and gridlock.

As recently as last month, the mayor and the city Aviation Department reiterated that O'Hare needed no new runways until 2012.

Then on Feb. 1, the mayor flipped again, dropping all pretense and admitting the obvious—that Chicago needed additional capacity. Now the mayor is calling for new runways at O'Hare.

Unfortunately for taxpayers, the mayor's deception has come with a heavy price tag.

To pay for his ill-fated third airport, Daley in 1992 leveraged Congress to enact a $3 ticket tax on air travelers. The so-called passenger facility charge was, according to Congress, to be used to increase airport capacity and enhance airline competition.

Instead, the city committed $3 billion in passenger facility charge receipts—all those to be collected through 2017—to expand and gold-plate terminals, improve taxiways and aprons, and pay consultants—none of which adds capacity or competition to the overcrowded, overpriced O'Hare.

Consequently, passengers are paying for a new airport but getting increased fares, delays, cancellations and congestion at ''O'Nightmare.''

Now, given the mayor's renewed call for runways, it is inevitable that City Hall and O'Hare's dominant carriers, United and American airlines, will return hat-in-hand to ask the federal government and the public to pony up more money.

After violating the public trust so often, the mayor wants to be the steward of it. But his tactics have led to misplaced priorities and misallocation of funds. Chicago deserves better.

Fortunately, there is an alternative. The State of Illinois has proposed building a third airport near Peotone. As proposed, the inaugural airport could be built faster, cheaper, cleaner and safer than a new runway at O'Hare.

With Peotone's stock suddenly rising with the new administration in Washington, Daley and his supporters in business and the media are promoting a compromise. Many are advocating that O'Hare get a new runway in exchange for Peotone getting off the ground. Of course, a new runway at O'Hare makes Peotone unnecessary for at least several more years.

I oppose such a deal. The city has strained its credibility and blocked the doorway of opportunity long enough. The region is paying with lost jobs, market share and tourism. Passengers are paying with high fares and poor service.

For the sake of safety and fairness, Peotone must be the taxpayers' new first priority. Because the naked truth is, the city, the mayor and the airlines no longer can be blindly trusted to ensure that Illinois gets the best deal.

A MESSAGE FROM THE MAYOR

(By Richard M. Daly)

Chicago's Southeast Side, along with the entire Calumet region, has been in a state of economic decline since the steel industry and its related businesses left the area.

The loss of this industrial base proved devastating to many thousands of families forced to endure years of harder times.

Over the years that followed, there were many promises of revitalization and major new industry. None of them amounted to anything.

There are two realistic futures for this area.

One is to continue struggling, fighting for dwindling resources that will never be enough to restore the area to economic and environmental health.

A comprehensive clean-up of the industrial pollution alone would cost hundreds of millions of dollars that simply are unavailable from the federal government.

The other future is one that offers tremendous hope: the prosperity of hundreds of thousands of new jobs and an economic rebirth that includes a cleanup-up environment.

It is a future that will cost billions of dollars to create. And there is only one possible way to raise this money: the Lake Calumet Airport.

While my airport proposal is good for the entire City of Chicago, it is the Calumet region that will most benefit.

Construction and operation of this international airport will create a huge economic engine that will pump new life into this region.

It will bring new prosperity to the entire area, making it the most dynamic in the state.

The economic benefits of this project are so immense—we are talking billions of dollars each year—that it will present no difficulty to create new communities for those residents who must someday relocate nearby.

These communities can even be modeled after what is now in place—if that is what the residents desire.

We can do all this. It's that big a project.

Chicago is a city of neighborhoods and of families. Many Southeast Side residents have roots in the area going back generations.

All of this can be preserved, both in the city and throughout the Calumet region, as the new airport takes shape.

I wouldn't have it any other way.

A few opponents of the airport believe the area is being asked to sacrifice itself for the good of the rest of Chicago.

I ask no sacrifice other than to give up the false promises of the past, in favor of a real future for the community and all who call it home.

LAKE CALUMET AIRPORT: THE FUTURE OF CHICAGO

Chicago's O'Hare International Airport is again the busiest in the world for 1990, but this coveted title did not come by chance. Chicago worked hard to become the transportation hub of the nation.

Competition in the aviation world is more intense than ever. Today other cities aggressively pursue this prestigious leadership position in the nation's air transportation system and the jobs and economic benefits that go with it.

Not all passengers using Chicago airports begin or end their trips here. About half are connecting passengers using the major airline hub operations at O'Hare.

This arrangement not only makes them customers of the airport bringing in revenue, but also makes available a huge selection of direct destinations for Chicagoans to points around the world. This, in turn, makes Chicago a very attractive location for business and industry that rely heavily on convenient passenger and air freight service.

Aviation leadership means a great deal to Chicagoans. If the new airport is not built, the city will likely continue to lose business to Denver, Dallas, Atlanta and others that more aggressively compete with new and improved facilities. Should airline business go elsewhere, Chicago will lose many of the jobs it now enjoys.

The central position occupied by Chicago in the nation's air transportation system has been extremely important to the economic growth and development of the entire region. The economic impact of O'Hare—the state's seventh-largest employer—is more than $9 billion each year and the airport supports over 180,000 jobs. The Lake Calumet Airport will be larger in size and generate even greater economic benefits and jobs.

Forecasts for the future of air travel indicate that Chicago's present airports will not be able to handle the increased demands of air transportation expected in the next century. As demand for air service increases, delays and congestion at Chicago's airports are getting worse. As a result, the share of business handled by Chicago already has begun to decline.

In 1986, the Illinois Department of Transportation began a feasibility study for a third Chicago airport. The results clearly demonstrated that the location that would provide efficient service to the most passengers is between Chicago's Loop and Gary, Indiana.

Chicago Mayor Richard M. Daley proposed the Lake Calumet airport site as the best means for revitalization of the north-eastern Illinois and northwestern Indiana region. Located halfway between the Loop and Gary, it is ideally situated to attract a significant share of Chicago's air transportation market. News organizations including the Chicago Sun-Times, Crains's Chicago Business, the Chicago Tribune and the Southtown Economist have recognized the benefits of the Lake Calumet Airport concept, as have a broad cross section of community, labor and business leaders.

Sponsored by the states of Illinois and Indiana and the City of Chicago, a major study is now underway of five new airport sites: the Chicago Lake Calumet location; expansion of the Gary Municipal Airport; Rockville Township in northwest Kankakee County; Peotone, Illinois in Will County; and a location on the Illinois-Indiana state line east of Beecher, Illinois—also in Will County.

The results of this study, to be completed in Fall 1991, will compare the suitability of these sites as airports under established financial, environmental, social and technical criteria. The Bi-State Airport Policy Committee, made up of the appointed representatives of the three sponsors, will review these findings and recommend a site to be developed as an airport for the region.

The advantages of the Lake Calumet site are that it addresses the region's need for a new airport, not only by attracting passengers, but also by improving the environment (see ''Airport to provide health and environmental benefits'', page 2). These advantages make it a strong contender.

The lead time for developing a major airport is very long—15 years or more. Several complex steps must be taken after site selection is completed. They include: master planning, environmental review, financing, land acquisition, site preparation and construction.

The expenses are enormous. At a cost of $5 billion, only location with the financial resources to cover such expenditures can realistically aspire to build an airport in today's environment. Chicago is the only site with that capacity.

A new airport will allow Chicago to retain its leadership in aviation well into the next century and continue to enjoy the many economic benefits inherent in that position.

CHICAGO AVIATION MILESTONES

1927—''Chicago Airpark'' (now Midway) opens as the first municipally owned and operated airport in United States.

1932—Midway Airport, the birthplace of municipal aviation, becomes the world's busiest airport, serving 100,847 passengers annually.

1963—O'Hare International Airport is dedicated by President John Kennedy, heralding the beginning of the jet age in Chicago.

1970—O'Hare continues as the world's busiest airport, serving 29 million passengers annually.

1990—On February 15, Mayor Daley unveils his proposal for the Lake Calumet Airport to ensure Chicago's aviation leadership into the 21st Century.

AIRPORT WILL GENERATE NEW JOBS

As the residents know, the Lake Calumet areas has been in an economic slump that has lasted for nearly two decades. Since many steel mills, factories and neighborhood businesses were closed, many former workers have had to take lower paying jobs.

Despite the many promises of jobs from same local politicians over the years, nothing has been found to replace the good-paying jobs that used to be plentiful for area residents.

This is why the Lake Calumet Airport project is so important for the area. It brings far more than just an airport. It will revitalize the Southeast Side of Chicago and the entire Calumet region. The airport will generate thousands of jobs and business opportunities.

The Lake Calumet Airport will provide an economic rebirth for an area with a rich heritage founded on a strong work ethic. The airport is expected to generate nearly $14 billion each year and bring approximately 200,000 new jobs to the region once it becomes operational in the year 2010. The jobs include every line of work in the aviation industry, along with thousands of positions in airport spin-off businesses.

The project will require thousands of construction workers to build the airport facilities and the new housing and business developments that will spring up around the airport. These jobs will offer competitive wages.

The Mayor is committed to establishing a program that gives residents from the affected communities the first opportunity to train and apply for these jobs.

The city will develop a comprehensive job training and employment program by working with unions, business developers, women- and minority-owned businesses and area schools. City colleges and vocational schools will be encouraged to establish courses to train residents for the jobs that will be needed at the airport and in the many spin-off businesses.

The city will encourage business developers to support the job training programs. Contractors for the numerous project tasks will be selected, in part, based upon their commitment to support the local employment pool.

PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS

Occupation	Middle Range Earnings *
Ticket Agent	$26,208–$34,996

PARTIAL LIST OF THE JOBS THAT SUPPORT AIRPORT OPERATIONS—Continued

Occupation	Middle Range Earnings*
Line Maintenance Inspector	36,400–44,262
Motor Vehicle Mechanic	30,555–41,808
Aircraft Inspector	36,400–45,302
Aircraft Mechanic	30,784–39,728
Ramp Service Helper	20,093–34,778
Stock Clerk	24,814–33,488
Aircraft Cleaner	15,413–28,600
Computer Programmer	25,766–30,576
Computer Systems Analyst	34,684–59,202
Janitor, Porter, Cleaner	11,315–27,706
Dispatchers	29,640–55,120

*In 1989 dollars.

Source: U.S. Dept. of Labor, Bureau of Labor Statistics.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

BACKGROIUND ASSUMPTIONS FOR DEMAND FORECASTS

Aviation demand is derived from a few basic factors:

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

The location/desirability of the region for providing connecting flights.

The ability of the region to accommodate this demand depends on:

The capacity of its airports.

The competitiveness of its fares.

NATIONAL/INTERNATIONAL AVIATION GROWTH

The FAA forecasts a doubling in aviation growth over a 15 year period.

International enplanements and freight are growing even more rapidly.

The FAA and the Airports Council International have equated this growth to 10 O'Hare Airports.

By 2012, there will be more than 1 billion enplanements, 2 billion passengers in the U.S.

SOCIO-ECONOMICS CREATE DEMAND

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations:

In 1990–1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,260 persons.

The regional planning agencies have increased their 2020 forecasts, to reflect this growth. So has NPA, author for forecasts used by City of Chicago.

Woods & Poole Economics (the national forecast used by IDOT), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.: for 1996—2020, a 1,118,660 job growth; for 1990—2020, a 1,635,570 job growth.

Chicago's economy can continue its robust growth only if it can provide excellent aviation access. And, it can serve the region fairly, only if it provides that access to the south suburbs.

LOCATION DRIVES CONNECTING FLIGHTS

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz•Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

O'Hare's current connecting is 54.7%, slightly under its past average. IDOT assumed 50% connecting for O'Hare in 2001; 51% for the region.

AVIATION GROWTH PARALLELS IDOT FORECASTS

Since their national forecasts of 1994 (base for IDOT forecasts), the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for all short- and long-term regional transportation planning.

Other aviation plans (Gary Airport Master Plan; Booz•Allen forecasts for O'Hare International) are consistent with IDOT forecasts.

CAPACITY CONSTRAINTS JEOPARDIZE ECONOMIC AND AVIATION GROWTH

The ability of the region's airports to accommodate demand is a most-serious concern. The Chicago region has reached aviation capacity. These aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Small cities have been dropped from service.

Booz•Allen says the international market is not being well served.

Fares at O'Hare have risen above the average for large airports.

O'Hare delays have been much greater this year than last; O'Hare's delays are among the nation's highest and cascade throughout the nation's airports.

The FAA has long forecasted such capacity problems and resultant delays. In 1992 it forecasted a doubling of airports with delay problems by 2001.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the nation are jeopardized.

THE GROWING IMBALANCE IN THE REGION'S GROWTH, AND ACCESS TO JOBS

1. The Chicago region has grown robustly over the past 25–30 years.

Over 1.310 million jobs (1970–96) for the consolidated area.

Over 275,000 jobs between 1990 and 1997, alone, for the six-county area.

2. This growth has been very uneven. The North has prospered, while the South has languished.

3. The region's center has migrated from Downtown Chicago (with its excellent public transportation access) to the area around O'Hare (dependent on autos).

4. The City of Chicago lost over 27,000 jobs between 1991 and 1997; 11,000 of these losses were from the South Loop.

5. The suburbs grew by 300,000 jobs. The areas to the north, northwest and west (O'Hare-influenced) contributed nearly 200,000 of this growth.

6. With 500,000 jobs in Chicago's CBD, versus 450,000 in North Suburban Cook and 150,000 in Northeast DuPage, the economic center of the region has shifted from Downtown to O'Hare.

7. Consequently, residents of the South Side and South Suburbs have commutes to work that are among the nation's longest. There is little public transit between suburbs.

8. These same residents do have the region's highest tax rates, however; without businesses and industries, the residents, alone, must pay for all their services.

9. New businesses and industries want access to major airports. O'Hare's nearby communities have run out of space to offer. The South Side has ample land, but no airport. The ample land also allows the construction of an environmentally-sensitive airport.

10. To accommodate the economic growth anticipated over the next 20 years, the Chicago region needs additional airport capacity. To balance the economic growth, it needs a South Suburban Airport.

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

BACKGROUND ASSUMPTIONS FOR DEMAND FORECASTS

Aviation demand is derived from a few basic factors:

The socio-economic dynamics and growth of the region.

The location/desirability of the region for providing connecting flights.

The national/international growth in aviation.

The ability of the region to accommodate this demand depends on:

The capacity of its airports.

The competitiveness of its fares.

SOCIO-ECONOMICS CREATE DEMAND

Since the original aviation forecasts, made in 1994, the socio-economic performance of the Chicago region has matched or exceeded expectations:

In 1990–1996, population and employment for the 14- and 9-County regions grew at rates and volumes slightly above those forecast.

The Chicago Consolidated Area (Kenosha to Michigan City) produced 1,311,000 jobs between 1970 and 1996; and added 617,260 persons.

The regional planning agencies—primarily NIPC, but also NIRPC have increased their 2020 forecasts, to reflect this growth.

Woods & Poole Economics (the national forecast used in the former IDOT study), in its 1999 edition, expects the Chicago region to produce the largest volume growth in employment of any metropolitan region in the U.S.: for 1996–2020=1,118,660 job growth; for 1990–2020=1,635,570 jobs growth.

NPA, author of the forecasts used by the City of Chicago in 1998 and once much lower, in 1999 raised their economic forecasts to match those of W&P.

LOCATION DRIVES CONNECTING FLIGHTS

Because of its central location and high concentration of jobs and population, the Chicago region is a critical location for connecting flights:

The recent Booz Allen study, prepared for the City, forecasts an international growth that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

The City of Chicago, in 1998, forecast connecting enplanements based on regional location; their connecting forecasts were higher than IDOT's.

The FAA's latest estimates put O'Hare's connecting at 54.70% slightly under its average percentage of the past 15 years. IDOT assumed 50% connecting for O'Hare in 2001; and 51% for the region.

AVIATION GROWTH PARALLELS IDOT FORECASTS

Since their national forecasts of 1994 (base for IDOT forecast), the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts.

All the FAA national forecasts are higher than the study's base forecast.

Although it continues to contest IDOT's forecasts, the City of Chicago and its consultants are using forecasts that are nearly identical.

The City and State are using IDOT socio-economic and aviation forecasts for short- and long-term regional transportation planning.

Other aviation plans Gary Airport Master Plan; Booz Allen forecasts for O'Hare international are consistent with IDOT forecasts.

CAPACITY CONSTRAINTS JEOPARDIZE ECONOMIC AND AVIATION GROWTH

While forecasts are an issue, it is the ability of the region's airports to accommodate demand that is most serious. The Chicago region has reached capacity. Aviation capacity constraints have dampened regional growth:

Since 1995, O'Hare's growth in commercial operations has stopped.

Domestic enplanements at O'Hare have declined this year.

Delays have been significantly greater this year than last.

Small cities have been dropped from service.

Booz Allen says the international market is not being well served.

Fares at O'hare have risen about the average for large airports.

ABILITY TO ACCOMMODATE REGIONAL DEMAND IS DECLINING

In 1998, (FAA statistics) O'Hare slipped to second place, behind Atlanta's Hartsfield, in enplanements. Capacity limited O'Hare's growth. The City of Chicago claimed that we should, ''look at the Chicago aviation system (O'Hare and Midway) which combined, make Chicago the world's busiest system.'' Unfortunately, this claim is wrong; but a look at the major regional aviation systems in the country shows that Chicago is slipping in accommodating its regional demand.

In 1993, the Chicago regional system ranked second, behind New York, only. By 1998, it was about to slip behind Los Angeles, but rallied at year's end. By 2015, however, Chicago will have slipped to fourth, behind New York, Los Angeles and Atlanta.

MAJOR AIRPORT SYSTEMS

[Enplanements in thousands and regional rank]

Region	1993	1998	1993–98 growth (percent)	2015
Chicago (O'Hare, Midway)	33,017 (2)	39,231 (2)	16	65,551 (4)
Atlanta	22,282 (6)	35,255 (4)	53	65,719 (3)
New York (JFK, Laguardia, Newark)	36,855 (1)	43,895 (1)	20	70,514 (2)
Los Angeles (LAX, John Wayne, Ontario, Burbank)	31,878 (3)	38,510 (3)	25	71,377 (1)

[1] FAA—Terminal Area forecasts Summary: fiscal Years 1998–2015 estimates had Chicago slipping to 3rd in 1998. FAA—Terminal Area Forecasts Summary: Fiscal Years 1999–2015—source of above data.

Chicago's slippage, over the five-year period (1993–1998) shown, indicates its inability to accommodate regional aviation demands.

Chicago's regional growth, at 16%, lagged far behind Atlanta's, at 53%.

Chicago also lagged behind the regions that have capacity-constrained major airports—New York, Washington, San Francisco and Los Angeles—because those regions have utilized third and fourth airports.

Recent statistics indicate that O'Hare has slipped behind in operations, as well as enplanements, a clear indication of capacity constraints.

There are no socio-economic reasons for a dampened regional demand.

OPPORTUNITIES ALREADY HAVE BEEN LOST; OTHERS WILL FOLLOW

It is always difficult to document events and forecasts that do not materialize. But if you trust your forecasts, some estimates can be made and general conclusions reached.

Over the past decade, the Chicago region has missed the following opportunities:

When Delta could not accommodate its demand at O'Hare, it moved its Midwest hub operations to Cincinnati. Cincinnati, with a metro area population of 1.729 million in 1980 and 1.969 million in 1999, has watched its airport grow from 2.300 million enplanements, in 1986, to 9.327 million enplanements, in 1997; and is forecast to grow to 21.826 million enplanements by 2015.

Both the U.S. Postal Service and Fed Ex have built major facilities at Indianapolis Airport. United Airlines built its maintenance facility there, as well. UPS built major facilities at Louisville and Rockford Airports.

United Airlines, Chicago's hometown airline, has developed its European hub at Dulles Airport. It now is transferring increasing numbers of connections to Denver, the airport it opposed so vehemently.

Major conventions have been lost, in total or in part, to the Chicago area. An IDOT study showed that average fares from across the country to Orlando and to Las Vegas were lower than to Chicago despite the fact that average distances to Chicago are smaller.

Chicago, over the past several years, has lot major headquarters. Although many losses were due to acquisitions/mergers, few new corporate headquarters have chosen to locate in the Chicago region. Although proximity to a major airport is one of three factors determining corporate location, such proximity in Chicago is both costly and rare.

The region has missed a window of opportunity when: jobs have grown beyond expectation; financing was available; business economic conditions were very good; and commercial development rebounded.

Without a major investment in airport infrastructure, by 2020 the Chicago region will have forfeited: 30.7 million regional enplanements unaccommodated; 500,000 jobs and attendant economic opportunities lost.

CHICAGO'S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, INFILL REDEVELOPMENT AND REGIONAL BALANCE

The Midwest and, in particular, the Chicago Metropolitan Area, has had a remarkable turnaround in economic fortune over the past decade. It has shed its ''rust-belt'' image and has produced remarkable economic growth.

Between 1990 and 1998, the six-county Chicago area grew by 505,500 persons, a 7 percent increase. While this percent increase is moderate, the numerical increase is equivalent to a city larger than Denver.

Between 1990 and 1997, the six-county area grew by 275,000 jobs, a 9 percent increase. Between 1970 and 1996, the region (Kenosha to Michigan City) grew by 1.310 million jobs, the fifth largest increase in the nation.

Between 1996 and 2020, the Chicago region is projected to grow by 785,000 persons. This is a city the size of San Francisco.

Between 1996 and 2020, the Chicago region is projected to have the largest growth of any metro area in the U.S., adding 1.118 million jobs.

In spite of these significant regional turnarounds, the City of Chicago continued to lose ground. Between 1991 and 1997, the City of Chicago lost over 27,000 jobs; 11,000 were from the South Loop. Every one of the City's eight major community areas experienced losses, with the exception of North Michigan Avenue and the Northwest area around O'Hare International Airport. The Far South, Southwest and South communities experienced the greatest losses.

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and northwest suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (around O'Hare) Counties contributed 194,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business District versus 450,000 in North Suburban Cook County and 150,000 in Northeast Du Page County, the economic center of the region has shifted from downtown to O'Hare.

O'Hare International Airport is, undoubtedly, the great economic engine it is portrayed. But, it has run out of space, both in the air and on the ground. Its enormous attraction, to business and industry, has brought thousands of enterprises, hundreds of thousands of jobs, millions of visitors and billions of dollars, annually, to the Chicago region. On this, we all agree. But, the area surrounding it is choking on the development. Other areas, particularly the South Side, are in great need of both jobs and better airport access. In fact, the two issues are closely related.

The massive development attracted by O'Hare Airport makes airport expansion there costly, time-consuming, difficult and intrusive. Traffic often is brought to a near halt on the expressways leading to O'Hare; future traffic problems would be compounded many times over. O'Hare's neighbors—well-aware of its many economic contributions—also are wary of expansion, weary of noise and traffic, and fearful of possible future compromises on safety. On the opposite side of the region—and the other side of the ledger—are the communities of the Chicago South Side and the South Suburbs. By all accounts, these areas find themselves overlooked and under-served—primarily due to their distance from the region's airports. This economic disparity is clearly evident from the following maps, which show job concentrations in 1960 and 1990. This period marked major declines in manufacturing jobs in the region's South Side; and a rise in both manufacturing and service jobs in the North/Northwest, around O'Hare. Airport access was the difference.

The solution to the region's needs is the Third Chicago Airport. Development of the Third Chicago Airport is a true urbanist's dream: obtaining multiple benefits from one investment. Why, then, is it being ignored? When you have two powerful and thoughtful representatives of the people—Congressman Henry Hyde saying ''we've had enough,'' and Congressman Jesse Jackson, Jr. saying ''let us have some''—perhaps we should listen to them. Other representatives—Congressmen Jerry Weller, Bobby Rush, and Tom Ewing, Senator Peter Fitzgerald, Governor George

Ryan, Senate President Pate Phillip—plus scores of local mayors, hundreds of local businesses and hundreds of thousands of residents, have joined in the effort to bring the airport to the South Suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, encourage infill development and share the wealth of the region.

THE PLANNING PROCESS: TWELVE YEARS OF FINDINGS

The state agency responsible for planning the region's transportation infrastructure, the Illinois Department of Transportation (IDOT), has been planning for the region's aviation needs for the past twelve years. IDOT, and its aviation consultants, are convinced, without a doubt, that Chicago's aviation demands will more than double by 2020. The Federal Aviation Administration (FAA), the Airports Council International (ACI) and other industry groups have forecasted national growth of similar magnitude. For a brief time, the City of Chicago agreed, as well. The Chicagoland Chamber study predicts a five-fold increase in international traffic. IDOT's studies support the contention that Chicago has an excellent opportunity to be the dominant North American hub for international flights, as well as its premier domestic hub, into the next century. That point has been stated and documented on many occasions by IDOT. The State's forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

The region cannot double its aviation service without building major new airport capacity. O'Hare and Midway are now at capacity. Enplanements already are being affected, with growth limited to increases in plane size or load factor; neither is expected to increase further. The City's $1.8 billion investment in terminals will not increase capacity. But, the adverse impact on the region already is evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the USDOT, the GAO and the FAA, itself. Perhaps in response to these obvious constraints, both the Chicagoland Chamber and the Commercial Club of Chicago have begun to address the region's aviation issues. The Chamber calls for O'Hare expansion. The ''Metropolis 2020'' study also recognizes the need for additional aviation capacity, with a call for expansion of O'Hare and land banking of the Third Airport site in Peotone. This call for action comes none too soon. There are many indications that the Chicago region has begun to suffer from capacity constraints.

Ten years ago, Chicago was one of the nation's least expensive regions to fly to, due to its central location. Obviously, its location has not changed; however, now, due to O'Hare's capacity overload and higher fares, it is cheaper to fly from all around the country to many other cities than to Chicago. For instance, according to data supplied by the airlines to the U.S. Department of Transportation, it is now cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O'Hare's airlines are over-charging their patrons by $750 million, annually (the difference between average fares for large U.S. airports and those at O'Hare). This fact is beginning to affect regional development—especially conventions and tourism—but, it also affects every major and start-up business, every individual with family and friends in far-flung places. As is well-known, access to a major airport is one of the top three requirements of a locating or expanding business. But, access must be at competitive fares. Expanding O'Hare will simply buttress the monopolistic behavior of its airlines. Such monopolistic practices currently are a major concern of Congress.

THE DEVELOPMENT ALTERNATIVES

Aviation infrastructure must be expanded—and expanded soon—to bring true competition, lower fares and increased service to the region. The alternatives are two: adding runways to O'Hare; or building the Third Chicago Airport. The two alternatives have far different consequences. The question is:

''Will we continue to spend great outlays of public-private funds on an area that is overwhelmed with both riches and the congestion those riches bring; or do we make those investments in mature urban areas that are wanting for jobs and economic development?''

As is clearly documented by a recent Chamber study, O'Hare's benefits are conferred, primarily, on the west, north and northwest suburbs. Virtually all of O'Hare's employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values. High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in areas farther removed from the region's central core.

THE TWO SIDES OF THE COIN

While unprecedented growth takes place around O'Hare, to the north, the three million residents of the region who reside south of McCormick Place are left with long trips to the airport for flights and out of the running for the many jobs it produces. The consequences, for South Side/South Suburban residents and the dwindling businesses that serve them, are the highest property tax rates in the State. Because jobs have disappeared, residents have some of the longest trips to work in the nation. Because transit only to the Loop is convenient, recent job losses in that area, as well, (11,000 since 1991; 25,000 since 1983) have compounded the job searches of the South Side's residents. For decades, regional planning agencies have called for the development of moderate-income housing near job concentrations. Instead, let us bring the jobs to the residents.

Recent public forums on the disparity of property tax rates in Cook County's north and south communities have led to the South's designation as the ''Red Zone,'' signifying its concentration of highest property tax rates. This disparity was not always so. It has occurred over the last three decades and proliferated in the last two, as shown below. The ''Metropolis 2020'' study addresses this disparity issue by calling for a sharing of revenues with the ''lesser haves.'' The more-responsive, enduring and—ultimately—more-equitable solution is to provide the South Side with the economic opportunities generated by the Third Chicago Airport.

Whether the region expands O'Hare or builds a supplemental airport, OHare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago's role as the center of the region's growth.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.5 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition, traditionally have come from the federal government. In this ''Year of Aviation'', these funds are expected to increase by 50 percent; and Passenger Facility Charges (PFC's) are expected to increase from $3 to $6. Currently, $1 in PFC's at O'Hare yields $37 million per year. At the Full-Build forecast and $6 rate, the Third Chicago Airport will generate $100 million in PFC's annually by 2010. The FAA must provide the needed approvals and normal up-front funding. A Third Airport development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

Independent studies have demonstrated, overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Needed is a Third Airport that can grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, conventions and other opportunities.

There are two alternatives for meeting the region's demand:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of access to a major airport.

Doubling traffic at O'Hare drives new development farther away from the region's core—the Chicago Central Area—and its residents and businesses to the South.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Ultimately, the passenger pays through Passenger Facility Charges.

CHICAGO'S THIRD AIRPORT AND THE FUTURE OF THE CHICAGO REGION: AN OPPORTUNITY FOR SMART GROWTH, CONGESTION RELIEF AND REGIONAL BALANCE

AN EMERGING CONSENSUS

Finally, after nearly nine years of intense debate, there is near unanimous agreement on the need for additional airport capacity in the Chicago region. This is due, in part, to several inescapable facts:

Operations at O'Hare have been at a virtual stall since 1994; hourly capacities have been reached; every day is Thanksgiving eve.

The region's enplanements have grown only as Midway has been able to take up a portion of the demand unaccommodated at O'Hare; and as small markets are abandoned in favor of large.

International enplanements have grown at rates over 9 percent, annually, but at the expense of domestic.

Domestic enplanements at O'Hare have grown by only 1.9 percent, annually, since 1993; and actually have declined since 1998.

In 1998, Atlanta's Hartsfield Airport surpassed O'Hare as the nation's busiest airport; it remained first in 1999 and 2000.

In 1999, the regional air system (O'Hare/Midway) nearly slipped to third place, behind New York and Los Angeles. It is forecast by the FAA to fall to fourth place (behind Atlanta) by 2015.

In 2000, O'Hare had the nations worst delays.

Now, nearly all those who claimed that Chicago could handle forecasted growth into the foreseeable future, are admitting that the gap between demand and the ability to accommodate it are growing farther apart and at a faster pace.

1998 studies by Booz-Allen & Hamilton (BAH) for the Chicagoland Chamber claim that Chicago's capture of international traffic—although considerable—is stifled.

BAH's recent (2000) update for the Commercial Club of Chicago shows an international demand that is even higher than estimated a year ago and higher than estimates made by IDOT.

Overall forecasts undertaken by the City of Chicago's consultants—and recently made public—are similar to the forecasts of IDOT, but with higher connecting volumes.

Both United and American Airlines have called for the construction of an added runway at O'Hare. United funded the 1998 BAH study.

Calls for an added runway also have come from the Chicagoland Chamber, the Commercial Club and the Chicago Tribune.

When the State of Illinois Department of Transportation started planning for the regions Third Airport, in 1986, it was suggested that the need would be evident by the turn of the century. Later, detailed forecasts documented an unmet demand of 7.1 million enplanements, by 2001. We have nearly reached that first milestone and the evidence of unmet demand, indeed, is great. Recent studies indicate that, by 2001, the Chicago region will have lost or foregone a large portion (5.1 million) of the 7.1 million enplanement forecast for the Third Airport.

The question no longer is whether we should add capacity to the region but, rather, where we should add it.

Whether the region expands O'Hare or builds a supplemental airport, O'Hare's riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800-million-publicly-funded new terminal. However, in spite of this $1.8 billion investment, the region's capacity will not be increased. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Airport, will increase it, And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places by 2020. Additional airport access jobs will benefit the entire region, In addition, it will reinforce the City of Chicago's role as the center of the region's growth. Furthermore, both businesses and residents of the airport's environs want it.

Spokesmen for the incumbent airlines claim that other airlines will not invest in the Third Chicago Airport; this is a traditional response to discourage competition. Furthermore, the financing of any airport comes, principally, from its users. The Third Chicago Airport market comprises 16.6 percent of the region's current air trip users, with a potential for contributing 20 percent. They should not be left behind. Upfront airport development costs, for planning and engineering and land acquisition, traditionally have come from the federal government. In 2000, these funds increased by 50 percent; and Passenger Facility Charges (PFC's) increased from $3 to $4.50. Currently, $1 in PFC's at O'Hare yields $37 million per year. The Third Airport market contributes nearly one fifth of these funds for O'Hare. At the Full-Build forecast and $4.50 rate, the Third Chicago Airport will generate $75 million in PFC's annually by 2010. The FAA must provide the needed approvals, and normal upfront funding, A Third Airport development in the South Suburbs can provide social and economic parity; and it can do it with a hand-up rather than a hand-out.

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

Independent studies have demonstrated, overwhelmingly, the need for expanded aviation capacity in the Chicago region.

Demand will more than double by 2020.

Existing airports are at capacity.

Needed, is a facility to grow as future demand dictates.

The need is now. The region is beginning to experience the costs of capacity constraints. These are:

Travel delays, often the nations worst.

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, businesses and other opportunities.

There are two alternatives for meeting the region's demand; they are:

Adding runways at O'Hare—an area already well-served and suffering the effects of overdevelopment and congestion, or;

Building the Third Chicago Airport—investing in an existing, mature part of the region suffering losses due to changes in the national/regional economies and lack of airport access.

Doubling traffic at O'Hare forces job development farther away from the region's core—the Chicago Central Area—and from the South Side.

It will require additional land and structure acquisition.

It will encroach on environmentally-sensitive areas.

It will compound noise, pollution and traffic congestion; and impose these on hundreds of thousands of additional residents.

It will buttress monopolistic behavior by major airlines.

It will take 10–15 years to achieve capacity increases.

Building the Third Chicago Airport is a true urbanist's dream. It solves multiple problems with one investment.

It develops an environmentally-sensitive, new airport, that can provide increased capacity for decades to come.

It provides nearby, inexpensive land for development.

It brings jobs and development to mature portions of the region.

It allows three airport facilities to function at optimal capacity.

It maintains the Chicago region as the nation's aviation capital.

Because of planning already completed, the Third Chicago Airport can be built before additional runways at O'Hare.

Residents and businesses nearby want it built.

Resources are available to build the Third Airport.

The U.S. Congress, many businesses and consumers are demanding access to and through the Chicago area.

Federal funds for airport development have increased by 50 percent.

Ultimately, the passenger pays through Passenger Facility Charges; PFC rates have increased from $3.00 to $4.50 per trip segment.

At full build, PFC's will provide $75 million, annually, by 2010.

CLAIMING THE TIME IN OPPOSITION (JACKSON)

[You need to be on your feet when the bill is called up]

[After the Speaker recognizes Mr. Lipiniski and Mr. Young]

Mr. Speaker: Point of order Mr. Speaker. May I inquire as to whether either gentleman is opposed to the bill. As I understand it, the bill was ordered reported favorably by unanimous voice vote, and both of these gentleman were present. Under the provisions of Rule XV, clause 1(c), debate on a motion to suspend the rules is ''one-half in favor and one-half in opposition, thereto.''

The notes to the Rule state where the time in opposition is contested, ''The Speaker will accord priority first on the basis of true opposition. . . .''

Mr. Speaker, I will state for the record that I am in true opposition to this bill, I therefore claim the time in opposition.

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XV, clause 1

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

This provision (former clause 2 of rule XXVII) was adopted in 1880 (V, 6821). It was amended and redesignated from clause 3 to clause 2 of rule XXVII in the 102d Congress to conform to the repeal of the former clause 2, relating to the requirement of a second (H. Res. 5, Jan. 3, 1991, p. 39). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XXVII. Former clause 2 consisted of paragraph (b) and another provision currently found in clause 1(a) of rule XIX permitting 40 minutes debate on an otherwise debatable question on which the previous question has been ordered without debate (H. Res. 5, Jan. 6, 1999, p ——). Before the adoption of this provision in 1880 (V, 6821) the motion to suspend the rules was not debatable (V, 5405, 6820). The 40 minutes of debate is divided between the mover and a Member opposed to the bill, unless it develops that the mover is opposed to the bill, in which event some Member in favor is recognized for debate (VIII, 3416). Where recognition for the 20 minutes in opposition is contested, the

Speaker will accord priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference inuring to the minority party (VIII, 3415; Nov. 18, 1991, p. 32510). The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks the time in opposition (Aug. 3, 1999, p. ——). When the mover and the opponent divide their time with others, the practice as to alternation of recognitions is not insisted on so rigidly as in other debate (II, 1442). Debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day (Nov. 23, 1991, p. 34189).

This paragraph formerly included a provision dealing with the Speaker's authority to postpone further proceedings on motions to suspend the rules and pass bills or resolutions. It was added in the 93d Congress (H. Res. 998, Apr. 9, 1974, pp. 10195–99), amended in the 95th Congress (H. Res. 5, Jan. 4, 1977, pp. 53–70), and amended further in the 96th Congress (II. Res. 5, Jan. 15, 1979, pp. 7–16). It was deleted entirely in the 97th Congress (H. Res 5, Jan. 5, 1981, pp. 98–113) when all of the Speaker's postponing authorities were consolidated into clause 5 of rule I (current clause 8 of rule XX).

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OPENING STATEMENT OPPOSING H.R. 3479

There are many reasons why I oppose H.R. 3479. 1 want to share some reasons why you too should be opposed to the National Aviation Capacity Expansion Act.

1. RESPECT FOR THE INSTITUTION OF THE HOUSE

The Suspension Calendar is reserved for NON-CONTROVERSIAL bills. This is a HIGHLY CONTROVERSIAL bill. This should offend every House traditionalist and institutionalist. It violates the integrity of the established, respected, and utilitarian processes set up by the House of Representatives. Even if you agree on the substance, you should be against the process. H.R. 3479 should be a ''stand-alone'' bill that is fully debated before the House—with the possibility of adding amendments to improve the bill. It should not be on the Suspension Calendar.

2. H.R. 3479 DOES NOT REFLECT THE AGREEMENT BETWEEN MAYOR DALEY AND GOVERNOR RYAN

Most of you believe you are voting to codify an agreement between Chicago Mayor Richard M. Daley and Illinois Governor George Ryan. But this bill does not reflect that deal. Their agreement promised ''priority status'' for a south suburban airport in Peotone and O'Hare expansion. This bill provides for O'Hare expansion, but does not give ''priority status'' to Peotone.

3. IF THE ISSUE IS RESOLVING THE AIR CAPACITY CRISIS, THIS BILL IS NOT THE MOST EFFECTIVE OR EFFICIENT WAY TO SOLVE THAT PROBLEM

Both sides agree there is an air capacity crisis at O'Hare. The disagreement comes over how best to resolve it. A new south suburban airport in Peotone offers a faster, cheaper, cleaner, safer, and more permanent solution. What do I mean? I mean after O'Hare expansion is completed—if air travel expands as projected—we'll still be in the same capacity crisis that we're in today. So why spend more money, take longer, increase environmental problems, put the flying public at greater risk, support a temporary solution, and increase the economic and racial divide in Chicago, when there is a better way of resolving the current aviation capacity crisis?

4. A NEW SOUTH SUBURBAN AIRPORT IS A MORE ECONOMICALLY JUST SOLUTION

O'Hare Airport is the economic magnet that provides jobs and economic security for Chicago's North Side and the northwest suburbs. Midway Airport is the economic magnet that provides jobs and economic security for Chicago's southwest side. There is no similar economic engine for Chicago's South Side and south suburbs. O'Hare expansion puts 195,000 new jobs and $19 billion of economic activity in an area that already has an over-abundance. For example, the biggest beneficiary of O'Hare is Elk Grove Village, a city of 35,000 people where over 100,000 people come to work everyday—three jobs for every one person. The greatest beneficiary of O'Hare, Mayor Craig Johnson of Elk Grove Village, is one of the biggest supporters of Peotone. By contrast, some communities in my district have 60 people for every one job. Finally, it just so happens that the areas where O'Hare and Midway Airports are located are primarily where whites live. African Americans live primarily south and in the south suburbs. But African American families need economically stable families and communities, who have a future, and can send their children to college too. We need greater economic balance in the Chicago Metropolitan area so that all of the people have jobs and economic security.

5. PEOTONE IS ENVIRONMENTALLY CLEANER

Mr. Lipinski says fifteen environmental groups, including the Sierra Club, support the language in this bill. He's implying they've endorsed it, but he knows better. They've not endorsed it. I also asked Mr. Lipinski to supply me with the names of the other environmental groups he says support the language in this bill—and he's failed to do so. O'Hare is already the largest polluter in the Chicago area. Doubling the number of flights into the 7,000 acres that houses O'Hare means pollution levels will explode. A recent study found there was an excess of 800 new incidences of cancer each year—over and above what would be expected based on the state's average—in eight northeastern communities downwind of O'Hare. Peotone's 24,000 acre site has a built-in environmental safety zone.

6. THIS BILL IS PRECEDENT SETTING

For economic reasons, San Francisco wanted to add new runways, but there were environmental groups that objected. In Atlanta a few years back, Fulton County commissioners went to battle to stop a proposed sixth runway at Hartsfield. In New York, a controversy sprung up over a 460-foot safety overrun at LaGuardia because objections were raised by residents. Mayor James Hahn made a campaign pledge opposing expansion at LAX in Los Angeles, but a pro-expansion coalition is forming. H.R. 3479 sets a precedent that if these controversies can't be worked out locally, they can always be brought to Congress and passed by a suspension of the rules without debate or amendments. This is like putting the Inglewood Police in charge of homeland security!

7. PEOTONE WOULD PROVIDE MORE COMPETITION AND LOWER AIRFARES

The O'Hare expansion plan is an anti-consumer measure. Two airlines—American and United—control roughly 90 percent of the flights in and out of O'Hare. It's a duopoly. And due to a lack of competition, fares at O'Hare continue climbing higher and faster than the national average. Six years ago, O'Hare fares were 21 percent above the national average. Today, they are 33 percent above the national average and cost consumers an extra $1 billion annually.

8. THE SUPREME COURT WILL LIKELY FIND H.R. 3479 UNCONSTITUTIONAL

The U.S. Supreme Court stated in Printz v. United States (1997) that ''dual sovereignty'' is incontestable. It emphasized that the constitutional structural barrier to Congress intruding on a State's sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the Commerce Power—it will create 195,000 jobs and $19 billion in economic activity; (b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis; or (c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state. In short, all of the arguments the Daley/Ryan forces have been using are unconstitutional.

CONCLUSION

If you care anything about the institutional integrity of the House, you should vote *against* this bill because it's inappropriately on the alleged ''non-controversial'' Suspension Calendar. If you think you're voting to build O'Hare and Peotone simultaneously, *you're not*—and you should vote against this bill. If you think you're solving the air capacity crisis in Chicago, *you're not*—vote against H.R. 3479. If you think you're voting for a morally sound, and an economically and racially just bill, *you're not*—vote no. If you think you're protecting the environment and consumers, *you're not*—again you should be against this bill. If you think H.R. 3479 is constitutional, *it's not*—and both Democrats and Republicans should vote against this bill. Vote ''No'' on H.R. 3479!

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ECONOMIC IMBALANCE

Make no mistake. A ''YES'' vote on this bill today is a vote to widen and reinforce the economic and racial divide in Chicago.

For too long, the Chicago area has been fractured—divided in two by geography, opportunity and race.

One Chicago—the North Side and Northwest suburbs—is exploding with growth. With O'Hare having replaced the Downtown Loop as Chicago's economic center, jobs and investment located near the airport have increased dramatically. Today, some North West suburbs, which are primarily white and affluent, have 3 jobs for every person. This Chicago boasts the best schools, the least crime and the lowest property tax rates.

In sharp contrast, the other Chicago—the South Side and south suburbs—is slumping in depression. Today, in some South Side neighborhoods and south suburbs, which are predominantly Black and poorer, there are 60 people for every one job. Jobs and factories have been replaced with unemployment, welfare and crime; local property values have slumped; and local school funding has withered as prison construction has blossomed. In this Chicago, the lack of jobs and investment is disrupting lives, corrupting children and destroying communities.

Look at this Rand McNally easy finder map of Chicago. It includes O'Hare, but doesn't include much of the south side and none of the south suburbs. It's as if Chicago ends at the Museum of Science and Industry.

This tale of two cities is a classic and persistent divide for which Chicago, although not unique, has long been infamous. But rather than bridging this gap and uniting these two Chicagos with a third airport, this bill further concentrates all aviation and economic growth in the already over-saturated corridor from Downtown Chicago to O'Hare. Meanwhile, the South Side and beyond, get nothing.

This imbalance now poses a problem for aviation expansion. The massive development surrounding O'Hare makes airport expansion there costly, time-consuming, difficult and intrusive. Congestion often brings area expressways to a halt; O'Hare is the state's largest polluter; and safety is a growing concern because O'Hare is surrounded by

residential neighborhoods. Expansion would only compound these problems.

The question we must ask ourselves is: Do we continue to invest in an area that is overwhelmed with riches and congestion or do we invest in areas that desperately need jobs and economic development?

I brought with me just some of the many books that document the damaging effects of Chicago's persistent disparities between north and south.

Let me read a passage from just one of these, titled ''When Work Disappears,'' by noted University of Chicago and Harvard University scholar William Julius Wilson. Professor Wilson writes, ''Over the last two decades, 60 percent of the new jobs created in the Chicago metropolitan area have been located in the northwest suburbs of Cook and DuPage County (surrounding O'Hare). African-Americans constitute less than 2 percent of the population in these areas.'' He concluded, ''The metropolitan black poor are becoming increasingly isolated.''

Let's not add to this hefty volume. Let's not continue to perpetuate and exploit this divide. Let's relegate these books to the history section and begin our own new chapter of balanced economic growth and justice in Chicago. I urge a ''no'' vote on this bill.

SUSPENSION CALENDAR ARGUMENTS TO BE AGAINST H.R. 3479

The Suspension Calendar is a procedure that allows House members to vote on noncontroversial bills—like paying tribute to Ted Williams.

Putting H.R. 3479 on the Suspension Calendar, for House traditionalists and institutionalists, ought to strike you as violating the integrity of the established, respected, and utilitarian rules set up in the House. It is inconsistent with the institutional traditions of this body. This is an abuse of power!

It is highly unusual for a bill defeated under suspension of the rules to ever be brought back in the same manner—not to mention a week later. In the entire 106th Congress, no bill defeated on the Suspension Calendar was brought up again. Six Suspension bills have failed in the 107th Congress—all six during the second session. Two of the six were later passed as stand-alone bills in regular order. Not one of the six was brought up again under suspension of the rules. This is an arrogant use of power!

H.R. 3479 should be a ''stand-alone'' bill that is fully debated before the House—with the possibility of adding amendments to improve the bill.

Even if you are with this bill on substance you should be against it on process. This makes a mockery of the suspension of the rules, which is reserved for noncontroversial bills.

This does not have the full support of the Illinois delegation. In the other body, one Illinois senator staunchly opposes it, and one strongly supports it.

This bill is far from being non-controversial. It is controversial for the Illinois delegation, controversial for the community surround O'Hare, controversial for the South Side and south suburbs, and controversial throughout the entire state. The Speaker's participation and the lobbying effort of the last few days underscores the controversy. It does not conceal, but reveals that this is a controversial issue. It does not obscure it, it underscores it. It's so controversial that it's on the Suspension Calendar in order to limit discussion and debate, and prevent amendments.

Today's vote is not about the most efficient and effective way to resolve the aviation capacity crisis at Chicago's O'Hare International Airport. It is not about sound policy and regular procedure, but raw politics and brute political power. This should not be on the Suspension Calendar!

H.R. 3479 DOES NOT REFLECT THE DALEY/RYAN AGREEMENT

This bill has been touted as codifying a secret deal struck between Mayor Richard M. Daley and Governor George Ryan—a deal without public input, where nobody has seen the actual plans, and where total costs are still unknown. But this bill is not that secret deal.

The *Chicago Tribune* reported on December 6, 2001, that Mayor Daley and Governor Ryan had reached ''a deal that would build new runways at O'Hare International Airport. . . . The deal also calls for construction of a new airport near Peotone Ryan has wanted. Daley, who has raised concerns that Peotone would compete with O'Hare, agreed to work with the governor to seek federal funds for construction of the third airport.''

In a December 7th AP story, Senator DICK DURBIN said, ''O'Hare and Peotone are not mutually exclusive. It is not an 'either-or' proposition. We need both and we will have both. . . . On Wednesday, Ryan and Daley reached an historic agreement that would modernize O'Hare International Airport, including east-west parallel runways; construct a south suburban airport near Peotone. . . . Durbin said construction of Peotone will provide a huge economic boost to the south suburbs and help provide travel access to fast-growing areas like Will County.''

The *Chicago Tribune*, in a December 11, 2001, editorial, said, ''Thanks to Daley and Ryan, the gridlock may finally be broken. They have a sound plan. The parameters of it have been before the public for five months. It answers the nightmare of flight delays at O'Hare and gives the south suburbs their best chance to build an airport at Peotone.''

Despite these reports, and what may be said here on the floor today, this bill does not codify a key part of the agreement reached by Mayor Daley and Governor Ryan.

Mr. Speaker, this bill does not make construction of a south suburban airport near Peotone a federal priority.

While it's coming to light that corporate chieftains are cooking books, fudging numbers, and misrepresenting the facts to the public, it is critical that this body, the peoples' House, not do the same.

10TH AMENDMENT ARGUMENTS AGAINST H.R. 3479

Even if H.R. 3479 becomes law, a federal court is likely to find it unconstitutional under the 10th Amendment, which gives certain powers exclusively to the States, including the power to build and alter airports.

The U.S. Supreme Court stated in Printz v. United States (1997) that ''dual sovereignty'' is incontestable.

It emphasized that the constitutional structural barrier to Congress intruding on a State's sovereignty could not be avoided by claiming that congressional authority was:

(a) pursuant to the Commerce Power—it will create 195,000 jobs and $19 billion in economic activity;

(b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis; or

(c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state.

In short, all of the arguments for codifying the Daley/Ryan deal in federal law are unconstitutional.

It sets a dangerous precedent by allowing the federal government to pre-empt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature.

This bill converts the concept of dual sovereignty into tri-sovereignty by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

If this bill passes, it would invite congressional interference on other important aviation issues, leading to a potential rash of demands from various localities for priority standing for airport funding, bypassing reasonable administrative planning, and the environmental review process. Airport expansion issues are bubbling up everywhere—Boston Logan's, New York's LaGuardia, Cleveland's Hopkins, Atlanta's Hartsfield, San Francisco's SFO, and Los Angeles' LAX. Will your state legislature be next to lose its power to decide local airport matters?

Indeed, H.R. 3479 stands federalism on its head. It makes about as much sense as putting your local police department in charge of homeland security.

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW,
Champaign, IL, March 1, 2002.

Re: Proposed Federal legislation granting new powers to the City of Chicago.

Hon. JESSE L. JACKSON, Jr.,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN JACKSON: As you know, I serve as the Albert E. Jenner Professor of Law at the University of Illinois Law School. I have authored a leading course book on Constitutional Law. In addition, I co-author, along with my colleague John Nowak, the widely-used multi-volume Treatise on Constitutional Law, published by West Publishing Company. In addition to my books, I have taught and researched in the area of Constitutional Law since 1974.

I have been asked to give my opinion on the constitutionality of proposed federal legislation entitled ''National Aviation Capacity Expansion Act,'' identical versions of which have been introduced in both the Senate and the House of Representatives by Senator DURBIN and Congressman LIPINSKI (S. 1786, H.R. 3479), hereafter the ''Durbin Lipinski legislation.''

The Durbin-Lipinski legislation seeks to enact Congressional approval of a proposal to construct a major alteration of O'Hare Airport in Chicago. While this legislation focuses on Chicago and the State of Illinois, the issues raised by the legislation have serious constitutional implications for all 50 States.

There are two key components of the legislation that have been the subject of my examination.

First Section 3(a)(3) attempts to give the City of Chicago (a political subdivision and instrumentality of the State of Illinois) the legal power and authority to build a proposed major alteration of O'Hare even though state law does not authorize Chicago to build the alteration without first receiving a permit from the State of Illinois. Chicago, as a legal entity, is entirely a creation of state—not federal law—and Chicago's authority to build airports is essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement that Chicago first obtain a state permit is an integral and essential element of that delegation of state power. The U.S. Constitution prohibits Congress (1) from invading and commandeering the exercise of state power to build airports, and (2) from changing the allocation of state-created power between the State of Illinois and

its political subdivisions. The U.S. Constitution, in short, prohibits Congress from essentially rewriting state law dealing with the delegation of state power by eliminating the conditions, restrictions, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congress' power—which prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter into agreements for a third party (the FAA) to alter O'Hare without first obtaining a permit from the State of Illinois. But Chicago has no state law authority (under the delegation of state power to build and alter airports) to enter into an agreement to engage in a massive alteration of O'Hare without a state permit. Congress cannot confer powers on a political subdivision of a State where the State has expressly limited its delegation of state power to build airports to require a state permit. Congress has no constitutional authority to create powers in an instrumentality of State law (Chicago) when the very authority and power of Chicago to undertake the actions proposed by Congress depends on compliance with—and is contrary to—the mandates of the Illinois General Assembly

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.

SUMMARY OF ANALYSIS

The following is a summary of my analysis:

1. Under the governing United States Supreme Court decisions of New York v. United States and Printz v. United States, 6 which are discussed below, the proposed legislation is not supported by any enumerated power and thus violates the limitations of the Tenth Amendment of the Constitution. In these decisions, the Supreme Court held that legislation passed by Congress, purportedly relying on its exercise of the Commerce Power (nuclear waste legislation in New York and gun control legislation in Printz) was unconstitutional because the federal laws essentially commandeered state law powers of the States as instrumentalities of federal policy.

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

3. Under Illinois law, Chicago (like any other political subdivision of a State) has no authority to undertake any activity (including constructing airports) without a grant of state authority from the State of Illinois. Under Illinois law, actions taken by political subdivisions of the State (e.g., Chicago) without a grant of authority from the State, or actions taken by a political subdivision in violation of the conditions, limitations or prohibitions imposed by the State in delegating the state authority, are plainly ultra vires, illegal, and unenforceable. The City of Chicago is a creature of state law, not federal law.

4. The power exercised by any state political subdivision (e.g., the power to construct airports) is in reality a power of the State—not inherent in the existence of the political subdivision. For the political subdivision to have the legal authority to exercise that state power, there must be a delegation of that state power by the State to the political subdivision. Further, it is axiomatic that any such delegation of state power to a political subdivision must be exercised in accordance with the conditions, limitations, and prohibitions accompanying the State's delegation of that power.

5. In the case of airport construction, the Illinois General Assembly has enacted a statute that delegated to Chicago (and other municipalities) the state law power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly imposed. One basic requirement is that Chicago must first comply with all of the requirements of the Illinois Aeronautics Act—including the requirement that Chicago first receive a permit (a certificate of approval) from the State of Illinois. The Illinois General Assembly has expressly provided that municipal construction or alteration of an airport without such a state permit is unlawful and ultra vires.

6. Section 3(a)(3) of the Durbin-Lipinski legislation expressly authorizes Chicago to proceed with the ''runway redesign plan'' (a multi-billion dollar modification of O'Hare) without regard to the clear delegation limitations and prohibitions imposed by the Illinois General Assembly on the state statutory delegation to Chicago of the state law power to construct airports. Illinois law explicitly says Chicago has no state law authority to build or alter airports without first complying with the Illinois Aeronautics Act, including the state permitting requirements of 47 of that Act. Even though Chicago (a political creation and instrumentality of the State of Illinois) has no power to build or modify airports (a state law power) unless Chicago obtains State approval, Section 3(a)(3) purports to infuse Chicago (which has no legal existence independent of state law) with a federal power to build airports and to disregard Chicago's fundamental lack of power under state law to undertake such actions (absent compliance with state law). Like New York v. United States and Printz v. United States the proposed Durbin-Lipinski legislation involves Congress attempting to use a legal instrumentality of a State (i.e., the state power to build airports exercised through its delegated state-created instrumentality, the city of Chicago) as an instrument of federal power. As the Supreme Court held in New York and Printz, the Tenth Amendment—and the structure of ''dual sovereignty'' it represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section provides that, if (for whatever reason) construction of the ''runway design plan'' is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall construct the ''runway redesign plan'' as a ''Federal Project''. But, Section 3(f)(1) then provides that this ''federal project'' must obtain several agreements and undertakings from Chicago—agreements and undertakings that are controlled by state law, which limits Chicago's authority to enter into such agreements or accept such undertakings. Chicago has no authority under the state law (which confers upon Chicago the state power to construct airports) to enter into agreements with any third party (be it the United States or a private party) to make alterations of an airport without the state permit required by state statute. Thus, Chicago has no authority under state law to enter into an agreement with the FAA Administrator to have the runway redesign plan constructed by the federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition of the delegation of state power (to build airports) to Chicago by the Illinois General Assembly. Just as Chicago (a creation and instrumentality of the State of Illinois) has no power or authority under state law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Section 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both New York v. United States and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both New York v. United States and Printz do not allow).

8. The Durbin-Lipinski legislation is not a law of ''general application''. There is a line of Supreme Court decisions which allow Congress to use the Commerce Power to impose obligations on the States when the obligations imposed on the States are part of laws which are ''generally applicable'' i.e., that impose obligations on the States and on private parties alike. See e.g., Reno v. Condon, 528 U.S. 141 (2000) (federal rule protecting privacy of drivers' records upheld because they do not apply solely to the State); South Carolina v. Baker, 485 U.S. 505 (1988) (state bond interest not immune from nondiscriminatory federal income tax); Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, upheld). But these cases have no application where, as here and in New York and Printz, the Congressional statute is not one of general application but is specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubly unconstitutional, because it does not apply to private parties or even to all States but only to one State (Illinois) and its relationship to one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the State of Illinois. This is an unconstitutional use of the Commerce Power under the holdings New York and Printz and does not fall within the ''general applicability'' line of cases such as Reno v. Condon, South Carolina v. Baker, and Garcia.

ANALYSIS

Before discussing any further the specific provisions of the Durbin-Lipinski legislation, let us review some important background law.

A. The Basic Legal Principles.

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal

Power. Normally, this controversy surrounding the proposed expansion of O'Hare Airport would be left to the state political process. Under Illinois law, the cities in this state have only the power that the State Constitution or the legislature grants to them, subject to whatever limits the State imposes. This legal principle has long been settled.

Nearly a century ago, the U.S. Supreme Court, in Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) held that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give them, subject to whatever limits the States choose to impose:

This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. [Citations omitted.] It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

Hunter held that a State that simply takes the property of municipalities without their consent and without just compensation did not violate due process. While Hunter is an old case, it still is the law, and the Seventh Circuit recently quoted with approval the language reprinted here.

The Illinois Aeronautics Act Expressly Limits Chicago's Power to Build and Alter. The State of Illinois has delegated to Chicago the power to build and alter airports. But that power is expressly limited by the requirement that Chicago must comply with the Illinois Aeronautics Act. And the Illinois Aeronautics Act provides that Chicago has no power to make ''any alteration'' to an airport unless it first obtains a permit, a ''certificate of approval,'' from the State of Illinois. Finally, Chicago has not obtained this certificate of approval. That fact is what has led to the proposed federal intervention.

B. The Federalism Problem.

As mentioned above, section 3(a)(3) of the proposed federal law overrides the licensing requirements of §47 of the Illinois Aeronautics Act. This section states:

(3) The State shall not enact or enforce any law respecting aeronautics that interferes with, or has the effect of interfering with, implementation of Federal policy with respect to the runway redesign plan including sections 38.01, 47, and 48 of the Illinois Aeronautics Act.

In addition, section 3(f) authorizes Chicago to enter into an agreement with the federal government to construct the O'Hare Airport expansion. This project is called a ''Federal project,'' but Chicago must agree to construct the ''runway redesign as a Federal Project,'' and Chicago provides the necessary land, easements, etc., ''without cost to the United States.''

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion approved by the Administrator of the Federal Aviation Administration. But, under state law, Chicago cannot expand O'Hare because it does not have the required state permit.

There is no doubt that the O'Hare Airport is a means of interstate commerce, and Congress may certainly impose various rules and regulations on airports, including O'Hare. Congress, for example, may decide to require airport security and require that the security agents be federal employees. Or, Congress could provide that it would build and take over the O'Hare Airport and construct expansion if the State of Illinois refused to do so.

Congress may also use its spending power to take land by eminent domain and then construct or expand an airport, no matter what the state law provides. The limits on the spending clause are few.

But, the proposed law does not take such alternatives. It does not impose regulations on airports in general, nor does it exercise the very broad federal spending power. Nor does the proposed law authorize the federal government take over ownership and control of O'Hare Airport. Instead, it seeks to use an instrumentality of state power (i.e., the state law power to build airports as delegated to a state instrumentality, the city of Chicago) as an exercise of federal power.

The proposed federal law is stating that it is creating a federal authorization or empowerment to the City of Chicago to do that which state law provides that Chicago may not do—expand O'Hare Airport without complying with state laws that create the City of Chicago and delegate to it certain limited powers that can be exercised only if within the limits of the authorizing state legislation.

NEW YORK V. UNITED STATES

The proposed federal law is very similar to the law that the Supreme Court invalidated a decade ago in New York v. United States. The law that New York invalidated singled out states for special legislation and regulated the states' regulation of interstate commerce. The proposed Durbin-Lipinski legislation singles out a State (Illinois) for special legislation and regulates that State's regulation of interstate commerce dealing with O'Hare Airport.

While the law in this area has shifted a bit over the last few decades, it is now clear that Congress can use the Interstate Commerce Clause to impose various burdens on States as long as those laws are ''generally applicable.'' The federal law may not single out the State for special burdens. For example, Congress may impose a minimum wage on state employees in, or affecting, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress can regulate the States using the Commerce Clause if it imposes requirements on the States that are generally applicable—that is, if it imposes the same burdens on private employers. Congress cannot single out the States for special burdens; it cannot commandeer or take control over the States or order a state legislature to increase the home rule powers of the City of Chicago; it cannot enact federal legislation that adds to or revises Chicago's state created and limited delegated powers.

The leading case, New York v. United States, held that the Commerce Clause does not authorize the Federal Government to conscript state governments as its agents. ''Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.'' The proposed Durbin-Lipinski legislation will do exactly what New York prohibits: it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

New York invalidated a legislative provision that is strikingly similar to the proposed federal Durbin-Lipinski legislation. The Court, in the New York case, considered the Low-Level Radioactive Waste Policy Amendments Act of 1985. Congress was concerned with a shortage of disposal sites for low level radioactive waste. The transfer of waste from one State to another is obviously interstate commerce. Congress, in order to deal with the waste disposal problem, crafted a complex statute with three parts, only one of which was unconstitutional. There were a series of monetary incentives, which the Court unanimously upheld under Congress' broad spending powers. Congress also authorized States that adopted radioactive waste and storage disposal guidelines to bar waste imported from States that had not adopted certain storage and disposal programs. The Court, again unanimously, relied on long-settled precedent that approves of Congress creating such trade barriers in interstate commerce.

Then the Court turned to the ''take title'' provisions and held (six to three) that they were unconstitutional. The ''take title'' provision in effect required a State to enact certain regulations and, if the State did not do so, it must (upon the request of the waste's generator or owner), take title to and possession of the waste and become liable for all damages suffered by the generator or owner as a result of the State's failure to promptly take possession.

The Court explained that Congress could, if it wished, preempt entirely state regulation in this area and take over the radioactive waste problem. But Congress could not order the States to change their regulations in this area. Congress lacks the power, under the Constitution, to regulate the State's regulation of interstate commerce. That is what the proposed federal O–Hare Airport bill will do: it will regulate the State's regulation of interstate commerce by telling the State that it must act as if the City of Chicago has complied with the Illinois Aeronautics Act and other state rules.

In a nutshell, Congress cannot constitutionally commandeer the legislative or executive branches. The Court pointed out that this commandeering is not only unconstitutional (because nothing in our Constitution authorizes it) but also bad policy, because federal commandeering serves to muddy responsibility, undermine political accountability, and increase federal power.

The proposed Durbin-Lipinski legislation prohibits Illinois from applying its laws regulating one of its cities. The proposed federal law also authorizes the federal government to make an agreement with Chicago, pursuant to which Chicago will assume some significant obligations, even though present state law gives Chicago no authority to engage in this activity. As the six to three New York decision made clear:

A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress. . . . No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one

views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution.

The proposed Durbin-Lipinski legislation is very much like the law that six justices invalidated in New York. The O'Hare bill provides that, no matter what the State chooses, ''it must follow the direction of Congress.'' The State has ''no option other than that of implementing legislation enacted by Congress.''

The Court in New York went on to explain that there are legitimate ways that Congress can impose its will on the states:

This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.

The Court then discussed those two alternatives. First, there is the spending power, with Congress attaching conditions to the receipt of federal funds. The proposed Durbin-Lipinski legislation rejects the spending power alternative. Second, ''where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation.'' The proposed Durbin-Lipinski legislation rejects that alternative as well. It does not propose that Congress directly takeover and expand O'Hare Airport. Instead, it proposes that the City of Chicago be allowed to exercise power that the State does not allow the City to exercise.

New York v. United States did not question ''the authority of Congress to subject state governments to generally applicable laws.'' But Congress cannot discriminate against the States and place on them special burdens. It cannot commandeer or command state legislatures or executive branch officials to enforce federal law. Congress can regulate interstate commerce and States are not immune from such regulation just because they are States. For example, Congress can forbid employers from hiring child labor to work in coal mines, whether a private company or a State owns the coal mine and employs the workers.

Printz v. United States. Following the New York decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials, in Printz v. United States. The Brady Act, for a temporary period of time, required local law enforcement officials to use ''reasonable efforts'' to determine if certain gun sales were lawful under federal law. The federal law also ''empowered'' these local officers to grant waivers of the federally prescribed 5-day waiting period for handgun purchases Note that the proposed Durbin-Lipinski legislation will also ''empower'' the City of Chicago to do that which Illinois does not authorize the city to do.

To make the analogy even more compelling, the chief law enforcement personal suing in the Printz case said that state law prohibited them from undertaking these federal responsibilities. That, of course, is the exact position in which Chicago finds itself. State law prohibits Chicago from entering into and committing to these federal responsibilities (e.g., the agreements between Chicago and the FAA in §3(f) of the proposed Durbin-Lipinski legislation call for construction as a ''federal project'' but then require Chicago to either construct or allow construction without a permit from the State of Illinois).

We should realize that the proposed Durbin-Lipinski legislation—in commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago—is quite unusual and not at all in the tradition of federal legislation. For most of our history, Congress would explicitly only ''recommend'' or ''request'' the assistance of the governors and state legislatures in implementing federal policy. It is only in very recent times that Congress has sought explicitly to commandeer or order the legislative and executive branches of the States to implement federal policies. Because such federal legislative activity is recent, the case law in this area is recent, but the case law is clear in prohibiting this type of federal assertion of power.

New York v. United States held that Congress cannot ''command a State government to enact state regulation.'' Congress may regulate interstate commerce directly, but it may not ''regulate state governments'' regulation of interstate commerce.'' The Federal Government may not ''conscript state governments as its agents.'' Congress has the ''power to regulate individuals, not States.''

In short, there are important limits on the power of the federal government to commandeer the state legislature or state executive branch officials for federal purposes. Another way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called ''unfunded mandates'' on state officials. Congress cannot simply order the States or state officials or a city to take care of a problem. Congress can use its spending power to persuade the States by using the carrot instead of the stick.

While there are those who have attacked the restrictions that New York v. United States have imposed on the Federal Government, it is worth remembering the line-up of the Court in Maryland v. Wirtz when the justices first considered this issue. That case rejected the applicability of the Tenth Amendment and held that it was constitutional for Congress to set the wages, hours, and working conditions of employees, including state employees in interstate commerce. However, Justice Douglas, who was joined by Justice Stewart, dissented. Douglas found the law to be a ''serious invasion of state sovereignty protected by the Tenth Amendment'' and ''not consistent with our constitutional federalism.'' He objected that Congress, using the broad commerce power, could ''virtually draw up each State's budget to avoid 'disruptive effect[s]' '' on interstate commerce. New York v. United States prevents this result.

The ''generally applicable'' restriction is important, and it explains Reno v. Condon. Congress enacted the Driver's Privacy Protection Act (DPPA), which limited the ability of the States to sell or disclose a driver's personal information to third parties without the driver's consent. Chief Justice Rehnquist, for a unanimous Court, upheld the law as a proper regulation of interstate commerce and not violating any principles of federalism found in New York v. United States or Printz because the law was ''generally applicable.''

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtained the information from a state DMV. The Court concluded: ''The DPPA's provisions do not apply solely to States. Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

Unlike the law in New York, the Court concluded that the DPPA does not control or regulate the manner in which States regulate private parties, it does not require the States to regulate their own citizens, and it does not require the state legislatures to enact any laws or regulations. Unlike the law in Printz, the DPPA does not require state officials to assist in enforcing federal statutes regulating private individuals. This DMV information is an article of commerce and its sale or release into the interstate stream of business is sufficient to support federal regulation.

The DPPA is a ''generally applicable'' federal law regulating commerce because it regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the states as initial suppliers and the private resellers or redisclosers of this information. ''South Carolina has not asserted that it does not participate in the interstate market for personal information. Rather, South Carolina asks that the DPPA be invalidated in its entirety, even as applied to the States acting purely as commercial sellers.''

CONCLUSION

The proposed federal law dealing with the O'Hare Airport expansion is most likely unconstitutional because it imposes federal rules on the relationship between a city and the State that created the city. It subjects Illinois to special burdens that are not generally applicable to private parties or even to other States. It authorizes the City of Chicago to do that which Illinois now prohibits.

There is no escape from the conclusion that the proposed federal law does not regulate the behavior of private parties in interstate commerce. It does not subject the State of Illinois to ''generally applicable'' legislation. Instead, Congress is regulating the state's regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,
The Albert E. Jenner, Jr. Professor of Law.

MEMORANDUM

July 13, 2002.

Re Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

To: Senator Peter Fitzgerald; Congressman Henry Hyde; Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Sandy Murdock asked me to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law

override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with § 47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a ''certificate of approval'' from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville before seeking a certificate of approval. In testimony at the July 9, injunction hearing before Judge Webster, the lead IDOT official in charge of the IDOT approval process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT's approval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition and consider this harm as a basis of its decision—but only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire by condemnation or otherwise all of Bensenville, Wood Dale, Elk Grove Village (thousands of homes and businesses) and any other municipality—without any need for a prior certificate of approval form IDOT under § 47.

Thankfully, Judge Webster rejected Chicago and IDOT's claims and applied and enforced the plain language of the statute—prohibiting Chicago from acquiring and demolishing homes and businesses in another municipality without first obtaining a certificate of approval from IDOT.

It is important for you to understand that the preemption approach of the Lipinski Bill (as well as Durbin's) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§ 47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. Under the Illinois Constitution, Chicago has only that condemnation authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law (''Dillon's rule'' followed in almost all of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed against assertions of authority by the municipality.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes in the Illinois Municipal Code (65 ILCS 5/11–102–4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code (65 ILCS 5/11–102–10) that this grant of authority to condemn must be in accordance with the requirements of the Illinois Aeronautics Act.

3. Acquisition of land by Chicago without complying with the Illinois Aeronautics Act is thus not only a violation of the Illinois Aeronautics Act, such failure constitutes an unlawful ultra vires action by Chicago in violation of the Illinois Constitution and the Illinois Municipal Code. Without compliance with the Illinois Aeronautics Act, Chicago has no authority under either Article VII, Section VII of the Illinois Constitution and no authority under the Illinois Municipal Code to acquire land in other municipalities.

The Lipinski (and Durbin) legislation seeks to ''preempt'' and destroy the Illinois Aeronautics Act, but in doing so the Lipinski (and Durbin) legislation attempts to destroy and rewrite the framework created by the Illinois Constitution and the Illinois Municipal Code. Why not just abolish state constitutions and state statutory codes altogether and let Congress rewrite the state constitutions and state statutory codes of all 50 states?

Beyond the enormous legal implications of such action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to condemn land in other municipalities even though no such authorization exists for Chicago to do so under the Illinois Constitution or Illinois Municipal Code.

2. The Lipinski (and Durbin) legislation will ''authorize'' Chicago to engage in unfettered condemnation authority with the ability to acquire and destroy thousands of homes and businesses in many other municipalities—all in violation of the limits on Chicago's state constitutional and state Municipal Code authority imposed by the Illinois Constitution and Illinois General Assembly.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago unfettered ability to condemn properties outside the City of Chicago. If applied in other states, it would ''authorize'' one municipality (whichever municipality Congress chose) to disregard the limits on that municipality's delegated powers created by that state's constitution and state statutory code) and to condemn land in any other municipality in that state—in total federal preemption of that state's constitution and municipal code.

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal ''authorization'' to one municipality in a state to run roughshod over other municipalities in that state in violation of the state constitution and municipal statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt § 38.01 of the Illinois Aeronautics Act, 620 ILCS 5/38.01. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the State of Illinois to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O'Hare, the Lipinski (and Durbin) legislation will literally ''open the chicken coop'' to widespread potential for corruption.

GOOD GOVERNMENT VS. CITY HALL CORRUPTION

It's hard to pinpoint Chicago City Hall's position on airports because it changes about as often as the wind in the Windy City.

In 1988, City Hall opposed a new airport or O'Hare expansion, saying they were unnecessary. In 1990, City Halls said a new airport was needed and proposed building one on the South Side near Lake Calumet. In 1994, City Hall abandoned the Lake Calumet Airport proposal and once again claimed no new runways were needed.

Just last year, the Mayor held a press conference to reiterate that O'Hare could handle all regional capacity needs until 2012, and that no runways were needed. Then in 2002, the Mayor changed course again and said six new runways were needed at O'Hare immediately. We don't need it. We need it. We don't need it. We need it. What is it?

Through all the flipflopping, one factor has remained consistent. That is City Hall's desire to protect cronyism and pin-striped patronage at O'Hare. The Chicago Tribune last year won a Pulitzer Prize for writing about what it called in one editorial: ''Daley and the stench at O'Hare.'' Mr. Speaker, I ask for unanimous consent to enter this editorial into the record.

The Tribune's continuing series recounted numerous insider deals that enriched the Mayor's family, friends and contributors. And these aren't penny-annie deals. For example, the City handed out $400 million to 30 engineering firms in no-hid contracts—when the City denied it was working on expansion plans. A longtime mayoral friend was paid $1.8 million to arrange a meeting with a concessionaire. Another friend was paid $480,000 to lobby for O'Hare, even though he wasn't a lobbyist. Meanwhile, airport vendors, concessionaires and businesses tied to O'Hare gave the mayor $360,000 in campaign gifts, according to the Tribune.

More recently, Chicago unveiled plans to spend $1.3 billion for terminal improvements at O'Hare. After viewing the plan, U.S. Transportation Secretary Norman Mineta remarked that the massive project included ''not one dime for new capacity.'' Mineta joked, ''O'Hare will have the finest food court in America.''

Now the City says trust us to build six new runways for billions of dollars.

The bottom line is: City Hall's repeated flip-flopping; its insider deals; and decades of deceit on this important issue have left it with little credibility.

I oppose such a deal. The City has strained its credibility and blocked the doorway to opportunity long enough. The region is paying with lost jobs, high fares, poor service and political corruption.

This airport debate is about good government. A third airport would protect taxpayers interests and improve service, while also resolving our nation's aviation crisis quicker, cheaper, safer and cleaner.

CONSUMER PROTECTION FARES

The O'Hare expansion plan is an anti-consumer measure.

Two airlines—American and United Airlines—control roughly 90 percent of the flights in and out of O'Hare. Combined, they have a monopoly.

Due to a lack of competition, fares at Chicago O'Hare continue climbing higher and faster than the national average. Six years ago, O'Hare fares were 21 percent above the national average. Today, they are 33 percent

above the national average. In real terms, Chicagoans today pay more than $1 billion a year in overcharges to use O'Hare.

The Secretary of Transportation in Illinois often tells a story about his travels from Springfield Illinois to Washington. If he flies from Springfield to O'Hare and then to Washington, it costs him about $400. However, if he drives from Springfield to O'Hare and then flies to Washington—on the exact same plane—it costs him nearly $1,500, or three times more. That's because Springfield has competition. From there, one can choose to fly through Chicago or St. Louis. The poor traveler in Chicago has few options. And he or she pays mightily.

O'Hare's monopoly fares have been the subject of analysis in recent years by the General Accounting Office, the U.S. DOT and the State of Illinois, among others. Each study concluded that O'Hare fares are considerably higher than average simply because of a lack of competition.

A lack of competition has also resulted in airlines reducing service or methodically abandoning service to less-profitable markets, which severely hurts the economy of small and mid-sized cities.

In the past 10 years, O'Hare has terminated service to more than a dozen markets, from South Carolina to North Dakota.

Will adding new runways at O'Hare increase competition or lower fares? It's unlikely.

A few years ago, Congress lifted the restrictions on slots for commuter flights at O'Hare—theoretically in the name of increasing competition. However, the vast majority of the new slots were snapped up by commuters planes owned by or affiliated with United and American. Why, because only United and American provide a network of connecting flights.

Now, the airlines will tell you that no carrier wants to come to Peotone. But that's simply not true. At least two airlines—Spirit and Virgin—have said they would love to fly out of a third airport. Moreover, last summer the CEO of American Airlines, Donald Carty, said American would use Peotone.

This airport debate is about consumer protection. A third airport will increase competition, which will reduce fares, while also resolving our nation's aviation crisis quicker, cheaper, safer and cleaner.

STOP O'HARE EXPANSION

LET 2,000 SOULS REST IN PEACE

DEAR COLLEAGUE: Two historic cemeteries stand in the path of the runways proposed under a plan to expand Chicago O'Hare International Airport. For this and many reasons more, we urge you to oppose H.R. 3479 or any legislation that would essentially force the Federal Aviation Administration to tear down and reconstruct O'Hare. We believe this legislation is constitutionally suspect, deeply divisive, environmentally flawed, wasteful and dangerous.

Many of you might be wondering why this issue should matter to you. Well, the answer is simple. If this atrocity could happen in our backyards, it could happen in yours!

On the reverse side of this page, please read an article that was printed in the Chicago Sun-Times detailing the ''royal mess'' that happened when contractors tried to move thousands of bodies in a nearby cemetery when St. Louis Lambert Airport expanded in the 1990s.

Near O'Hare, there are two cemeteries: St. Johnannes Cemetery (owned and maintained by St. John's United Church of Christ) and Resthaven Cemetery (affiliated with the Methodist Church). Most people have never heard of these cemeteries, but they serve as the final resting place of some of the first Illinois pioneers, as well as many of their modern era descendants. These cemeteries have served this purpose for more than 150 years since their first church members were laid to rest in the 1840s.

These individuals, their descendants and 1,600 other souls lie at rest in St. Johnannes, including some buried within the last year. Hundreds of others lie at rest at Resthaven, including mayors, business owners, farmers, factory workers, soldiers and housewives. Members of the Potowatamie tribe also are buried at Resthaven.

Illinois law states that a cemetery cannot be removed without the owner's consent, but that hasn't stopped the City of Chicago from planning to dig up these souls despite both churches stating publicly that they do not intend to provide consent.

Again, we implore you to vote against H.R. 3479. Let the dead rest in peace.

HENRY HYDE.
JESSE JACKSON, Jr.
PHIL CRANE.

[From the Chicago Sun-Times, July 14, 2002]

MOVING GRAVES CAN BE 'ROYAL MESS'

(By Robert C. Herguth, Transportation Reporter)

In the 1990s, St. Louis' Lambert Airport moved thousands of bodies from the crumbling, mostly black Washington Park Cemetery to make way for a transit line and create a larger, flatter buffer for runways.

Trouble, it turned out, was almost as bountiful as bones. An archaeologist hired to help with disinterment was accused of snatching limbs and yanking out teeth, supposedly for research, and later of hiding corpses to ensure he got paid. A state inspector climbed into a burial vault and held what was described as a ''mock funeral.''

There also were reports of coffins being accidentally pulverized by machinery.

''That was a royal mess,'' a person associated with the project recently remarked.

While an extreme example, the St. Louis work demonstrates how bad an already difficult and delicate process can get.

And it serves as a cautionary tale as the City of Chicago—using one of the same consultants involved in the Washington Park effort—makes plans to bulldoze two historic suburban cemeteries, and 433 acres of homes and businesses, to accommodate a proposed O'Hare Airport runway expansion.

''We've thought about those kinds of things,'' said Bob Sell, referring to Lambert's problems.

The Loop attorney has dozens of relatives buried at St. Johannes Cemetery, which is targeted for relocation, along with tiny Resthaven Cemetery.

''The notion of someone going to the cemetery and putting a shovel to my family member is horrible. That something could go wrong in that process, it makes me sick to my stomach.''

Like many homeowners in the proposed expansion zone, leaders of Resthaven and St. Johannes don't want to sell. One and perhaps both graveyards will fight the city in court, cemetery officials said.

The process, as of last Tuesday, is in a holding pattern because of a DuPage County judge's ruling in a different lawsuit. The judge ordered Chicago to halt land buys until it receives a state permit, something city officials believe is unnecessary and will appeal. Meanwhile, the city won't even be negotiating sales.

In another room Tuesday in another part of DuPage, a different aspect of the same thorny issue played out as two of the city's hired guns met for the first time with leaders of Resthaven to ''open up the dialogue.''

That's how Jeff Boyle—a former top aide to Mayor Daley now being paid $240 an hour as a no-bid consultant—portrayed the meeting at the Bensenville Community Public Library.

Resthaven president Lee Heinrich, vice president Bob Placek and their attorney said they were there to listen to Boyle and another consultant, Robert Merryman of O.R. Colan Associates.

Merryman—after Boyle nearly canceled the meeting because of the presence of a reporter and the lawyer—outlined several options, all of which involved the city buying the cemetery land.

''Let's start with the assumption that you have to go,'' he said softly, speaking in the consoling tones of a funeral director.

''The airport could simply purchase Resthaven and Resthaven is no more,'' he said.

The second possibility, he said, would be to ''functionally replace Resthaven'' by building ''a new Resthaven'' elsewhere.

Third, he said, the cemetery could be moved to another graveyard, where ''a section can be Resthaven.'' Headstones and monuments would go with the remains, the city would cover costs, and if some families wanted relatives reburied elsewhere, that would be fine, too, he said. Relatives could decide who ''disinters and reinters the body,'' and help monitor the process, he said.

Merryman's company was involved in the Washington Park Cemetery relocation. The firm did not select the archaeologist facing the allegations of desecrating the remains and, in fact, was asked ''to come and correct the situation,'' according to Chicago Aviation Department spokeswoman Monique Bond.

The firm also helped handle the ''land acquisition aspects'' of moving graves from Bridgeton Memorial Cemetery in St. Louis, which currently is being excavated to make way for new and longer runways at Lambert, said Lambert spokesman Mike Donatt.

HOW A CEMETERY IS MOVED

Locating and moving remains can be a tough process, but it's one played out quite frequently for road, airport and other public works projects, said Randolph Richardson.

He owns Kentucky-based Richardson Corp., which does the physical part of relocating graves.

For big jobs, Richardson may bring in 15 workers in blue jeans and knee boots, and heavy equipment. After mapping a cemetery, a worker with a ''probe rod'' tries to gauge the depth of graves and directs a backhoe operator on how far to dig. ''If the grave itself is 6 feet deep you dig down around 4½ feet, and the rest of it is hand digging,'' he said.

''Say we've got a row of 50 graves, we'd start at the end with a backhoe, the man with the probe rod is guiding the backhoe to tell him how deep to go, we dig a trench to expose those 50 graves, that allows us to get the men in there to work,'' he said.

Bodies are placed in individual wooden boxes—there are several sizes—unless coffins are intact, he said, adding that his workers may get tetanus shots before a project because of old rusty nails.

Caskets are put on trucks and driven to their new resting place, he said. His company typically charges between $1,000 and $1,500 per body.

Richardson, whose firm relocated some of the bodies from St. Louis' Washington Park, recalls some of the trouble there, but insists things usually are more smooth.

GUARDS QUESTIONING VISITORS

Boyle and Chicago's first deputy aviation commissioner, John Harris, have said they want to handle their cemetery situation with dignity and sensitivity. But the city is having its own public relations headaches.

The cemeteries are outside Chicago's borders, but can only be reached by a city-owned access road monitored by city guards.

Twice this month, a guard approached a St. Johannes visitor at the cemetery, questioned the person and asked that they ''sign in.''

In the first instance, the visitor said, he was interrupted while praying at a grave site, and after refusing to sign in was met by five Chicago police cars on the access road. The visitor in the second case was the pastor of the church that owns St. Johannes.

Just before being confronted—on Wednesday, after the judge's ruling—the minister was surprised to find four O.R. Colan employees nosing around graves at St. Johannes, apparently taking down names from headstones, although they had no permission to be there.

''They said they were doing a study,'' Sell said. ''They're trespassing on private property.''

Merryman did not return phone calls. City officials were at a loss to explain.

But Roderick Drew, a spokesman for Daley, said Friday that there's been a ''change in policy'' that ''nobody will have to sign in any more.''

''Anybody who wants access to that cemetery during those posted hours will not be stopped, will not have to sign in,'' he said, adding that the sign in ''has turned out to be a much greater inconvenience to the people who access it.''

FLOOR STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR., OPPOSING H.R. 3479: THE NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002—MONDAY, JULY 15, 2002 WASHINGTON, DC

Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I rise in opposition to H.R. 3479.

Votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is non-controversial is like arguing that the elimination of estate taxes, gun control legislation, a patients bill of rights, and prescription drug benefits for seniors should all be on the suspension calendar. H.R. 3479 is one of the most controversial bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation (our two U.S. Senators are divided over it), in all House and Senate Committees, in the full Senate, and, if a full debate were held on the House floor today, the NATION would see just how controversial this bill is.

This bill has already been delayed in the Senate with one virtual filibuster—and it will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the Senate again. Hardly non-controversial!

To tear down and rebuild O'Hare will cost taxpayers three times as much money as it will cost to build a third South Suburban airport—$15–20 billion (not the $6.6 billion generally used) versus $5–7 billion. This bill is hardly noncontroversial for taxpayers!

Tearing down and rebuilding O'Hare is estimated to take 15-to-20 years, assuming it proceeds on schedule, without lawsuits—not likely—while building a new South Suburban Airport would take five years, it would expand thereafter as need arises, and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How is that not controversial?

This bill will double the noise pollution in the suburban communities surrounding O'Hare. It is hardly non-controversial in the polluted northwest suburbs of Chicago.

Doubling the traffic in the air space around O'Hare from 900,000 to 1.6 million operations will make flying into O'Hare less safe for the public—hardly noncontroversial for the flying public.

This bill will increase environmental pollution—O'Hare is already the number one polluter in Illinois—hardly non-controversial for those having to live in the increased pollution.

The Chicago Tribune won a Pulitzer Prize for documenting ''sleaze'' surrounding the City of Chicago and past O'Hare construction, vender, and service contracts. By passing this bill—and removing the Illinois Aeronautics Law and by-passing the Illinois General Assembly—we are virtually sanctioning more ''sleaze'' to be found around O'Hare construction, vender, and service contracts. Since when has such potential ''sleaze'' become non-controversial for Congress.

I don't consider the Federal Government running over any future Governor of Illinois, the Illinois General Assembly, the Illinois Aeronautics Law, and the 10th Amendment of the U.S. Constitution—to build an airport—non-controversial.

Finally, we're already finding out how controversial this bill is as Judge Hollis Webster on July 9, 2002, stopped the City of Chicago from running rough-shod over their northwest suburban neighbors by illegally trying to buy up and tear down their homes and businesses to make room for O'Hare expansion. This is just one of many controversial lawsuits that have been and will be filed in the future if this bill passes and becomes law.

How is tearing down and rebuilding O'Hare—which will be three times as expensive, take three times longer, be less protective of the environment, make the skys less safe, and be a less permanent solution than building a third airport—non-controversial? I say, solve the current air capacity crisis by building Peotone first, faster, cheaper, and safer, then evaluate what needs to be done with O'Hare.

H.R. 3479 falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing the current air capacity crisis surrounding O'Hare. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environmental impact. About federal precedence—and I associate myself completely with the remarks of my good friend, Mr. HYDE.

Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill—constitutionality.

The attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court:

''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, *it lacks the power directly to compel the States to require or prohibit those acts*.''—New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added).

It is incontestable that the Constitution established a system of ''*dual sovereignty*.''—Printz v United States, 521 U. S. 898, 918 (1997) (emphasis added).

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. 1, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''—ld at 918–919.

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.—Id at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991).

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either (a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or (b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 3479 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

''Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.''—Commissioners of Highways, 653 F.2d at 297.

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports.

Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide for the record.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge members to reject this unprecedented, unwise, and unconstitutional bill.

TESTIMONY OF CONGRESSMAN JESSE L. JACKSON, JR. BEFORE THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, UNITED STATES CONGRESS

OVERSIGHT HEARING ON THE STATE OF COMPETITION IN THE AIRLINE INDUSTRY—JUNE 14, 2000

Mr. Chairman, Ranking Member Conyers, members of the Judiciary Committee. Thank you for the opportunity to present my concerns about monopoly abuses in the airline industry—particularly the apparent agreement by the so-called ''Big Seven'' major airlines not to compete in each other's Fortress Hub markets. I know much of the discussion at today's hearing will focus on the recently announced merger between United and US Air and the potential responsive mergers between American and Northwest and between Delta and some other major airline. That these mergers are anti-competitive and should be prohibited is self-evident.

While I will address the issue of these proposed or potential mergers, I believe it important to focus on today's monopoly environment in the airline industry. It is true that the proposed mergers will make the monopoly problem worse. But what needs to be emphasized is that today—even if the proposed or potential mergers never reach fruition or are ultimately rejected—the major airlines have currently created a monopolistic system of Fortress Hubs that represents a blatant violation of federal antitrust laws. Moreover, if government estimates are correct, these current monopoly abuses at Fortress Hubs are costing air travelers—especially business travelers—billions of dollars a year in excess fares.

Therefore my remarks will focus on the antitrust violations of the current Fortress Hub system created and maintained by the major airlines. That the proposed or potential mergers are an unacceptable expansion of monopolization is a given. But this Committee, the entire Congress, and the Administration need to develop and implement specific concrete and comprehensive solutions to the existing Fortress Hub monopoly problem.

Thankfully, we do not address this problem in a vacuum. The Suburban O'Hare Commission—an intergovernmental body of local governments adjacent to O'Hare airport—has recently issued a comprehensive report on the national Fortress Hub problem entitled If You Build It, We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market. The Suburban O'Hare Commission report contains a detailed analysis and description of the monopoly problem presented by the Fortress Hub system and I won't repeat all those details here. But I would like to highlight several issues from the report and discuss recommended solutions to the Fortress Hub problem both nationally, and in Chicago.

1. Northwest owns Minneapolis and Detroit; Delta owns Atlanta and Cincinnati; American and United own Chicago; US Air owns Pittsburgh.

Ever since the passage of deregulation legislation in 1978, the major airlines have consolidated their economic power into a series of geographically distinct ''Fortress Hubs''. Thus everyone knows that Northwest Airlines dominates air travel to and from Minneapolis and Detroit; Delta dominates air travel to and from Atlanta and Cincinnati; United and American dominate air travel to and from Chicago; and US Air dominates air travel to and from Pittsburgh.

2. These Fortress Hub markets have economically attractive business travel markets that should—in normal circumstances—attract competition to service those markets.

Virtually all of the major Fortress Hub markets are located in thriving urban business centers. This means that in all major Fortress Hub markets there is a large pool of business travelers who would like to travel from the Fortress Hub to other destinations.

One would assume that this pool of business travelers would be an attractive market for major airlines to compete with one another for this traffic. One would assume therefore that United would—under normal circumstances—wish to compete with Delta for the business traveler based in Atlanta. Similarly, Delta would—under normal circumstances—wish to compete with United and American for the business travel market based in Chicago or with Northwest for the business market in Minneapolis or Detroit.

But we do not have normal circumstances here. We do not see Northwest coming before Congress complaining about their inability to compete with Delta in Atlanta for the lucrative business travel market. We do not see Delta coming before Congress complaining about their inability to compete with Northwest in Detroit for the lucrative business travel market there or their inability to compete with United and American in Chicago for the business travel there. Instead we have a collective decision by the major airlines—the so-called ''Big Seven''—not to compete in each other's major hub markets.

3. This decision by the Big Seven Not To Compete Appears to Be a ''Per Se'' Violation of federal Anti-trust laws.

Given this obvious collective decision by the Big Seven to stay out of each other's Fortress Hub markets and this collective decision not to compete for lucrative business travel in those markets, the obvious question is: Do these geographic allocation of

Fortress Hub markets by the major airlines constitute ''per se'' violations of federal antitrust laws. As set forth in the Suburban O'Hare Commission report, a multitude of Supreme Court decisions uniformly condemn horizontal geographic market allocations—such as is present in the geographic allocation of Fortress Hub markets—as ''per se'' violations of the Sherman antitrust law.

4. The Fortress Hub Monopoly System Costs Travelers—especially business travelers—billions of dollars per year in excess fares.

The concentration of market power in the hands of one or two airlines in a single geographic market inevitably leads to the temptation by the dominant carriers to raise prices to higher levels than would be the case if there was significant competition in that market. The General Accounting Office (GAO) has warned us for years that concentration of market power in one or two airlines has led and will lead to significantly higher prices than would otherwise be the case with aggressive competition.

The State of Illinois has produced two studies which suggest that the monopoly premium paid by travelers at Fortress O'Hare alone is on the order of several hundred million dollars per year—monopoly overcharges taken from the traveler by United and American because of the lack of significant competition in the O'Hare market. Extended nationally, these monopoly overcharges are likely to exceed several billion dollars per year being paid by the nation's air travelers. The segment of the travelling public that bears the brunt of these monopoly overcharges is the business traveler. The anecdotal evidence is overwhelming that the time-sensitive business traveler is being charged exorbitant prices for business travel. It is clear that the Big Seven cartel is maintaining the Fortress Hub system—and reaping huge monopoly induced revenues—on the backs of the business traveler.

5. The Big Seven's refusal to Compete In Chicago—If You Build It We Won't Come.

Metropolitan Chicago makes a good case study of the collective refusal of the other members of the Big Seven to compete with United's and American's dominance of the Chicago air travel market. As discussed in the Suburban O'Hare Commission report, the evidence is clear that United and American—in concert with their fellow members of the Air Transport Association (ATA)—have engaged in a collusive effort to stop construction of major new capacity in metropolitan Chicago.

Here we have explicit evidence of the other major airlines telling the State of Illinois that—even if a new airport is constructed in metro Chicago—they will not use that airport to compete head-to-head with United and American. When read carefully, the ATA sponsored letter necessarily implies even more. It suggests that these other major airlines simply do not wish to compete with United and American in the Chicago market on any terms or at any location.

Nowhere do these major airlines (e.g. Delta, Northwest, Continental) offer to compete with United and American in the metro Chicago area if favorable terms are made available to them at the new airport (e.g. low landing fees; high speed rail access to central Chicago, etc.). Nor do they alternatively demand major hub-and-spoke capacity be made available to them at O'Hare so that they can compete head-to-head at O'Hare. Instead, they simply declare their refusal to use the new airport and by necessary conclusion, declare their refusal to compete in the metro Chicago market.

6. The Currently Proposed O'Hare Expansion Will Only Make the Monopoly Problem Worse.

United and American are currently working with the City of Chicago on a massive expansion of O'Hare called the ''World Gateway'' program. This proposal calls for spending several billion dollars in federal taxpayer money to fund the expansion of United and American's hub-and-spoke monopoly at O'Hare. Nowhere in the design of the World Gateway project is there any attempt to include or encourage new hub-and-spoke competition from another major airline. Indeed, the entire terminal design is premised on continued growth of United and American's hub-and-spoke systems to the exclusion of any new hub-and-spoke competitor.

7. The Campaign to Maintain the Fortress Hub System—and to Defeat the Development of New Capacity for New Competition—has Other Serious Consequences.

As discussed above the principal economic victims of the Fortress Hub monopoly system is the business traveler and our national economy. American businesses are paying a penalty of billions of dollars per year in monopoly overcharges to the major airlines Fortress Hub system. Further, the prohibitively high prices of business travel created and maintained by this Fortress Hub system are actually stifling business travel for those entrepreneurial businesses who cannot afford those prices.

But the business traveler is not the only victim of this Fortress Hub system. As shown by the Suburban O'Hare Commission report and from my own experience, the major airlines attempts to defeat the construction of new competitive capacity in the South Suburban Chicago Airport illustrates the widespread adverse consequences of this illegal conduct.

By seeking to expand United and American's dominance of the regional Chicago market through a major expansion of O'Hare—while refusing to compete in metropolitan Chicago—the major airlines (led by United and American) have created severe environmental and economic problems and distortions throughout the Chicago metro region. My point is that the major airlines' passion for protection and expansion of the Fortress Hub monopoly system has consequences far beyond the business traveler. These include:

Severe environmental impacts on communities around the Fortress Hub airport. The O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because United and American want the expansion to take place under their control at O'Hare—where by design they are keeping out new hub-and- spoke competition—rather than at a new regional airport where a major new competitor could enter the region.

Serious economic decline in the communities in my district. By seeking to force traffic growth into their already overloaded Fortress Hub at O'Hare, United and American (along with their colleagues at the ATA) are causing serious economic injury to the communities in my district. As you know, Chairman Hyde and I each represent a part of Chicago and its suburbs. What you might not know is that the hub of business activity in Chicago is no longer downtown; it is O'Hare Airport. There are roughly equal numbers of people living in the south suburbs, which I represent, and the northwest suburbs, which Chairman Hyde represents. However, during the past ten years, eighty percent of the new jobs created in the Chicago region were in Mr. Hyde's district while my district lost jobs.

8. The Federal Government Has Assisted In the Growth and Expansion of the Fortress Hub Monopoly System.

It is obvious that the Department of Justice has broad law enforcement powers to correct many of the abuses of the Fortress Hub system. But there is another aspect of federal power that has actually been used to nurture and expand the Fortress Hub monopoly problem—the current federal programs for financial assistance to airports.

The federal government—through either the Airport Improvement Program (AIP) or the Passenger Facility Charge Program (PFC)—awards or authorizes the expenditure of billions of dollars for airport development. Yet it is clear that little effort has been made by the Department of Transportation to ensure that these billions of federal taxpayer dollars are used to enhance competition and to deter monopoly. Indeed, there is strong evidence that the Department of Transportation has acted in collusion with the Fortress Hub major airlines to expand the Fortress Hub monopolies and to discourage new competition.

This neglect of the antitrust implications of federal airport funding policy is vividly illustrated in the Administration's bizarre use of federal funding power in Chicago:

First, the Administration has repeatedly denied planning and development funds for a new regional airport which could support major new competition for United and American. The Administration has done so on the bizarre extra-legal claim that before a new airport can proceed, there must be ''regional consensus''—a code phrase for Mayor Daley's approval. No such requirement exists in federal law.

Second, the Administration is proceeding forward with Chicago's (and United and American's) design for a so-called ''World Gateway'' program at O'Hare which is designed to expand and solidify the current hub-and-spoke dominance of United and American in the region. As currently proposed, the DOT is being asked to approve or authorize billions of federal taxpayer dollars to build a Fortress Hub expansion designed by United and American to keep out new hub-and-spoke competition.

Both of these actions by DOT are interrelated. Starving the new regional airport will ensure that no significant new competition comes into the region while funneling billions in taxpayer dollars into United's and American's expanded Fortress O'Hare will only increase the monopoly problem in Chicago.

9. Mega-Mergers Will Only Make The Problem Worse.

My discussion above makes it clear that we already—independent of the proposed and potential mega-mergers—have enormous problems with anti-trust violations in the airline industry's Fortress Hub system, problems that cost the traveling public billions of dollars, in overcharges each year. These current problems stem from a concentration of market power in the hands of a few. It is obvious that the mega-mergers will only make an already terrible situation even worse.

CONCLUSION AND RECOMMENDATIONS

Based on my own analysis and that of the Suburban O'Hare Commission, I conclude that the evidence is overwhelming that the major airlines have developed a Fortress Hub system that enables individual airlines to dominate geographic markets and charge exorbitant monopoly supported air fares. I further conclude that as part of their program to maintain and expand this illegal system, the major airlines have acted in concert not to compete in each other's Fortress Hub markets for lucrative business travel markets—with the result that business travelers are overcharged billions of dollars per year. Finally, I conclude that this Fortress Hub system constitutes a per se violation of federal antitrust laws. Given these conclusions,

I make the following recommendations to this Committee:

It is obvious that the proposed and potential ''mega-mergers'' should be stopped.

I respectfully ask that the Committee join with me in asking the Department of Justice to initiate an investigation into the collective refusal of the Big Seven airlines to compete against each other in each other's Fortress Hub markets.

I respectfully ask that the Committee join with me in asking the Department of Justice to initiate a civil action in federal court to break up the Fortress Hub geographic market allocation by the major airlines and to prohibit the collective refusal of the major airlines to compete in each other's Fortress Hub markets.

I respectfully ask that the Committee join with me in asking the state Attorneys General to bring civil damage actions to recover treble damages for the billions of dollars per year in overcharges imposed on travelers as a result of Fortress Hub system.

I respectfully ask this Committee to join with me in a request to the Department of Justice and the Department of Transportation that no further federal funds (either Airport Improvement Program funds or Passenger Facilities Charges) be authorized or approved at O'Hare until there have been full public hearings and public consideration of the antitrust implications of the proposed alterations to O'Hare.

I respectfully ask that the Committee join with me in seeking major reform of the federal aid process to airports to insure that the federal funds are used to promote competitions and to discourage maintenance and growth of Fortress Hub monopoly power.

I respectfully ask that the Committee join with me in the following recommendation to the Department of Transportation: Until completion of construction of a new Chicago regional airport, the existing capacity of O'Hare should be reallocated from its current dominance by United and American into a shared capacity allocation program that reserves a significant share of OHare's capacity (e.g. 40 percent) for new 1 competitive entrants. And by new competitive entrants, I do not mean affiliates of United and American.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1ST, 2001 WASHINGTON DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we're here. I won my first term in a special election and on December 14th, 1995 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new Member. He told me then: ''Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign.''

Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word to block a third airport.

It is this rigid stance by many Chicago officials that's allowed a local problem to escalate into a national crisis. Once the nation's best and busiest crossroads, O'Hare is now its worst choke point—overpriced, overburdened and overwhelmed.

And to think it was avoidable. This debate dates back to 1984 when the Federal Aviation Administration determined that Chicago was quickly running out of capacity. The FAA directed Illinois, Indiana and Wisconsin to conduct a feasibility study for a new airport. The exhaustive study of numerous sites concluded almost 10 years ago that gridlock could be best avoided by building a south suburban airport. The State of Illinois then drafted detailed plans for an airport near Peotone.

Unfortunately, despite the FAA's dire warning and the State's best efforts, I watched in amazement as the City of Chicago went to extremes to thwart and delay any new capacity.

In the late 1980s, Mayor Daley mocked the idea of a third airport. By 1990, the City did an about-face and proposed building a third airport within the City. The City even initiated federal legislation creating the Passenger Facility Charge (PFC) to pay for it. But two years later the City reversed itself again and abandoned the plan, yet continued to collect $90 million a year in PFCS. This summer, the City told the Illinois Legislature that O'Hare needed no new capacity until the year 2012, then, in yet another reversal, three weeks ago declared O'Hare needed six new runways.

As the City was spending hundreds of millions of dollars on consultants to tell us that the City didn't, did, didn't, did need new capacity, it continued to be consistent on one thing—fighting to kill the third airport.

Sadly, that opposition was never based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals and the status quo. In fact, earlier this year the Chicago Tribune won a Pulitzer Prize for documenting the ''stench at O'Hare.''

Still, for eight years, City Hall leveraged the Clinton FAA to stall Peotone. The FAA, ignoring its own warnings of approaching gridlock, conspired with the city to:

(1) Mandate ''regional consensus,'' thus requiring Chicago mayoral approval for any new regional airport; (2) Remove Peotone from the NPIAS list in 1997, after it emerged as the frontrunner. Peotone had been on the NPIAS for 12 years; (3) Hold up the Peotone environmental review from 1997 to 2000.

In short, the same parties who created this aviation mess are now saying ''trust us to clean it up'' with H.R. 2107. But their hands are too dirty and their interests are too narrow. Proponents of this legislation claim to be taking the high road. But this is a dead end.

Fortunately, there is a better alternative. Compared to O'Hare expansion, Peotone could be built in one-third the time at one-third the cost—both important facts given that the crisis is imminent and that the public will ultimately pay for any fix.

Site selection aside, however, there is yet another, even bigger problem with H.R. 2107. It is the United States Constitution.

H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the ''reserved powers'' clause of the 10th Amendment.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake an activity, nor can it intrude upon Illinois' prerogative to exercise or delegate its power. As stated by the United States Supreme Court: ''[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States . . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.'' [New York v. United States, 1992] [2]

Supporters have cited the Commerce Clause in defending his legislation. But the Supreme Court in Printz v. United States specifically emphasized the 10th Amendment barrier to Congress intruding on a state's sovereignty by saying that it could not be avoided by claiming either, one, that congressional authority was pursuant to the Commerce Power, or, two, that federal law ''preempted'' state law under the Supremacy Clause.

Chicago has acknowledged Illinois' authority to build and operate airports by express statutory delegation through the Illinois Aeronautics Act, including the requirement that the State approve any airport alterations. Under the 10th Amendment, if Congress strips away a key element of the Illinois law, Chicago's attempt to build runways would likely be ultra vires (without authority) under Illinois law.

Moreover, H.R. 2107 converts the concept of dual sovereignty into tri-sovereignty, by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

Indeed, H.R. 2107 sets federalism on its head. It makes about as much sense as putting the local police department in charge of national defense.

Such legislation won't improve aviation services. In fact, it increases the likelihood for a constitutional challenge that will further prolong this crisis.

So, from a practical standpoint, I urge the subcommittee to reject this measure, to reject cramming more planes into one of the nation's most overcrowded airport, to reject turning O'Hare into the world's largest construction site for the next 20 years, and to reject sticking the taxpayers with an outrageous bill.

I strongly urge the committee to reject this unprecedented, unwise and unconstitutional attack against our fifty states and our Founding Fathers. Thank you.

HOUSE OF REPRESENTATIVES,
Washington, DC.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE THURSDAY, MARCH 21, 2002.

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago's airports. As you know, I sent a letter to each of you stating my opposition to this bill. Many Members responded favorably, and for that I thank them. Today, my position has not changed.

As you know, my commitment to resolving Chicago's aviation capacity crisis predates my days in Congress. I ran on this issue in my first campaign. I won on this issue. It remains my first priority. It was the subject of my first speech in Congress. And it was the topic of my first debate in Washington.

I am elated that this issue—my issue—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolving this regional and national crisis, I must say that HR 3479 as amended falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing O'Hare's problems. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal precedence. And about constitutionality.

Clearly this bills sets dangerous precedence by stating that Congress—not the

FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and built airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

Unfortunately, this bill mandates expansion of O'Hare yet pays mere lip service to Peotone. It puts the projects on two separate and unequal tracks. That is my opinion. That is also the opinion of the Congressional Research Service, whose analysis I will provide to you.

What we don't need at this critical juncture is favoritism or interference from politicians and profit-oriented airlines to stack the deck against Peotone. What we don't need is a bill that increases the likelihood of a constitutional challenge that prolongs the debate and delays the fix.

Thus, I urge you to reject this unprecedented, unwise, and unconstitutional bill. Instead, I urge you to treat O'Hare and Peotone on equal terms and to avoid stacking the deck for or against either project. Finally, I urge you to consider substantive improvements to this bill that would allow—not impair—Peotone to proceed on its own merits, free of political interference.

If you do, I am confident that Peotone will prove to be the cheaper, quicker, safer, cleaner, more practical and more permanent solution to the region's and nation's aviation capacity needs. Thank you.

HOUSE OF REPRESENTATIVES,
Washington, DC., Wednesday, February 6, 2002.

FEDERAL STUDY CONFIRMS AIRPORT DEAL SHORTCHANGES PEOTONE

An analysis released today by the independent, non-partisan research arm of Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport agreement puts O'Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the Congressional Research Service concludes that the proposed National Aviation Capacity Expansion Act puts the two projects on separate and unequal tracks.

The CRS analysis states that the Federal Government ''shall construct the runway redesign plan'' at O'Hare but would merely ''review'' and give ''consideration'' to the Peotone Airport project.

In reaction to the release of today's report, Congressman Jackson reiterated his opposition to the measure. ''This study unmasks the bare truth about the agreement between the Mayor and the Governor. For those claiming that the deal is good for the Third Airport, it's not. The masquerade ball is over,'' Jackson said.

''Peotone has been stuck in the paralysis of analysis for 15 years. We don't need any more reviews. We need a Third Airport, '' Jackson said. ''Peotone can be built faster, cheaper, safer, and cleaner than expanding O'Hare, and presents a more secure and more permanent solution to Illinois' aviation crisis. This is shortsighted legislation and a bad deal for the public.''

The CRS report states that the Lipinski-Durbin bill ''specifically states that the (FAA) Administrator 'shall construct' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport.''

CRS concludes that the bill ''provides for the Administrator's review of the Peotone Airport project (and) provides for the expansion of O'Hare. The provisions appear to operate independently of each other and are not drafted in parallel language, and provide different directions to the Administrator.''

CONGRESSIONAL RESEARCH SERVICE,
February 6, 2002.

MEMORANDUM

Subject Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act.

To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour

From: Douglas Reid Weimer, Legislative Attorney, American Law Division.

BACKGROUND

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division. Your staff has expressed interest in certain provisions of H.R. 3470, the proposed National Aviation Capacity Expansion Act (''bill''). These provisions are examined and analyzed in the following memorandum.

The bill contains various provisions relating to the expansion of aviation capacity in the Chicago area. Among the provisions contained in the bill are provisions relating to O'Hare International Airport (''O'Hare''), Meigs Field, a proposed new carrier airport located near Peotone, Illinois (''Peotone''), and other projects. Your office has expressed repeated concern that the news media and various commentators have reported that the bill would apparently implement the various projects in a similar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited to concerning the bill tend to report the various elements of the bill without distinguishing the bill language and the differences as to the means in which the various projects may be implemented.

ANALYSIS

The chief purpose of the bill is to expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other issues. Your staff has focused upon the interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political Subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport .

If enacted, this bill language would relate to the federal funding for the proposed airport to be constructed at Peotone. The ''Administrator'' refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application (''application'') submitted by Illinois, or a political subdivision for the construction of the ''south suburban airport,'' the proposed airport at Peotone.

The Administrator is given specific directions concerning the application and for the time consideration of the application. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure and/or to compel that the Administrator will comply with the Congressional mandate, if the Administrator does not choose to follow the Congressional direction. Congress possesses inherent authority to oversee the project, as well as the Administrator's compliance with the statutory requirements, by way of its oversight and appropriations functions. Congress and congressional committees have virtually plenary authority to elicit information which is necessary to carry out their legislative functions from executive agencies, private persons, and organizations. Various decisions of the Supreme Court have established that the oversight and investigatory power of Congress is an inherent part of the legislative function and is implied from the general vesting of the legislative power in Congress. Thus, courts have held that Congress' constitutional authority to enact legislation and appropriate money inherently vests it with power to engage in continuous oversight. The Supreme Court has described the scope of this power of inquiry as to be ''as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.''

Specific interest is focused on the language ''shall consider'' used in the second sentence of the subsection. In the context of this subsection, it should not necessarily be considered to mean the implementation of an accelerated approval/construction process for the airport. While these events may occur, such a course of action is not specifically provided by the legislation.

Your staff has also focused on subsection (f), dealing with the proposed federal construction at O'Hare. The bill provides:

(f) FEDERAL CONSTRUCTION.—

(1) On July 1, 2004, or as soon as practicable thereafter, the Administrator shall construct the runway redesign plan as a Federal project, if—

(A) the Administrator finds, after notice and opportunity for public comment, that a continuous course of construction of the runway design plan has not commenced and is not reasonably expected to commence by December 1, 2004;

(B) Chicago agrees in writing to construction of the runway redesign plan as a Federal project without cost to the United States, except such funds as may be authorized under chapter 471 of title 49, United States Code, under authority of paragraph (4);

(C) Chicago enters into an agreement, acceptable to the Administrator, to protect the interests of the United States Government with respect to the construction, operation, and maintenance of the runway redesign plan;

(D) the agreement with Chicago, at a minimum provides for Chicago to take over ownership and operations control of each element of the runway redesign plan upon completion of construction of such element by the Administrator;

(E) Chicago provides, without cost to the United States Government (except such funds as may be authorized under chapter 471 of title 49, United States Code, under the authority of paragraph (4)), land easements, rights-of-way, rights of entry, and other interests in land or property necessary to permit construction of the runway redesign plan as a Federal project and to protect the interests of the United States Government in its construction, operation, maintenance, and use; and

(F) the Administrator is satisfied that the costs of the runway redesign plan will be paid from sources normally used for airport development projects of similar kind and scope.

(2) The Administrator may make an agreement with the City of Chicago under which Chicago will provide the work described in paragraph (1), for the benefit of the Administrator.

(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property necessary for the runway redesign plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in this subsection.

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago provides, without cost, the land, easements, right-of-way, rights of entry, and other interests in land/property as are required to allow the construction of the runway plan as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the redesign plan costs will be paid from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator ''may'' make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word ''may'' would appear to make this language optional, and would not necessarily require the Administrator to enter into such agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the Federal Government those property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator ''shall construct'' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport in subsection (e). The provisions of the subsections appear to be independent of each other and provide very different directions to the Administrator. Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is concerned primarily with the review and the consideration of an airport construction plan.

It is possible that the Administrator's actions concerning the implementation of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administrative behavior. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency's action/inaction. The Administrative Procedure Act (''APA'') provides general guidelines for determining the proper court in which to seek relief. Some statutes provide specific review proceedings for agency actions. Subsection (h) of the bill provides for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. § 46110.

If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that ''nonstatutory review'' may occur. When Congress has not created a special statutory procedure for judicial review, an injured party may seek ''nonstatutory review.'' This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case ''arising under'' the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator's review of the Peotone Airport project. Subsection (f) provides for the expansion of O'Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator to compel the Administrator to fulfill the statutory responsibilities provided by the bill.

July 22, 2002.

Hon. MAXINE WATERS,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE WATERS, I would like to personally thank you for opposing H.R. 3479, The National Capacity Expansion Act. This is an extremely controversial bill, and it was totally inappropriate for it to be included on the suspension calendar.

There is no dispute that there is an air capacity crisis at the Chicago O'Hare International Airport. There is a dispute over how to resolve it. We believe that building Peotone is a quicker, cheaper, safer, cleaner, more permanent, and more just way to resolve the aviation capacity crisis,

As you know, this bill also sets a dangerous precedent by allowing the federal government to preempt an Illinois state law that requires state legislative approval of airport construction and expansion. Will your state legislature be next to lose its power to decide local airport matters?

With your assistance, the misguided efforts of H.R. 3479 were defeated. I appreciate your vote and urge your continued opposition to H.R. 3479!

Sincerely,

JESSE L. JACKSON, Jr.
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., December 13, 2001.

Hon. EDWARD M. KENNEDY,
United States Senate, Washington, DC.

DEAR SENATOR KENNEDY: In the next few days and months, you may be asked to cosponsor S. 1786, a bill to massively expand O'Hare International Airport in Chicago. I strongly oppose this legislation, which in my view, is severely flawed, deeply divisive, constitutionally suspect, environmentally unsound, unnecessarily wasteful and dangerous.

For the past six years, I have been working on an alternative proposal to increase aviation capacity in the Chicago area—building a third regional airport. Rather than ripping up and reconstructing runways at O'Hare, a new airport near Peotone, Illinois provides a cheaper, quicker, and cleaner solution.

Able to be built in one-third the time and at one-third the cost of the proposed O'Hare expansion, a third airport would be a more secure and more permanent solution to the region's aviation crisis. It also would create 236,000 jobs, generate $10 Billion in new economic activity, revitalize depressed communities, foster balanced economic growth, enhance airline competition, and drive down ticket prices. Simply put, a new airport makes good dollars and good sense for the City of Chicago, the State of Illinois and the entire nation.

Thus, I ask that you oppose S. 1786. However, if you are considering supporting the bill, I respectfully request that you allow me an opportunity to share my views with you. I can be reached at 225–0773. Thank you in advance for your consideration and I look forward to speaking with you.

Sincerely,

JESSE L. JACKSON, Jr.,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., July 24, 2001.

Hon. DON YOUNG,
Chairman, Transportation and Infrastructure Committee, Washington, DC.

DEAR CONGRESSMAN YOUNG: I am writing to you about the grave concerns I have with H.R. 2107, The End Gridlock at Our Nation's Critical Airports Act of 2001. I share the concerns of Congressmen Henry Hyde, Jerry Weller and Philip Crane, who have sent a virtually identical letter to you under separate cover. I agree that in H.R. 2107—the attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

In other contexts—specifically with regard to certain human rights—I believe that the Tenth Amendment serves to place limitations on the federal government with which I disagree. Indeed, in the area of human rights, I believe new amendments must be added to the Constitution to overcome the limitations of the Tenth Amendment. However, building airports is not a human right. Therefore, in the present context, I agree that building airports is appropriately within the purview of the states.

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois Legislature over the delegation and authorization to Chicago of state power to build airports—along with the authority of governors and state legislatures in a host of other states such as Massachusetts (Logan), New York (LaGuardia and JFK), New Jersey (Newark) California (San Francisco airport), and the State of Washington (Seattle)—raise serious constitutional questions.

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the states delegate power—or limit the delegation of that power—to their political subdivisions. Unless and until Congress decides that the federal government should build airports, airports will continue to be built by states or their delegated agents (state political subdivisions or other agents of state power) as an exercise of state law and state power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the state law authority to build airports is an essential element of that delegation of state power. If Congress strips away a key element of that state law delegation, it is highly unlikely that the political subdivision would continue to have the power to build airports under state law. The political subdivision's attempts to build runways would likely be ultra vires (without authority) under state law.

Under the Tenth Amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the states, the prerogatives of the states as to how to allocate and exercise state power—either directly by the state or by delegation of state authority to its political subdivisions.

As stated by the United States Supreme Court:

[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States....We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.

New York v. United States, 505 U.S. 144, at 166 (1992) (emphasis added).

It is incontestable that the Constitution established a system of ''dual sovereignty.''

Printz v United States, 521 U. S. 898, 918 (1997) (emphasis added).

Although the States surrendered many of their powers to the new Federal Government, they retained ''a residuary and inviolable sovereignty,'' The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text.

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not ail governmental powers, but only discrete, enumerated ones, Art. 1, Sec. 8, which implication was rendered express by the Tenth Amendment's assertion that ''[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.''

Id at 918–919.

This separation of the two spheres is one of the Constitution's structural protections of liberty. ''Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

ld at 921 quoting Gregory v. Ashcroft, 501 U.S. 452 at 458 (1991).

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Power and the ''necessary and proper clause of the Constitution or b) that the federal law ''preempted'' state law under the Supremacy Clause. 521 U.S. at 923–924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See Reno v. Condon, 528 U.S. 141 (2000). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But Reno did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

A state's authority to create, modify, or even eliminate the structure and powers of the state's political subdivisions—whether that subdivision be Chicago, Bensenville, or Elmhurst—is a matter left by our system of federalism and our federal Constitution to the exclusive authority of the states. As stated by the Seventh Circuit in Commissioners of Highways v. United States, 653 F.2d 292 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

COMMISSIONERS OF HIGHWAYS, 653 F.2D AT 297

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be ultra vires under state law as being without the required state legislative authority.

Very truly yours,

JESSE L. JACKSON, JR.,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC., January 31, 2001.

Re Key Points Why The Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Best Interests

Hon. ANDREW H. CARD,
Chief of Staff to the President,
The West Wing, 1st Floor,
The White House,
Washington, DC.

DEAR ANDY: A matter of great importance to us is the need for safe airport capacity expansion in the metro Chicago region. At your earliest convenience, we would like to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views. We are convinced that we must build a new regional airport now and, for the same reasons, we believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

As set forth in that memorandum:

Most responsible observers agree that the Chicago region needs major new runway capacity now.

The question is where to build that new runway capacity—(1) at a new regional airport, (2) at O'Hare, (3) at Midway, or (4) a combination of all of the above. An assessment of these alternatives reaches the following conclusions:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway.
2. More new runway capacity can be built at a new site than at O'Hare or Midway.
3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway.
4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare.
5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.
6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. New runways at O'Hare would doom the economic feasibility of the new airport, guarantee its characterization as a ''white elephant'' and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these objectives in a low-cost, environmentally sound manner.

Again, we would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE.
JESSE JACKSON, Jr.

Re Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Aviation Best Interests

To: White House Chief of Staff Andrew Card

From: Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

January 31, 2001

This memorandum summarizes our views in the debate over the need for airport capacity expansion in the metro Chicago region. For the reasons set forth herein, we are convinced that we must build a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple question and answer format.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure to build capacity will only get worse, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build the new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build new runways at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Simply from the standpoint of physical construction (as well as paper and regulatory planning) the new runways can be built faster at a ''greenfield'' site than they can at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway. Given the space limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at either O'Hare and Midway. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a ''greenfield'' site than they can at either O'Hare or Midway. Given the enormous public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the overall costs of building the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no ''environmental buffer'' between the airports and the densely populated communities surrounding these airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, of the environmental harm and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) fares at ''Fortress O'Hare'' and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant competition allow American and United to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the existing ''Fortress O'Hare'' business fare dominance of United and American?

The State of Illinois has stated that existing ''Fortress O'Hare'' business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the new airport. Certainly the design of Chicago's proposed World Gateway program—designed in concert with United and American to preserve and expand their dominance at O'Hare—does not offer opportunities for major competitors to come in and compete head-to-head with United and American.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. The dominant O'Hare airlines are pushing their suggestion: add another runway at O'Hare and allow a ''point-to-point'' small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it presumes massive growth at O'Hare, as it is based on the assumption that all transfer traffic growth—along with the origin-destination traffic to sustain the transfer growth—stays at O'Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic assumed to stay at O'Hare will necessitate not one, but two or more additional runways. This increase in traffic at O'Hare will have serious environmental and public health impacts on surrounding communities.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O'Hare, there would be no economic need for the new airport.

Third, assuming the new airport is built anyway, as a ''compromise'', this alternative guarantees that the new airport will be a ''white elephant''—much as the Mid-America airport near St. Louis is today because of the Fortress Hub practices of the major airlines and as was Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATED QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O'Hare, then much of the 5–6 billion dollar terminal and roadway expansion proposed for O'Hare may be justified.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar O'Hare expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternative of putting the new runways in at O'Hare, what is the full cost of expanding O'Hare as opposed to constructing a new airport? If others wish to explore the alternative of an expanded O'Hare as the place to build the new runways capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the airlines already know what the components of an expanded O'Hare would be. These components are laid out in Chicago's ''Integrated Airport Plan and include a new ''quad runway'' system for O'Hare and additional ground access through western access''.

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the ''slot'' restrictions at O'Hare and other major ''slot'' controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a ''Camp O'Hare'' where air traffic is managed by cancellation rather than by adequate service.

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the slot controls and chaos ensued.

But just because our warnings were ignored doesn't mean that practical solutions should continue to be ignored. The delays and congestion were predictable and certain—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as the congestion was brought on by overstuffing O'Hare with more aircraft operations than it can handle, the congestion and delay can immediately be reduced to acceptable levels by reducing the scheduled air traffic to the level that can be easily accommodated by O'Hare without the risk of unacceptable delays. The delay chaos was self-inflicted by ignoring the flashing warnings put

out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desire to overscheduled flights.

Should the short-term ''fix'' to the delays and congestion include ''capacity enhancement'' through air traffic control devices? Absent new runways, the FAA has encouraged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. These procedures—known as ''incremental capacity enhancement''—focus on putting moving aircraft closer together in time and space—to squeeze more operations into a finite amount of runways. Typically, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots surely have not:

We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion mid-airs were only seconds apart. O'Hare is at maximum capacity, if not over capacity. It is my opinion that it is only a matter of time until two airliners collide making disastrous headlines.

Captain John Teerling, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1999 letter to Governor Ryan (emphasis added)

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements as threats to safety. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they reduce safety margins, particularly at multiple runway airports, to the point that they invite a midair collision, a runway incursion or a controlled flight into terrain.

Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such ''enhancement'' procedures as the recently announced ''Compressed Arrival Procedures'' and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their safety to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overscheduled levels of traffic is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O'Hare (and Midway) generate levels of toxic air pollutants that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the fields of air pollution and public health to conduct a preliminary study of the toxic air pollution risk posed by O'Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O'Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounding Residential Communities (August 2000), found that current operations at O'Hare—based on emission data supplied by Chicago created levels of toxic air pollution in excess of federal cancer risk guidelines in 98 downwind communities. The highest levels of risk were found in those residential communities that O'Hare uses as its ''environmental buffer'' namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged Chicago, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O'Hare's emissions on downwind residential communities. And that does not mean simply listing what comes out of O'Hare. The downwind communities are entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the concentrations of O'Hare toxic pollution when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities.

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternatives?

What about the monopoly problem at Fortress O'Hare and what should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for new runway capacity. But the monopoly problem of Fortress O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current market dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O'Hare Commission report, If You Build It We Won't Come: The Collective Refusal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were low fares for reservations far in advance. The major business travel organizations representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that they charge extremely high ''lock-step'' fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is ''competitive'' with fares charged to business travelers in other Fortress Hub Markets. That statement ignores the fact that all the major airlines are gouging captive business travelers in all their own Fortress Hub markets. Indeed, a repeated anecdote is the fact that a passenger from a ''spoke'' city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O'Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of ''compromise'' that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all homes experiencing 65 DNIL (decibels day-night 24–hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Result: Chicago is only soundproofing less than 10 percent of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise monitors to collect ''real world'' data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program—because it is so limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one ''hub'' airport operating in the same city? Faced with the potential inevitability of a new airport, the airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. That simply is not correct:

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington D. C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a

new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is simple and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was to collect PFCs at O'Hare and use them for the new airport.

But United and American claim that the PFC revenues are ''their'' money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer dollars than the similar ''AIP'' tax charged to air travelers. These funds don't belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds ''Chicago's'' money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O'Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O'Hare to Gary and the same way he proposed getting federal funds collected at O'Hare to the Lake Calumet project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posited some answers for the President's and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O'Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region's air transportation needs:

1. Let's stop the paper shuffling and build the new airport. The program we outline in this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fasttrack planning and construction program for a new airport could see the new airport open for service in 3–5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal antitrust laws. Let's put together a federal-state partnership to get the job done.

3. Give the O'Hare suburbs guaranteed protection against further expansion of O'Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O'Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air toxic emissions from O'Hare.

6. Fix the short-term delay and congestion at O'Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion, now experienced at O'Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into that airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortress Hub anti-competitive phenomenon—both at O'Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the disbursal of massive federal subsidies.

8. The entire World Gateway Program should be examined in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your convenience.

CHICAGO URBAN LEAGUE,
Chicago, Illinois, June 27, 2002.

Rep. WILLIAM O. LIPINSKI,
Rayburn House Office Building,
Washington, DC.

DEAR REPRESENTATIVE LIPINSKI: I am writing to express my concern about your omission of any special provision for a south suburban airport near Peotone from the O'Hare expansion legislation that you are introducing for consideration in the House of Representatives.

The expansion agreement reached last December by Illinois Governor George Ryan and Chicago Mayor Richard Daley was the product of a long and difficult process of political negotiation. To reach this historic and comprehensive aviation agreement, it was deemed essential to include a special measure giving priority consideration to federal funding of airport development in Peotone.

Along with Governor Ryan, Mayor Daley, and a host of state legislators, aldermen, and other civic and business leaders from the Chicago area, I met last February with you and Senator Dick Durbin to plot a strategy to secure federal funding to make O'Hare the airport hub of the nation. Our Chicago delegation of The Campaign to Expand National Aviation Capacity left Washington, DC. with the understanding that you agreed that this goal would be best achieved through a bill that provides for a modernized and expanded O'Hare and funding for a new airport in Peotone. As our delegation indicated in February, both are needed, and both play important roles in the Chicago region's strongly linked aviation and economic futures.

I know that you agree with the Campaign's belief that Chicago's airports are key to the future of every citizen in Illinois. They are the economic engines that create jobs, provide new business opportunities, and make Chicago one of the world's truly great cities.

In the interest of maintaining a strong Chicago and Illinois coalition in support of airport expansion in the Chicago area, I urge you to revisit the discussions we had last winter and to reconsider your omission of the Peotone provision.

If you or your staff have any questions or comments regarding the Chicago Urban League's position on this key issue, please do not hesitate to call me at 773–451–3500.

Sincerely,

JAMES W. COMPTON,
President and CEO.

cc: Representative Jesse L. Jackson, Jr.

ROSEMARY MULLIGAN,
STATE REPRESENTATIVE, 55TH DISTRICT,
ILLINOIS,
July 5, 2002.

SUBJECT: Vote ''No'' on H.R. 3479

Hon. JESSE L. JACKSON, JR.,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make a personal plea on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains gross misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that ''Chicago'' O'Hare Airport is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is the only major city airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a ''deal'' between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O'Hare would become. Unfortunately, the amount of land dedicated to the airport set its fate long before the current crisis. Plainly speaking, there isn't enough room to expand.

For the past several years, I and other legislators have introduced nearly a dozen measures in the Illinois General Assembly to conduct environmental studies, provide tax relief for soundproofing, defend suburban neighborhoods from unfair ''land grabs'', require state legislative approval of any airport expansion and to generally protect the people we represent whose residences abut airport property. Because of the political make-up of our body and the great influence of Chicago's mayor, we have been unsuccessful. Our efforts and the health and safety of our constituents are ignored because of politics.

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION
Chicago, IL, November 30, 2001.

Hon. PETER FITZGERALD,
U.S. Senate, Washington, DC.

SENATOR FITZGERALD, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200′) they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000′ and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated as one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200′ apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000′ long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another

aircraft is landing or departing. They are caused by either a mistake or mis-understanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has lead the nation in runway incursions for several years. A large part of their incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into those now runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BURZYCH,
Facility Representative
NATCA—O'Hare Tower

[From the Chicago Sun-Times, July 21, 2002]

BUILDING 3RD AIRPORT IS TOP PRIORITY NOW

(By Rep. Jesse L. Jackson)

Unfortunately, the House defeat of the O'Hare expansion bill last week has shifted the debate from ''substance'' to ''power.'' The focus now is on machismo: ''Does [Rep. William] Lipinski have the power to ram a bill through Congress?'' It is not on the real issue: ''Who has the best solution to the air capacity crisis?''

All four sides in this dispute agree on the analysis: There is an air capacity crisis at O'Hare. The disagreement comes over how to resolve it.

Many suburbs around O'Hare, for a wide variety of valid reasons, are absolutely against O'Hare expansion. They also believe expanding O'Hare will make Peotone unnecessary.

Mayor Daley and the downtown business and media community, who maniacally support O'Hare expansion and are attempting to ram it down the throats of everyone else—regard less of who is opposed or why—also believe it will kill Peotone. This interconnected and elite group of business leaders and politicians has an interest in maintaining American's and United Airlines' duopoly at O'Hare, where ticket prices are one-third higher than the national average, costing consumers an extra $1 billion. The mayor also has an interest in maintaining his campaign contributors, who, in many instances, are the same businesses connected at O'Hare's hip.

Others want to expand O'Hare and build Peotone simultaneously. However, Lipinski's bill removes Peotone as a priority—leaving its proponents with little more than baseless hope and a prayer.

A final group, of which I'm a part, wants to build Peotone first, then revisit O'Hare expansion later, because: (a) Peotone offers a faster, cheaper, cleaner, safer, more permanent and just solution; and (b) an evolving Peotone airport, accommodating 1.6 million new flights, would surely make O'Hare expansion unnecessary.

So why spend more money, take longer, increase environmental problems, put the flying public in greater danger, support a temporary solution—once O'Hare expansion is complete, we will be in the same capacity crisis as today—and increase the economic and racial divide in Chicago, when there is a better way of resolving the current aviation capacity crisis?

I'm not ignorantly against 195,000 new jobs and billions of dollars of investment on the North Side and northwest suburbs around O'Hare. I simply note that Elk Grove Village already has three jobs for every one person.

By contrast, some communities in the 2nd Congressional District have 60 people for every one job. Thus, I'm intelligently for the 236,000 new jobs and billions of dollars of economic activity; that Peotone will bring in and around my district, where the need is greatest. The Southland needs economically stable communities, and families who have a future and can send their children to college, too. Peotone also benefits the entire region, state and nation.

Even if H.R. 3479 becomes law, a federal court is likely to find it unconstitutional under the 10th Amendment, which gives certain powers exclusively to the states, including the power to build and alter airports. The U.S. Supreme Court stated in Printz vs. United States (1997) that ''dual sovereignty'' is incontestable. It emphasized that the constitutional structural barrier to Congress' intruding on a state's sovereignty could not be avoided by claiming that congressional authority was: (a) pursuant to the commerce power—it will create 195,000 jobs and $19 billion in economic activity; (b) the ''necessary and proper'' clause of the Constitution—there's an aviation capacity crisis, or (c) that the federal law ''preempted'' state law under the Supremacy Clause—that Congress can use its power to solve the impasses by overriding the state. In short, all the arguments the Daley and Ryan forces have been making are unconstitutional.

Both Mayor Daleys saw the aviation capacity crisis coming. Both proposed a third airport: one literally on Lake Michigan, the other in Lake Calumet. Both sites were in Cook County, controlled by the Daleys. However, when the most credible long-term study recommended Peotone in Will County, Daley did an about face.

Without the years of obstructionist tactics by Mayor Richard M. Daley, protecting his narrow and parochial interests, the south suburban airport would already be built and today's aviation crisis averted.

A new airport in Peotone can still be built in one-third of the time, at one-third of the cost of O'Hare expansion, with less disruption and environmental damage, greater public safety and more economic justice through balanced growth in the Chicago metropolitan area. Why force through an irrational bill when a more rational, effective and efficient solution to the aviation capacity crisis is available now?

[From the Chicago Sun-Times, Aug. 30, 2001]

GRAVE CONCERNS NEAR O'HARE

(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

''Maybe the federal law might come to our aid,'' said Bob Placek, a member of Resthaven Cemetery's board who estimates 40 of his relatives, all German and German-American, are buried there. ''The dead folks out there aren't obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history.''

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

''Primarily, the legislation applies to federal lands and tribal lands,'' said Claricy

Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal money, the most Resthaven proponents could probably hope for is a short delay, a say in how any disinterment takes place and, If they are Indian, the opportunity to claim the bodies of Native Americans.

''They've got a hard road,'' Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those families with local history.

''Ma used to talk about Indians being buried at Resthaven,'' said the 44-year-old Placek, who believes the Indians share a mass grave. His mother, who died in 1996, also is buried at Resthaven. ''I used to hear as a little kid Potawatomi'' were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to get involved.

''It's concerning,'' said Clarice Ritchie, a researcher for the community of about 1,000 who hadn't heard about the issue until contacted by a reporter.

''At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance In many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives,'' she said. ''We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of''

''I guess we'd have to keep our mind broad as to what would be done,'' Ritchie said. ''Naturally we don't like to see graves disturbed, but somebody has already disturbed them once. . . . I guess what I'd probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done.''

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits may not look kindly on those who move remains.

''It's not good to do that—move a cemetery or just plow over it,'' he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's $6 billion project, said this is the first he's heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

''I have no reason to doubt them at this time, but I have no independent knowledge,'' he said. But ''whether they're Indians or not, we would exercise in extreme level of sensitivity In the interest of their survivors.''

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the West side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described ''advocate for the dead'' Helen Sclair has heard there might be Indians buried at Resthaven, but she suspects not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

''We don't have much of a positive attitude toward cemeteries in Chicago,'' Sclair said. ''Do you know why? Because the dead don't pay taxes or vote. . . . Well, technically they don't vote.''

SUBURBAN O'HARE COMMISSION,
Bensenville, IL, February 13, 2002.

A BETTER PLAN FOR CURING THE O'HARE AIRPORT BOTTLENECK

CHICAGO.—A plan for relieving the Chicago aviation bottleneck was unveiled today that costs less, is more efficient, less destructive and can be realized quicker than a ''compromise'' plan that Chicago Mayor Richard M. Daley and Illinois Gov. George Ryan are trying to rush through Congress.

The plan was crafted by the Suburban O'Hare Commission, a council of governments representing a million residents living around O'Hare Airport.

The plan includes runway, terminal and other improvements at O'Hare International Airport, to make it more efficient, competitive and convenient. The plan also includes alternatives to the costly and destructive ''western access'' proposed in the Daley-Ryan plan. The centerpiece of the plan remains, as it has for well over a decade, a major hub airport in the south suburbs that had been urged by experts and government officials from three states, and would be operational now if not for obstruction from Chicago Mayor Richard M. Daley. The plan provides for many more flights to the region, and, consequently, many more jobs.

''We always have been in favor of a strong O'Hare Airport because of its importance to our communities and to the regional economy,'' said John Geils, SOC Chairman and president of the Village of Bensenville. ''This will come as a surprise only to those who have been taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O'Hare zealots, willing to damage or even destroy O'Hare. Our plan will expand the region's aviation and economic growth; the Daley-Ryan plan will stifle that growth.

''The claimed benefits—including delay reductions, job increases, improved safety, greater competition and less noise—of the Daley-Ryan O'Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends,'' Geils said.

Among the improvements are a realistically modernized O'Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western access and a bypass route would be built on airport property, skirting O'Hare to the south—as originally planned, thus avoiding the destruction of uncounted homes and businesses, as under the Daley-Ryan plan.

The SOC Solution also would increase competition at O'Hare, through terminal and other facilities improvements so that air travelers using the competition are not treated as second-class customers. Funding of O'Hare improvements would be disconnected from a complicated bonding scheme that allows United and American airlines to become more entrenched and to continue to charge anti-competitive fares. In addition, some of the lucrative gambling revenues, now going to enrich political insiders, would be used for a competitive makeover of O'Hare.

SOC's plan also would provide better safety and environmental protections. Every home impacted by noise at O'Hare and Midway would be soundproofed, instead of a select few as provided under the current, flawed standards adopted by Chicago. O'Hare neighbors would be spared the concentration of air pollution brought by a doubling of flights at what is already the state's largest single air polluter. Under the Daley-Ryan plan, O'Hare neighbors would find themselves in federally required crash zones at the end of runways, forcing them to either give up their homes or live in devalued property in great risk. Because most of the region's air traffic growth would use the South Suburban airport where pollution and safety buffers are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate ''reliever'' airport as envisioned under the Daley-Ryan plan. Just as New York City and Washington D.C. have more than one hub airport, a true regional airport in the South Suburbs would give Chicago the kind of potential it needs with three hub airports (O'Hare, Midway and Peotone) to maintain its aviation dominance for decades. Despite the long-made assertions by entrenched interests, such as United and American airlines, that the Chicago area didn't need a second hub airport, Midway already is developing into a hub simply because of market forces. With Midway reaching capacity in just a few years, and O'Hare already at capacity, the sounds of ''no one will come to Peotone'' no longer are heard.

Finally, the SOC Solution will protect taxpayers by creating an oversight board of improvements at all airports, including the south suburban airport and Midway.

''The SOC Solution is not a fragmented plan that simply focuses on O'Hare, which under the Daley-Ryan proposal is merely an instrument for extending the political and economic might of a select few,'' said Geils. ''Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public.''

SUBURBAN O'HARE COMMISSION,
Bensenville, IL, February 26, 2002.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: The Suburban O'Hare Commission (SOC) urges you to oppose H.R. 3479 and S. 1786, which have been erroneously titled the National Aviation Capacity Expansion Act. If enacted, this legislation would have unprecedented and deleterious consequences for the national air transportation system as well as for the Chicago-area aviation system.

SOC is a strong advocate of expanding airport capacity for the Chicago area and has presented a plan that will meet the area's aviation needs for the 21st century through the development of a needed third airport in the South Suburban area, as well as modernization of O'Hare International Airport. SOC's plan supports and would accomplish O'Hare modernization, because we recognize that it is a very important aviation facility for the country and our region.

If enacted, the proposed legislation would accord unique and special status to O'Hare Airport, unlike any other airport in the nation, by legislatively mandating a multi-billion dollar airport development project, calling for the total reconstruction of O'Hare to

create six new parallel runways and new terminal facilities. Its promoters hope to achieve nothing less than the circumvention of the existing legal framework for review of airport development by the FAA and the elimination of the environmental review process for one of the largest airport expansions in aviation history, the size, scope and cost of which has not yet been publicly disclosed.

The legislation:

Makes it ''federal policy'' to construct the O'Hare portion of the plan (projected to cost as much as 16 billion dollars) and, if construction has not commenced by 2004, *requires the federal government to complete the project ''as a federal project'';*

Preempts the State of Illinois from exercising its lawful rights under its own laws;

Mandates changes to the Clean Air Act implementation plan for the Chicago region should it interfere with the O'Hare expansion plans; and

Short-circuits the environmental review process under NEPA, a requirement applicable to all airport construction projects.

Each of these issues is particularly troubling from a national aviation and environmental perspective. For example, the curtailing of the NEPA process calls into question the need for other airport projects to undergo the same rigorous screening process to determine their public benefit and environmental compliance. Further, the legislation would in effect commit the Federal Government to spend billions of dollars for a flawed airport development project, and diverts needed financial and federal government resources from other critically needed airport projects throughout the nation.

The legislation is unnecessary. If the project is compelling, it should be able to meet the usual and regular evaluative process that is applicable to every other airport in the country. The FAA possesses the special competence and expertise to evaluate airport development projects. It is the agency entrusted by Congress to determine whether this or any other project makes sense for the national air transportation system. The legislation would substantially erode the FAA's independent and deliberative role in reviewing the O'Hare project. Moreover, the bill short-circuits the required review under the National Environmental Policy Act (NEPA), a 30 year old statute with a well defined process to review major federal action of this type.

The O'Hare project raises many public questions, which requires full debate and public disclosure through the FAA's review procedures. These questions include:

Will the air traffic control airspace resources around O'Hare allow the substantial increase in operations (project to increase from 900,000 per year to 1.4 million per year)?

Is the O'Hare expansion plan the best choice to meet the future needs of the Chicago region?

How much will the O'Hare expansion project cost?

Will six, closely aligned parallel runways (only 1400 feet apart) be cost effective to maximize the region's capacity?

What will be the impact on surrounding neighborhoods of the proposed project?

Is it possible to tear up two major runways and build four additional runways at the same time O'Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it propose to make these massive alterations while O'Hare continues to function as a key US hub?

Will the funds that must be expended at O'Hare preclude the development of Peotone? Will such mandated funding impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?

What impact would the expenditure of billions of dollars for, and according special congressional priority to, the O'Hare project have on critically needed airport development and aviation security projects for other airports throughout the nation.

It appears that one of the unstated goals of the legislation is to curtail the normal NEPA process and, to avoid the NEPA-mandated right of all interested persons to have an opportunity to review and comment on the environmental impacts of the proposal. The legislation seeks to have Congress make the decisions now vested by law with the FAA, even though details of the project has yet to be fully disclosed, the purpose and need has yet to be documented, the environmental impacts have yet to be evaluated, the alternatives and cost-benefits have yet to be studied.

This is not streamlining; it is redlining for a single airport! It is unprecedented in the history of civil aviation. A legislative mandate giving O'Hare special priority for approvals and funding for billions of taxpayers dollars will adversely impact the availability of grants-in-aid dollars for other major airport development projects around the country. If the legislation is enacted, proposed enhancements at airports such as San Francisco, Washington Dulles, Los Angeles, Denver, Seattle, Atlanta, and Dallas-Ft. Worth may experience delays in order to accommodate the preference granted to Chicago.

The proponents of HR 3479/S 1786 unsuccessfully attempted to enact this legislation without a hearing late last year but that plan of action was soundly rejected by members of the U.S. Senate, who objected to it being added to an appropriations bill without the benefit of a hearing. The speed with which its supporters want this bill to move suggests that they really do not want full and open consideration by Congress regarding the substantial questions that surround this bill. Recent history with aviation legislation should suggest that the industry's complex economic, policy, financial and environment issues require thoughtful review, not superficial treatment.

The bill is also unprecedented because it curtails the ability of a state to enforce its own laws and is thereby inconsistent with the Tenth Amendment. Every State should be very concerned about this proposed precedent, which may adversely affect its ability to make similar decisions in the future. Moreover, the attempt to foreclose the next Governor's ability to review this project makes bad public policy. The Chief Executive of a state should evidence the broader support of his or her government before such projects are adopted by the federal government. HR 3479/S 1786 seek to abrogate that historical protection.

The Senate Commerce, Science and Transportation Committee is likely to hold a hearing on S 1786 in the near future. We encourage you to urge Chairman Hollings and Ranking Member McCain to conduct a careful and thorough investigation of the legislation.

SOC is an advocate for the expansion of Chicago's aviation capacity. SOC has issued its own fully documented report which sets forth a Plan to increase capacity in the Chicago region. See enclosures. We urge you to oppose this legislation which would reverse 30 years of precedent and policy under NEPA and aviation law.

Sincerely,

JOHN C. GEILS,
Chairman.

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION BEFORE THE HOUSE AVIATION SUBCOMMITTEE OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE—HEARING ON H.R. 3479 MARCH 6, 2002

TESTIMONY OF THE SUBURBAN O'HARE COMMISSION

Mr. Chairman, and members of the House Aviation Subcommittee, the Suburban O'Hare Commission (SOC), a consortium of 14 local governments adjacent to O'Hare International Airport, representing the interests of over 1.5 million citizens, is grateful for the opportunity to present its views concerning the important national aviation policy and legal issues raised by H.R. 3479.

This legislation is intended to fast-track a massive new runway redevelopment plan for the Chicago O'Hare International Airport. Its principal purpose and effect would be to circumvent established requirements for review of airport development projects by the Federal Aviation Administration (FAA) and environmental agencies. The effect of the bill would be to silence, though an act of Congress, further public debate concerning the future and direction of Chicago's airport needs. It would effectively curtail the role of the FAA in evaluating and approving airport development projects; it would also have the effect of substantially reducing the protections of NEPA that safeguard the environment and the public health and welfare. H.R. 3479 represents an unprecedented abandonment of the federal laws established by Congress to provide for the reasoned and orderly construction of airports in a manner consistent with the public interest.

At the outset, it is important for you to understand what SOC stands for, and what it does not. SOC is not opposed to airport development, nor the need to improve the capacity and efficiency of Chicago's airport system. To the contrary, there is broad regional consensus—including SOC—that the Chicago metropolitan area needs significant new airport capacity. What SOC does oppose, however, is the single-minded focus on expansion at O'Hare—when there is a better, faster, safer, less expensive, and more environmentally-sound alternative: the construction of a South Suburban Airport at Peotone.

SOC believes that these regional airport development issues are matters to be determined by the Federal Aviation Administration, exercising authority charged to it by law. We do not think that the Congress should decide, through political fiat, what does, or does not make sense for the citizens most directly affected by the Chicago region's airport development needs. Congress has neither the specialized aviation and airport environmental expertise of the FAA, nor the local knowledge necessary to make these judgments. Indeed, for Congress to impose its will in the manner proposed by H.R. 3479, would strip away the vested oversight authority of the State of Illinois with respect to airport construction within its borders, and directly violate the 10th amendment.

SOC opposes this bill because it seeks to avoid the careful framework established for review of airport development by the FAA in cooperation with state airport sponsors. And, the bill would result in a major curtailment of the critical environmental review process. The O'Hare redevelopment plan is one of the largest airport expansions in aviation history. A project of this size, scope, and cost certainly deserves more than a perfunctory review, which is all the bill would allow. Before turning to a more thorough evaluation of the legislation, I would like to highlight a few of our key concerns.

H.R. 3479 is unprecedented in the history of civil aviation. It would:

Declare it to be ''federal policy'' to construct the O'Hare expansion project (expected to cost 15 billion dollars or more). If the City has not commenced construction by 2004, the FAA is required to ''construct the [six] runway design plan as a federal project'';

Accord the O'Hare runway project special statutory priority over every other airport project in the nation;

Violate the 10th amendment by preempting the State of Illinois from exercising its lawful oversight authority under its own law;

Interfere with FAA's statutory responsibility to evaluate the air safety, efficiency and public benefits/costs of airport development projects.

Short-circuit the environmental review process under NEPA, which is applicable to all other airport construction projects;

Mandate changes to the Clean Air Act State Implementation Plan (SIP) for the Chicago area by giving O'Hare a blank check to define its own pollution emissions at the expense of other industries.

For these reasons, SOC strongly urges the Aviation Subcommittee to reject H.R. 3479, and its goal of establishing a unique set of rules, applicable to no other airport in the nation, to ensure construction at O'Hare.

1. H.R. 3479 CONSTITUTES UNPRECEDENTED INTERFERENCE WITH FAA'S STATUTORY RESPONSIBILITY TO EVALUATE THE AIR SAFETY, EFFICIENCY AND COST/BENEFITS OF AIRPORT DEVELOPMENT PROJECTS.

SOC is extremely concerned about the shift in decision-making responsibilities over airport development that would be brought about by H.R. 3479. The bill would drastically impinge—indeed, nullify—the FAA Administrator's and the Secretary of Transportation's authority to review and approve airport development projects. The exercise by the FAA of independent, objective and expert judgment with respect to airport projects is essential to ensuring that public resources are well-spent to optimize the safety and efficiency of the air transportation system and to protect against harmful environmental consequences—particularly on a highly controverted and extremely costly project such as this. SOC believes that the critical future planning decisions about what Chicago-area airports and which particular runways should be built are best made on the technical merits, rather than through the federal political process.

Under current law, the FAA and DOT have the responsibility to determine whether any proposed airport development project is consistent with promoting the public interest and the safe and efficient management of the national air transportation system. The proposed legislation would substitute a political judgment by Congress for the expert judgment of the agencies that are charged with that responsibility under the Transportation Code (Title 49 U.S.C. Subtitle VII).

The legislation would erode the FAA's independent and deliberative role in reviewing the O'Hare project. It would have Congress make the decisions now vested in the FAA, even though details of the development plan have yet to be disclosed, the need for the plan has yet to be documented, the environmental impacts have yet to be determined, and the alternatives and cost-benefits have yet to be evaluated.

The legislation is unprecedented in the history of aviation. It accords unique and special priority for O'Hare not applicable to any other airport in the country. This is not streamlining; it is redlining for the benefit of a single airport!

By directing the FAA to give the O'Hare project priority for approvals and expenditure of Federal government resources, other vitally important airport development projects around the country would be adversely impacted. If this legislation is enacted, airport projects at airports such as San Francisco, Dallas/Ft. Worth, Los Angeles, Atlanta, San Jose and Seattle may experience FAA review delays or reduced funding in order to accommodate the preference accorded to O'Hare by Congress.

DOT and FAA currently have discretion to approve airport development funding for those projects that will ''preserve and enhance capacity, safety and security'' at airports throughout the country. 49 U.S.C. § 47115(c)(1). The Secretary is required to take into account ''the effect the proposed project will have on the overall national air transportation system and capacity.'' 49 U.S.C. 47115(d)(1). In addition, the DOT and the FAA now have the authority to approve changes in an airport's configuration (the airport layout plan) and to review the impacts of such changes.

The important issues the FAA is required to consider, but which the legislation short-circuits include the following:

Will the air traffic control airspace resources around O'Hare allow the substantial increase in operations (projected to increase from 900,000 per year to 1.6 million per year)?

Is the O'Hare expansion plan the best choice to meet the future needs of Chicago region?

How much will the O'Hare expansion project cost?

Will six, closely-aligned parallel runways (several of which are only 1400 feet apart) be cost effective to maximize the region's capacity?

What will be the impact on surrounding neighborhoods of the proposed project?

Is it possible to tear up two major runways and build four additional runways at the same time O'Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it propose to make these massive alterations while O'Hare continues to function as a key U.S. hub?

Will the preferences accorded to O'Hare in the legislation effectively preclude the development of Peotone? Will such preference impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?

What impact would the expenditure of billions of dollars for, and according special Congressional preference to the O'Hare project have on critically needed airport development and aviation security projects for other major airports throughout the nation?

The legislation would rob the Secretary and the FAA Administrator of their important statutory obligations. It is critical for the expert federal agencies entrusted with responsibility in this area to evaluate and make a determination on whether the crowded skies over O'Hare—with the closely abutting busy airspace used by Midway, Meigs and other very active general aviation airports in the area—are the safest, and most efficient conduit for additional air traffic moving to and from Chicago and through the national air transportation system, as opposed to the development of a new airport in the South Suburban area.

The legislation would substantially erode the FAA's independent and objective role in reviewing major airport expansion projects. Under the legislation, Congress will make that determination, not the FAA, since Congress would declare that: ''it is critical the Federal Government does all it can to facilitate the redesign of O'Hare'' (Sec. 2(3)), and directs that the FAA ''shall . . . construct the [six] runway design plan as a Federal project'' (Sec. 3(f)).

Thus, under the legislation, Congress would nullify the FAA's role in determining whether this airport development project is consistent with applicable requirements and reflects the sound expenditure of limited resources and airport development funds. Enactment of this legislation will dictate the construction of additional runways at O'Hare without regard to whether they will actually add capacity to the Chicago region or the national air transportation system.

THE O'HARE REDEVELOPMENT PLAN WOULD BE A NATIONAL AIR TRANSPORTATION MISTAKE OF EPIC PROPORTIONS

The O'Hare ''runway design plan'', which the legislation will mandate, calls for a massive expansion of O'Hare by creating a total of six parallel runways. However, in terms of well-established FAA safety and efficiency standards, several of the runways are too closely spaced (separated by only 1,400 feet) to allow for simultaneous arrivals or departures. The runways can only be used simultaneously if one runway is used for arrivals and the other is used for departures—and even then only if the weather is good. Whenever cloud cover and visibility conditions require the use of instrument landing procedures (a chronic situation at O'Hare), these closely spaced parallel runways could not be used simultaneously at all. By mandating the construction of the proposed configuration, Congress would abrogate the FAA's existing statutory power to determine whether the proposed runway system is safe and whether it would in fact add capacity to the region.

The proposed legislation would have Congress make findings that the national air transportation is ''dependent'' on O'Hare and that ''the reliability and efficiency of interstate air transportation for the residents and businesses in many States depend on the efficient processing of air traffic operations at O'Hare.'' (Sec. 2). While the bill's promoters, most notably the City of Chicago, would no doubt prefer that interstate air traffic have no alternative but to flow through O'Hare, in reality, this is far from the truth and there is a better, more efficient alternative.

Passengers traveling via O'Hare have their option of any number of viable connecting hubs. Rather than trying to cram more flights through O'Hare, SOC believes that the best way to enhance Chicago's role as a pivotal hub in the national air transportation system is through the development of a modern alternate third airport at Peotone. Chicago's large population and economic base makes it an attractive hub, and a new South Suburban airport will attract more air carrier service and more connecting passengers.

The legislation accords significant preference to O'Hare over the Peotone airport. If, despite the efficiency and safety concerns of the O'Hare project and the superiority of the proposed airport at Peotone, O'Hare is massively expanded, the economic viability of a new airport would be undermined. An expanded O'Hare could make it more difficult to justify a new South Suburban Airport at Peotone, as contemplated in the legislation.

Thus, the proposed legislation pays lip service to the development of a new airport at Peotone, but in practical effect would thwart the development of a South Suburban Airport. The legislation requires that the FAA ''shall construct the [six] runway design plan a federal project'' if it is not begun by July 1, 2004. No such directive is applicable to Peotone. As a result, the legislation guarantees the expansion of O'Hare but leaves Peotone to whither as an unfunded appendage. Such determinations should be made by the FAA through the exercise of its

expertise, not by Congress. Absent the legislative directive, the FAA might well determine to give Peotone a higher priority than O'Hare, based on very real safety, efficiency, public interest and environmental considerations. Under the legislation that would not be possible.

Worse yet, by prejudging the issue and requiring the mandatory federal construction of the ill-conceived O'Hare six-runway design plan, Congress would be condemning the Chicago region and the national air transportation system to a future of interminable delays. Because of air traffic constraints that will be exacerbated by the O'Hare project, a six-runway O'Hare super-hub would produce the biggest and most delay-prone airport in the country.

The Achilles heel of the O'Hare redevelopment plan is that the system is guaranteed to collapse in bad weather. Safety standards mandate that the closely-spaced parallel runways could not be used for simultaneous operations when the weather requires pilots to use instrument procedures. This means that half the expensive new concrete poured at O'Hare would effectively be taken out of service exactly when they need it most—to alleviate bad weather backups, which are a leading cause of delays.

Far from enhancing capacity and efficiency, if Congress were to adopt this legislation it would saddle the national air transportation system with an enormously expensive and delay-prone hub that is, in reality, the worst tool for the job. That is why SOC believes this is a matter best left to the FAA's expert judgment, instead of the legislative process.

LAYING NEW CONCRETE ON TOP OF FUNCTIONAL EXISTING RUNWAYS FLUNKS THE COST-BENEFIT TEST, AND DEFEATS THE FEDERAL POLICY TO DEVELOP RELIEVER AIRPORTS

There is compelling evidence demonstrating that the development of a third Chicago airport at Peotone would provide more effective capacity expansion for the region, and could be brought on line more quickly, at less cost, with less disruption to existing operations, and with less environmental impacts, than the proposed mandatory development project at O'Hare. Cost estimates released by the State of Illinois indicate that a new six runway airport at Peotone would cost in the vicinity of 5 billion dollars. Cost estimates for new runways at O'Hare are between 1 to 2 billion dollars per runway. Chicago itself estimates that terminal expansion at O'Hare would cost another 6 billion dollars, bringing the total tab for the O'Hare expansion extravaganza to a whopping 15 billion dollars. Even this massive figure does not include the additional cost of access roads, parking facilities, and mitigation measures for the immediately impacted communities.

Given that Peotone would provide substantially more new incremental capacity at substantially less cost, the O'Hare construction plan is a spendthrift nightmare. Under existing law, the FAA is responsible for weighing the ''project benefit and cost''. 49 U.S.C. §47115(d)(2). Congress added that responsibility to avoid situations in which taxpayer dollars are expended on projects that do not represent the best use of limited airport development funds. Under the required cost-benefit analysis, Chicago would be required to examine various alternatives and consider issues such as whether the addition of new runways at an existing airport is a better or worse investment than building a new airport. SOC submits that the O'Hare construction plan flunks this test.

The proposed legislation provides a ''quick fix'' to the otherwise fatal cost-benefit problems affecting a large scale redevelopment of O'Hare, by eliminating the FAA's essential ''purpose and need'' evaluation. The FAA is otherwise required to investigate cost-benefit of airport funding projects, and SOC believes that under any such analysis it should find this one unsatisfactory.

The legislation also contravenes the established federal policy to ''give special emphasis to developing reliever airports.'' 49 U.S.C. §47101(a)(3). By concentrating an ever-increasing number of airplanes in the finite volume of airspace over O'Hare, Congress would be frustrating the very reliever program it mandated the FAA to promote.

Another important consideration for airport development funding requires the Secretary to be satisfied that ''the project will be completed without unreasonable delay''. 49 U.S.C. §47106(a)(4). Attempting a massive redevelopment project at one of the busiest airports in the country is a recipe for project delays and massive disruption to the existing air carrier activities at O'Hare.

II. H.R. 3479 SHORTCUTS NEPA AND A HOST OF OTHER STATUTES THAT ARE ESSENTIAL TO THE PROTECTION OF THE ENVIRONMENT AND THE PUBLIC HEALTH AND WELFARE

This is result-driven legislation which has the singular purpose and effect of curtailing meaningful evaluation of the environmental consequences in order to lay runways and pavement at O'Hare. The legislation would shunt aside vital considerations that under current law would otherwise require careful scrutiny by the FAA and other agencies, including such issues as: the tremendous noise impacts over surrounding communities, the massive amounts of ozone and other airborne pollutants that would be emitted into the Chicago-area airmass, the millions of additional gallons in toxic deicing fluid and other chemical runoff that will flow into water-ways, and the impact of the project on wetlands, endangered species and other natural resources.

Even in its current pre-expansion condition, O'Hare is the largest source of toxic emissions and hazardous air pollutants in the State of Illinois. Moreover, monitoring data shows that O'Hare impacts large numbers of Chicago area residents with significant and undesirable noise exposure. Adding hundreds of thousands of new flights will make matters much worse. SOC is extremely concerned that the proposed legislation will effectively preclude further consideration of these important issues, cut off public comment, and curtail thorough evaluation of the public health and environmental considerations NEPA was enacted to protect.

While the legislation pays lip service to compliance with NEPA, there is simply no way that a project of this scope and scale could be subject to meaningful NEPA review in the scant period of time the legislation allows before the FAA is compelled to begin runway construction ''as a federal project.'' Airport development projects of this magnitude ordinarily take several years to complete the NEPA process, under current law and procedures.

Thus, while the bill states that implementation of the O'Hare construction plan ''shall be subject to application of Federal laws with respect to environmental protection and environmental analysis including [NEPA]'' (Sec. 3(a)(2)(B)), as a practical matter the construction deadline would make it impossible for FAA to conduct the necessary NEPA review. Courts have held that when Congress imposes a mandatory action under an impossible deadline, NEPA has, in effect, been legislatively overruled. See, Flint Ridge Development Co. v. Scenic Rivers, 426 U.S. 776 (1976). That is exactly what Congress would be doing here, despite token language to the contrary.

The FAA is the lead agency responsible for coordinating NEPA review of airport construction projects, along with the involvement of other Federal Agencies and the public. In discharging these obligations, the Transportation Code and NEPA charge the FAA with the duty to objectively and independently analyze the proposed airport expansion, and its impact on the environment, without prejudging the outcome.

Section 3(f) of the bill—which compels the Administrator to begin building the runway development plan at O'Hare by 2004 if the City has not begun construction—effectively eliminates that independence. FAA would do all it could to avoid having to assume construction of O'Hare as a federal project. A statutorily-imposed construction ultimatum by Congress would have the effect of forcing the environmental review process to be so truncated as to effectively preclude meaningful evaluation by the FAA of the environmental consequences.

The massive six-runway redevelopment and expansion plan at O'Hare raises serious and significant adverse environmental questions bearing on air quality, other pollutants, and noise. If an application has significant adverse environmental effects, under the Transportation Code, the FAA Administrator may grant approval ''only after a finding that no possible prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.'' 49 U.S.C. §47106(c). The proposed legislation would foreclose consideration of the otherwise legally-required alternatives.

Indeed, the alternative endorsed by SOC—that of a new South Suburban Airport—can readily be shown to produce far fewer negative environmental impacts. A new airport at Peotone would have an extensive non-residential environmental land buffer to mitigate the noise and air pollution created by the facility. In contrast, the environmental ''buffer'' for O'Hare currently consists of Bensenville, Wood Dale, Elk Grove and a host of other DuPage County communities—a residential ''buffer'' that would be severely negatively impacted if hundreds of thousands of more flights are added at O'Hare.

It is highly significant that two Chicago area Congressmen from different districts, different political parties, and with different political philosophies—Congressmen Hyde and Congressman Jackson—have come out united against further O'Hare expansion, based, in large part, on the disastrous environmental impacts to the region. Allow me to quote here from their open letter to State and Regional Leaders——

''Rather than build an environmentally sound new airport, Chicago wants to add new runways at O'Hare.

Adding runways at O'Hare would compound what is already an environmental disaster. Even Chicago in its Master Plan acknowledged that adding runways would allow a level of air traffic that would be environmentally unacceptable. Despite this environmental unacceptability, Chicago is aggressively fighting a new airport and is actively pushing the option of new runways at O'Hare. (Hyde/Jackson Open Letter, October, 1997 at 9.)

These are precisely the type of critical environmental issues that NEPA requires to be thoroughly examined prior to a major federal action like the O'Hare redevelopment project. However, NEPA and its companion environmental statutes would be effectively gutted by the proposed legislation. Viable, prudent, and indeed more desirable environmental alternatives exist than re-developing an inherently delay-prone airport in close proximity to the City. This legislation eliminates the FAA's independence and forces the FAA, as the lead agency on this project, to short-circuit its environmental review.

A. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (42 U.S.C. § 4321 ET SEQ.) AND ITS COMPANION ENVIRONMENTAL STATUTES WOULD BE IGNORED BY THE PROPOSED LEGISLATION

NEPA would either be eliminated or so truncated by the legislation as to preclude meaningful review by the FAA Administrator, coordinating federal agencies and the public. NEPA is the nation's core environmental statute that requires Federal agencies to give careful consideration to the potential environmental impacts of the project, to consider practical alternatives to the project, and to give the public adequate opportunity to participate in the review process.

The Department of Transportation—in its May 21, 2001 Report To Congress on Environmental Review of Airport Projects—recognizes the important role of NEPA and public participation as critical to the airport development process:

''[NEPA] requires federal agencies to prepare [Environmental Impact Studies] for projects significantly affecting the environment. Since most new commercial service runways and major runway expansions produce significant environmental impacts, an EIS is usually required. (Page iii)

''Public involvement is an essential part of the environmental review process. . . . There is usually a high degree of public interest in airport projects, including a certain amount of public opposition.'' (Page v).

''[P]ublic opposition to airport projects continues to rise. The NIMBY effect should not be dismissed as an environmental fringe element. It is based on real environmental concerns and has an increasingly broad-based constituency.'' (Page iii).

H.R. 3479 is diametrically opposed to the objectives of NEPA and the important public policies recognized by the Department of Transportation in its Report. For starters, the airport environmental review process for a runway expansion project of this magnitude requires the preparation of an EIS, as well as the opportunity for substantial public involvement. That cannot and will not happen under the timetable contemplated by the proposed legislation, and the public's right to participate in the NEPA process would be rendered meaningless,

In addition to the FAA's express NEPA obligations, the Clean Air Act further authorizes the EPA Administrator to conduct a NEPA review on federal projects for construction and major federal actions that are subject to NEPA. If the EPA Administrator determines that the proposed action is unsatisfactory from the standpoint of public health and welfare, or environmental quality, she must make public that determination and refer the matter to the Council on Environmental Quality for mediation. The mandatory 2004 Federal construction deadline under the legislation for the O'Hare project forecloses meaningful review.

B. STATE IMPLEMENTATION PLAN (SIP) CONFORMITY DETERMINATION (CLEAN AIR ACT)

The Chicago O'Hare area is classified as a severe nonattainment area for ozone, and parts of the Chicago region are designated as moderate nonattainment for particulate matter. Without amendment of the Clean Air Act, the O'Hare expansion program would face difficult or insurmountable burdens under that statute.

O'Hare is a huge polluter, and will be far worse if expanded to nearly double the level of flight operations. Air pollution from O'Hare consists of burned and unburned jet fuel aerosols containing dozens of carcinogenic organic compounds—including Benzene and Formaldehyde. If flights are expanded from 900,000 to 1.6 million annually, O'Hare and its immediately surrounding communities will experience an inevitable and unacceptably high concentration of Ozone and a host of toxic pollutants hanging in toxic cloud over O'Hare. (By contrast, a South Suburban Airport would have a significant land buffer to assist in the dispersal of these toxic pollutants and to keep them away from residential areas. No such buffer exists at O'Hare.)

As required by Section 176 of the Clean Air Act, the State of Illinois has, after extensive public consultation and comment, developed a State Implementation Plan (SIP), which is the State's plan to come into compliance with the national air quality standards under the Clean Air Act. The SIP reflects a careful balance between the protection of the public health and welfare from air pollution, on the one hand, and the need for commerce and other activities, on the other hand. Each Federal agency involved in an airport expansion project must make a determination that the proposed action conforms to the SIP.

Because of the huge increase in air pollution, there is a major inherent conflict between the existing SIP and O'Hare expansion. Under normal SIP processes, the City of Chicago, the airlines, the State of Illinois and its various agencies, the U.S. EPA, the FAA, other Federal agencies, and the public would work together to amend the SIP to accommodate O'Hare's needs while balancing competing interests. H.R. 3479 completely avoids that consultative and deliberative process.

If this legislation is enacted, the City is empowered to define O'Hare's SIP allocation, without the normal public participation process and without the participation of the State and Federal agencies. Moreover, the legislation directs the Administrator of the EPA to amend the SIP to accommodate the O'Hare's expansion (Section 3 (a)(5): ''. . . the Environmental Protection Agency shall forthwith use its powers under the Clean Air Act respecting approval and promulgation of implementation plans to cause or promulgate a revision of such implementation plan sufficient for the runway redesign plan to satisfy the requirements of section 176(c) of the Clean Air Act.'') This is unprecedented legislation. There is no public process, no balancing, only O'Hare claiming for itself whatever level of emissions it wants.

Under the proposed statute, O'Hare's needs (as determined by the City) are accepted as given, and the EPA would force other institutions to reduce their emissions pursuant to the EPA's judgment on how to reach SIP goals. This fails to allow other businesses and the public any opportunity to contribute to or participate in the process. Power companies, railroads, truckers, buses, heavy industry, and the Peotone Airport will, in all likelihood, have their target emissions cut by the EPA to satisfy O'Hare's runway plan. And, because this is a legislative mandate, none of those other vitally interested parties will be allowed to challenge O'Hare's claims or the EPA Administrator's solutions.

The proposed legislation would radically alter the SIP and would drastically impact other industries. The statute before Congress would do tremendous damage to the existing processes and the other businesses impacted by this unique power granted the City.

C. OTHER IMPACTED ''CROSS-CUTTING'' ENVIRONMENTAL LAWS

NEPA is the primary statutory tool for analyzing the impact of airport expansion on the environment. In addition, Congress has passed a number of environmental laws addressing federal responsibility for recognizing and protecting special national resources. These laws, referred to as ''cross-cutting'' laws, require Federal agencies to consider the impact that their programs and some private actions might have on such national resources. This consideration must be documented as part of the agencies' decision-making process. Many of these laws require the lead Federal agencies to consult with other federal and state agencies having legal authority over the proposed action or special expertise relevant to the proposed action.

Significantly, Congress has determined that standards and processes embodied in each of these Federal laws should be applied to every airport expansion. Some of the most obvious environmental criteria that would be eviscerated by the proposed O'Hare expansion legislation are set forth below.

1. ENDANGERED SPECIES ACT, 16 U.S.C. 1531 ET SEQ.

Airport expansion projects frequently raise Endangered Species Act concerns because airports are favored habitats for certain endangered and threatened birds of prey. If review of the proposed action reveals the potential for an adverse impact, the FAA must obtain an opinion from the Fish and Wildlife Service regarding the impact of the project on the endangered species or its habitat. The Endangered Species Act prohibits the project from proceeding unless the agencies agree on alternatives to the project to eliminate the adverse impact.

It will be difficult or impossible, in the time allowed, for the FAA and the Fish and Wildlife Service to perform the analysis of the potential impacts that O'Hare expansion would have on endangered species.

2. CLEAN WATER ACT, 33 U.S.C. 1251 ET SEQ.

The Clean Water Act prohibits the discharge of dredged or fill material into wetlands except in compliance with a permit issued by the Army Corps of Engineers. Federal agencies are required to identify any wetlands or other navigable waters of the United States that might be affected by a project.

In the normal course of any other airport project, relevant Federal and State agencies would contribute their comments and judgment as to whether a proposed project would put wet-lands at risk. If enacted, this legislation would result in the approval of the O'Hare project without consideration of these potential impacts in accordance with established statutory standards.

3. FLOODPLAINS (EXECUTIVE ORDER 11988)

Executive Order 11988 requires Federal agencies to avoid, to the extent possible, the adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.

For all airport development projects, the FAA is required to: (1) determine if the proposed project is located in a floodplain; (2) identify and evaluate practicable alternatives to the proposed project; (3) develop mitigation measures if alternatives are not practicable; and (4) encourage public participation in the review process.

If enacted, this legislation would mandate implementation of the six-runway O'Hare project without even passing consideration of whether floodplains would be affected and measures that could be taken to reduce the impact of the project.

III. H.R. 3479 WOULD VIOLATE THE TENTH AMENDMENT OF THE U.S. CONSTITUTION

SOC believes that it is inappropriate and unlawful for the Federal Congress to dictate to the State of Illinois which airports and what runways to construct within its borders. Decisions involving airport and infrastructure development have historically been delegated to the states. H.R. 3479 would strip the State of Illinois of its vested authority to delegate and authorize the City of

Chicago to construct airports in the State. Doing so would be a clear-cut violation of the tenth amendment,

Under the framework of federalism established by the Constitution, Congress is without power to dictate to the States how the States delegate power, or to limit the delegation of that power, to their political subdivisions. Unless and until Congress takes over complete responsibility to build airports, airports will continue to be developed by States, or their delegated agents, as an exercise of State power and law. Compliance by the political subdivision to which the State delegates authority to construct airports with the oversight conditions imposed by the State is an essential element of State authority and power.

The proposed legislation would strip away such oversight authority, fundamentally intruding upon the State's sovereign authority to take action under its own laws. The legislation would prohibit the State from restricting or limiting the delegated exercise of State power by the State's political subdivision. It would nullify the decision of the State of Illinois legislature allocating authority with respect to construction of airports located within the State, particularly the limitations and conditions imposed by the State on the delegation of that power to the City. The law is clear that Congress does not have the power to intrude or interfere with a State's decision as to how to allocate State power.

Under the U.S. Constitution, the State's authority to create, modify, condition, and impose limitations on the structure and powers of the State's political subdivisions is a matter left the exclusive control of the States.

''Municipal corporations are political subdivisions of the State, and created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respect the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.'' Commissioners of Highways v. United States, 653 F.2d 292, 297 (7th Cir. 1981) (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907) (emphasis added).

The Illinois State law delegating powers to construct or alter airports and runways are subject to the requirements of the Illinois Aeronautics Act. This Act requires that the State approve any alterations of the airport. The proposed legislation is an attempt to remove this State oversight in violation of the Tenth Amendment. The law would commandeer the City of Chicago, which is an instrumentality of the State of Illinois, to do what the State has prohibited it from doing: i.e. expanding the airport without receiving a permit from the State. Under State law, any airport construction without the required State permit is unlawful.

Congress does not have the authority to interfere with the State of Illinois's determination as to how to allocate State power to the City of Chicago. By impairing the State's delegation, the legislation would have the effect of undermining the delegation of the authority from the State to the City and thereby extinguish that delegation. As a result, any effort by the City to build new runways would be without the required State delegation and ultra vires under State law.

The national implications of this legislation are profound and go well beyond Illinois and implicate States throughout the nation. Most States have laws providing for some level of oversight over airport expansions, including State environmental laws and permitting requirements. Twenty-six states have laws requiring local airport authorities to submit applications for federal funds through the state, rather than directly to the FAA. This legislation would set a dangerous precedent nullifying State oversight laws.

IV. CONCLUSION

In conclusion, SOC strongly urges the Subcommittee to reject H.R. 3479. This legislation would dismantle the careful federal framework established to govern the review and approval of airport development projects. The FAA must have the unfettered ability to exercise its expert independent and objective expert oversight functions over airport development projects, and to carry out its environmental review responsibilities under NEPA, to make sure that whatever airport development is undertaken will be the best possible solution for the Chicago region and the national air transportation system.

The proposed legislation ties the FAA's hands by removing the agency's neutrality and discretion by forcing it to rush headlong toward a mandatory construction of O'Hare by 2004. SOC believes that a rational and reasoned evaluation will establish that the development of a new South Suburban Airport is superior to O'Hare in every respect—that a new airport at Peotone would offer more capacity, can be built at less cost, more quickly, and with fewer adverse environmental consequences. These are extremely important considerations which need to be resolved though the established federal review process. Congress not attempt to resolve them here by political fiat.

SOUTH SUBURBAN AIRPORT FACT SHEET

Reasons for building of a regional airport in Chicago's south suburbs:

JOBS

The South Suburban Airport would create an estimated 236,000 permanent jobs in the next 20 years. Most of these would be good-paying jobs with family health insurance and retirement benefits—jobs that stabilize communities and rebuild local economies.

REGIONAL AIR TRAVEL NEEDS

Air travel is expected to double in the next 20 years. Chicago's existing airports cannot handle that growth. O'Hare has reached operational capacity and Midway will reach capacity by 2005. Without additional capacity, airlines will be forced to move their hubs—and jobs—elsewhere.

ECONOMIC EQUITY

The third airport is an urbanist's dream—solving multiple problems with one investment. While the 1990s has been good to many, Chicago's old South Side/south suburban industrial hub has lost jobs and experienced negative growth—resulting in the downward spiral of lost investment, soaring property taxes, declining schools and rising crime. The airport would provide economic opportunities for hundreds of thousands of people, mostly minorities, who have been left behind.

LOWER FARES

A third airport would reduce fares. Fares to Chicago today average 34 percent higher than most major U.S. cities because of a lack of competition at O'Hare. American and United Airlines practically monopolize the airport, controlling 89 percent of all flights. A new airport would increase competition among carriers, which often leads to lower fares.

NO NEW TAXES

Airport construction would be paid by private investors and/or the airlines using the facility—not by taxpayers. Indeed, airports are cash cows that generate millions of tax dollars, spur investment, stabilize communities, shrink welfare rolls and improve quality of life.

WON'T HURT MIDWAY OR O'HARE

This airport would relieve, not compete with, existing airports. It would handle ovetflow traffic from O'Hare and Midway. The third airport would expand, as needed, to accommodate future demands that O'Hare and Midway cannot meet.

WHY YOU SHOULD VOTE 'NO' ON H.R. 3479

Don't be fooled into thinking this legislation will benefit your constituents

H.R. 3479 never should have been brought up under suspension. It is too controversial, What are proponents trying to hide by limiting debate?

2. H.R. 3479 Violates state's rights. The governor and mayor never consulted the Illinois General Assembly nor did they even try to obtain a permit from the Illinois Department of Transportation to expand O'Hare. Why? See #3 and #4. Also, think this legislation won't set a precedent that could rob your state legislature of its power to decide local airport matters? Think again.

3. H.R. 3479 Will Cost $15 to $20 billion, Not the 6.6 billion that the Mayor and governor are claiming. Do you really think there will be money left over to expand your local airport once O'Hare is expanded? Think again. A third suburban airport can be built CHEAPER and FASTER than O'Hare. Let's think ahead and spend the nation's money wisely.

4. H.R. 3479 will destroy up to 1,500 homes and an untold number of businesses once all of the safety buffers, ring roads etc. are in place. Don't believe the claims that ONLY 533 homes will be destroyed. These homes are occupied by senior citizens, young families and Hispanic families—all of whom won't be able to find quality, affordable housing in DuPage County if their homes are bulldozed. Quality of life for 1 million residents surrounding O'Hare will also be destroyed.

5. H.R. 3479 IS a public health treat. O'Hare expansion = increased air and noise pollution, increased cancer rates . . . the list goes on.

HENRY HYDE.
JESSE JACKSON, Jr.

Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Well, at least we have worked it out of my friend the gentleman from Illinois (Mr. LIPINSKI) why this city will not get a certificate of approval from the State. He said because the governor only has a year left, and they just do not know what another governor might want to do. They want to deprive the succeeding Governor of having any say on this massive expansion.

Well, I would like to know who is going to pay for this. We still did not get an answer on that. If United and American are going to buy these bonds that will be issued, why would they not demand their present monopoly, or duopoly? These are questions we do not have any answers to.

The Illinois Municipal Code is what empowers the city. They have no more nor any less rights to do anything unless conveyed upon them through the legislature. This bill seeks to sidestep the legislature and have Washington decide a local issue.

Every Republican I have ever known campaigns on the theory that we are going to cut the Federal Government down to size. Well, I would say to Members, do not ever say that, if you vote for this bill. This is a massive transfer of power to Congress and debilitates, weakens, ignores local government.

Mr. JACKSON of Illinois. Mr. Speaker, I yield back the balance of our time.

Mr. MICA. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Illinois (Mr. KIRK), who is one of the prime sponsors of this legislation.

Mr. KIRK. Mr. Speaker, I thank my chairman for yielding me time, and I rise in strong support of this legislation.

Mr. Speaker, we have been delayed in the passage of this very important bill, largely due to the respect and admiration we have for one Member of this House, the gentleman from Illinois (Mr. HYDE). He is a hero to me, and our communities and our country owe him a great deal of gratitude for the service he has given to the Nation.

The Chicago Tribune called the gentleman from Illinois (Mr. HYDE) a ''Lion in Winter,'' but the last week has proved that he is still a tiger.

But this legislation is still required, for Chicago and for the Nation. America's busiest airport is broken. Passengers using the airfield have only a 60 percent chance of leaving on time, and experts say that when O'Hare gets a cold, most airports get the flu. Tie-ups strand Americans everywhere, caused by an outdated design set in place by political gridlock.

That gridlock has been broken. Illinois is one of two States that requires a governor's signature before modernizing an airfield. We have that signature.

In an historic agreement, our Republican Governor and Chicago's Democratic Mayor agreed to the first modernization of the airfield since 1972. This bill simply ratifies an agreement made by local leaders who showed leadership.

In these uncertain times, the modernization of this airfield unlocks over $6 billion in new work, overwhelmingly paid for by private funds. Over 100,000 new jobs will be created, in an unprecedented shot in the arm for Illinois' economy.

The new design builds a safer O'Hare, eliminating intersecting runways. The removal of north-south runways dramatically reduces the sound of aircraft over Arlington Heights, Palatine and Mt. Prospect.

The bill also highlights the importance of NASA's Quiet Aircraft Technology Program. Leaders in this House and NASA helped eliminate the noisy Stage II 727 aircraft from O'Hare. We set an aggressive Stage III noise reduction standard now in the air and will soon require even quieter Stage IV aircraft.

Mr. Speaker, I want to compliment the leaders of the O'Hare Noise Compatibility Commission and their leaders, Mayor Arlene Mulder and Mayor Rita Mullins, for their ongoing work and commitment to the quality of life issues in our communities.

Mr. Speaker, this is bipartisan legislation, strongly supported by the gentleman from Illinois (Speaker HASTERT), the minority leader, the gentleman from Missouri (Mr. GEPHARDT), the Chamber of Commerce and the AFL–CIO. Even the Sierra Club has no objection to its passage.

Given this unique political alignment, it is clear that this plan's time has come. I urge adoption of the legislation.

Mr. COSTELLO. Mr. Speaker, I rise today in support of H.R. 3479, the National Aviation Capacity Act. This legislation was introduced by my good friend, Mr. LIPINSKI, and I would like to thank him for his hard work. I am pleased to join him as a cosponsor of this legislation.

O'Hare is a tremendously important airport in not only to Chicago and the Midwest, but also our entire national aviation system. It recently reclaimed the title of the world's busiest airport and is the only airport to serve as a hub for two major airlines. O'Hare serves 190,000 travelers and operates 2,700 flights daily, employs 50,000 people and generates $37 billion ion annual economic activity.

However, O'Hare needs to be redesigned to meet today's demands. It is laid out with seven runways, six of which interest at least one other runway. The modernization plan would add one new runway. The seven existing runways will be reconfigured to include a southern runway for a total of eight runways, of which six would be parallel. These improvements would have a significant impact on reducing delays and cancellations: bad weather delays would decrease by 95 percent and overall delays would decrease by 79 percent.

On December 5, 2001, Mayor Daley and Governor Ryan reached a historic agreement to expand and improve O'Hare airport. The agreement would modernize O'Hare, create western access to the airport, provide additional funds for soundproofing home and schools near O'Hare, move forward with the construction of a third Chicago airport at the Peotone site and keep Meigs Field open until at least 2006, and likely until 2026.

H.R. 3479 would simply codify the deal so that a future governor does not rescind the agreement. Illinois is in a unique situation because the governor does have veto power. If this legislation is not enacted, it is possible that a future governor could undo all the hard work that the current governor and mayor of Chicago have done to reach this agreement.

There is some concern that this legislation sets a precedent by involving the federal government or creating a short-cut around environmental laws. Again, O'Hare is an exceptional situation which requires this limited federal action. Other cities and airport authorities do not have a governor with veto authority over this issue. The city of Chicago does not want the federal government to take over the modernization of O'Hare but the language is included in case the State delays the State Implementation Plan (SIP) of the Clean Air Act to slow down the project. The language granting priority consideration for a Letter of Intent from the FAA for Peotone is no different than language that can be found in any Transportation Appropriations bill.

Regarding environmental concerns, the bill says that implementation shall be subject to federal laws with respect to environmental protection and analysis, and that the environmental reviews will go forward in an expedited way. There is no attempt to go around existing state or federal environmental laws, and this legislation has the support of many environmental groups.

Mr. Speaker, this legislation will allow the much-needed expansion of O'Hare to move forward. I urge my colleagues to join me in supporting this bill.

Mr. MICA. Mr. Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MICA) that the House suspend the rules and pass the bill, H.R. 3479, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. JACKSON of Illinois. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3479, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

COMMENDING THE HONORABLE HENRY HYDE AND HONORABLE JESSE JACKSON, JR., MEMBERS OF CONGRESS

(Mr. LIPINSKI asked and was given permission to address the House for 1 minute.)

Mr. LIPINSKI. Mr. Speaker, I just want to conclude by saying that I compliment the gentleman from Illinois (Mr. JACKSON) and the gentleman from Illinois (Mr. HYDE) on the very spirited, articulate presentation of their cause. They are both my friends. I have the greatest respect for them. Unfortunately, we disagree on this.