

ENHANCING CONSUMER PROTECTIONS AND CONNECTIVITY IN AIR TRANSPORTATION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MARCH 23, 2023

Printed for the use of the Committee on Commerce, Science, and Transportation



Available online: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

57-732 PDF

WASHINGTON : 2024

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MARIA CANTWELL, Washington, *Chair*

AMY KLOBUCHAR, Minnesota	TED CRUZ, Texas, <i>Ranking</i>
BRIAN SCHATZ, Hawaii	JOHN THUNE, South Dakota
EDWARD MARKEY, Massachusetts	ROGER WICKER, Mississippi
GARY PETERS, Michigan	DEB FISCHER, Nebraska
TAMMY BALDWIN, Wisconsin	JERRY MORAN, Kansas
TAMMY DUCKWORTH, Illinois	DAN SULLIVAN, Alaska
JON TESTER, Montana	MARSHA BLACKBURN, Tennessee
KYRSTEN SINEMA, Arizona	TODD YOUNG, Indiana
JACKY ROSEN, Nevada	TED BUDD, North Carolina
BEN RAY LUJAN, New Mexico	ERIC SCHMITT, Missouri
JOHN HICKENLOOPER, Colorado	J. D. VANCE, Ohio
RAPHAEL WARNOCK, Georgia	SHELLEY MOORE CAPITO, West Virginia
PETER WELCH, Vermont	CYNTHIA LUMMIS, Wyoming

LILA HARPER HELMS, *Staff Director*

MELISSA PORTER, *Deputy Staff Director*

JONATHAN HALE, *General Counsel*

BRAD GRANTZ, *Republican Staff Director*

NICOLE CHRISTUS, *Republican Deputy Staff Director*

LIAM MCKENNA, *General Counsel*

CONTENTS

Hearing held on March 23, 2023	Page 1
Statement of Senator Cantwell	1
Statement of Senator Cruz	2
Statement of Senator Duckworth	4
Statement of Senator Tester	48
Statement of Senator Schmitt	50
Statement of Senator Klobuchar	52
Statement of Senator Vance	55
Statement of Senator Welch	57
Statement of Senator Markey	62
Statement of Senator Baldwin	64
Statement of Senator Hickenlooper	65

WITNESSES

Sara Nelson, International President, Association of Flight Attendants-CWA, AFL-CIO	6
Prepared statement	8
Trent Moyers, Director of Airports, Chelan Douglas Regional Port Authority ..	14
Prepared statement	15
William McGee, Senior Fellow for Aviation and Travel, American Economic Liberties Project	18
Prepared statement	20
Diana Moss, President, American Antitrust Institute	24
Prepared statement	25
Heather Ansley, Associate Executive Director, Government Relations, Para- lyzed Veterans of America	31
Prepared statement	33
Jeffrey N. Shane, Former Under Secretary for Policy, U.S. Department of Transportation	38
Prepared statement	40

APPENDIX

Response to written questions submitted to Sara Nelson by:	
Hon. Maria Cantwell	69
Hon. Raphael Warnock	70
Response to written questions submitted to Trent Moyers by:	
Hon. Raphael Warnock	71
Response to written questions submitted to William McGee by:	
Hon. Raphael Warnock	71
Response to written questions submitted to Heather Ansley by:	
Hon. Maria Cantwell	73
Hon. Raphael Warnock	75
Response to written questions submitted to Jeffrey N. Shane by:	
Hon. Tammy Duckworth	76
Hon. Raphael Warnock	78
Hon. Ted Cruz	80

ENHANCING CONSUMER PROTECTIONS AND CONNECTIVITY IN AIR TRANSPORTATION

THURSDAY, MARCH 23, 2023

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SR-253, Russell Senate Office Building, Hon. Maria Cantwell, Chairwoman of the Committee, presiding.

Present: Senators Cantwell [presiding], Klobuchar, Markey, Baldwin, Duckworth, Tester, Hickenlooper, Welch, Cruz, Wicker, Schmitt, and Vance.

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

The CHAIR. Good morning, everyone. The U.S. committee on Commerce, Science and Transportation will come to order. This morning, we are having a hearing on enhancing consumer protections and connectivity in air transportation. And we are joined by a distinguished group of panelists who we will get to in a minute.

Today we will be discussing the importance of strengthening consumer protections, expanding access for travelers and commuters across America. The American consumer has had a rough flying experience over the last few years. In 2020, the Department of Transportation received nearly 30,000 airline refund complaints, more than a 4,600 percent increase from 2019.

The following year. In 2021 DOT received over 6,600 complaints. Still nearly a 1,000 percent increase over pre-pandemic levels. And last November, by 2022, U.S. consumers complaints were already 603 percent higher than in November 2019. And then we had a massive disruption that left nearly 2 million Southwest Airline passengers delayed or stranded across the country.

In these situations, the U.S. consumer is left with limited information, hardly any choices, and very little recourse. In this year's FAA reauthorization, I hope we can work together on a new passenger bill of rights that gets a better deal for the U.S. consumer. Consumers deserve concrete definition of significant delays or cancellations of your flight, and they deserve a very timely refund.

We must take down the hurdles to getting your money back when you don't receive the service you paid for. Any travel credit, if accepted in lieu of a refund, should never expire. That is your money and should be in your bank account. We also need to have real time, real person communication when a system breaks down, like in the Southwest situation.

That system failure left consumers stranded without any information and no one to talk to. In this kind of a massive shutdown, we need a better communication system. Second, Congress must end unfair and hidden fees known as junk fees. That is taking real money out of the pockets of Americans.

We should force the rebooking fees when your flight was canceled or delayed by the airline itself and stop that practice. We should make sure that families aren't charged just for sitting next to each other at the very beginning of a flight when there are many flight options. I look forward to hearing from Bill McGee on this issue this morning.

Many passengers with disabilities, especially those in wheelchairs, are cutoff from their families and opportunities just because of these issues. Sara Nelson, head of the Association of Flight Attendants, and Heather Ansley from Paralyzed Veterans of America, will provide more information on this topic.

We also need to address, third, that Congress gave the FAA the specific task of establishing what is a minimum seat size for airlines. The FAA has failed to take action on this, and this committee should help resolve that issue. To make this new passenger bill of rights stick, we should formally authorize fully fund, and staff up the Department of Transportation's Office of Aviation Consumer Protection.

This makes sense, given the incredible increase in workload and surge from consumer complaints. Secretary Buttigieg has taken important steps to protect consumers, but we need more policemen on the beat to execute these tools. We should consider tripling the civil penalties for noncompliance, the cost of bad actors and continuing to do things. We must improve the consumer experience.

But today, we also must talk about enabling the rural markets and small markets who are trapped because of lack of air transportation system. Most economic development happens within ten miles of an airport.

So, if we are hampering our airports, we are hampering our economic development. I am proud that Trent Moyers Director of airports at the Chelan Douglas Airport Authority, will be with us to talk about why Wenatchee, the Apple capital of the world, needs to have good air transportation.

Next to the airport, Microsoft is building a 41,000 square foot data center that will employ 50 full time employees. This is a \$400 million investment that would not be possible without the airport connection to the larger Washington economy. So, we have to have our communities like Wenatchee thrive, and for Wenatchee to thrive, they need good air transportation connectivity.

This committee also needs to deal with this issue and help rural America have good air transportation service. With that, I will turn it over to the Ranking Member for his opening statement. Senator Cruz.

**STATEMENT OF HON. TED CRUZ,
U.S. SENATOR FROM TEXAS**

Senator CRUZ. Thank you, Madam Chair. Before I address the topic of today's hearing, I want to take a moment to touch on bipartisanship at this committee. I greatly appreciate that aviation has

traditionally been a bipartisan effort. I think that view is held by most, if not all, of the members of this committee.

Every one of us wants safe air travel. We want to board a plane and know that you are safe. That the pilots, the air traffic controllers, the ground crew are highly qualified people who will safely get you and your fellow passengers to your destination.

Because we all hold those basic sentiments about aviation, I have to admit, I am disappointed that today's hearing about the rights of the flying public is so one sided. We are going to hear one perspective about the regulation of airlines. But we should be hearing from a much more balanced panel.

It is my hope at future hearings, including the one planned for next week, that we can get back to the spirit of bipartisanship that we have had for so many years on this committee, with the consensus panel of witnesses presenting a balanced view so the Committee can have all the facts.

If a hearing panel doesn't present a diverse range of views, it defeats the purpose of a hearing. You would think that a hearing about, "unfair airline policies" might include an airline. Perhaps we would start with an airline that has the single lowest customer satisfaction rating or employs some of the distasteful practices being discussed today, such as charging customers to talk to a representative on the phone.

That airline would be Frontier Airlines, whom I invited to testify, but Frontier, as well as their trade association, the National Air Carriers Association, refused to appear. Consumer protection is an important component of the travel experience. Travelers every day get on an airplane.

Some love it, some dread it. I happen to enjoy flying. I do it a lot. And I guess that is good because I spend many hours a week on a plane, getting to and from work, and traveling the great state of Texas. But if something goes wrong with a reservation or with the weather, the experience can quickly become unpleasant. I understand that frustration firsthand, as do millions of Americans.

Sometimes, airlines miss on customer service, leaving travelers stranded, inconvenienced, or otherwise harmed. To try and end extremely miserable consequences when things go wrong, on multiple occasions, Congress has legislated to protect consumers, so they, for instance, are not stuck on a tarmac for longer than 2 hours, so that they have easier access to customer service, and so that they are compensated if an airline overbooks a flight.

However, when we look at potential legislation in this area, we need to be careful not to impose so many Government regulations that we make flying more miserable or more costly. One group of travelers whose needs we should pay particular attention to are those with disabilities.

Congress recognized that persons with disabilities face unique challenges when flying, by including the 2018 FAA reauthorization law specific provisions to improve the traveling experience. This included granting DOT the authority to issue civil penalties against airlines that damage or lose a person's wheelchair.

It is my understanding that 5 years later, the Department of Transportation has still not exercised this authority. I am grateful

that we will have an opportunity to hear today from the perspective of the Paralyzed Veterans of America today.

For PVA's members, flying can prompt fear and anxiety. It is not just a simple matter of getting where they need to go. Disabled passengers deserve to travel not just safely, but they deserve to travel with dignity.

Another matter of great importance to the flying public is connectivity. Too often, communities become disconnected by the whims of large airlines. I have seen this happen in Texas, and I am sure many of us have with smaller towns in our states.

One example is what happened in Del Rio, where American Airlines is discontinuing service to Del Rio, Texas. I am deeply concerned about the impact that action will have on residents and local businesses.

I have raised it directly with senior leadership of the airline, and I would like to hear today ideas for how to work through these kinds of problems. Finally, a note of caution. The Airline Deregulation Act of 1978 was, by all indications, a significant success. Since deregulation, the price of air travel has fallen by more than 30 percent.

And when there is vigorous competition among airlines, offering services on a particular route, services better and airfares lower.

Dr. Clifford Winston, an economist at Brookings Institution, testified before this committee last month that reregulating airlines would inevitably lead to a cost transfer to consumers, raising prices, making family trips too unaffordable, and could cause more small communities to lose service.

I know I would have many unhappy constituents if I supported any legislation that made air travel more expensive and less affordable. So, I hope we will resist the temptation to micromanage travel schedules and pricing plans. I would like to thank the witnesses for being here to discuss this topic. Thank you.

The CHAIR. Thank you. I will turn it over to my colleague who is going to chair the meeting, the Chair of the Subcommittee.

I will note for the record that Frontier Airlines, Allegiant Airlines, the National Air Carrier Association, all were invited to testify and had scheduling conflicts. Senator Duckworth, thank you again for your leadership on aviation and chairing the subcommittee.

**STATEMENT OF HON. TAMMY DUCKWORTH,
U.S. SENATOR FROM ILLINOIS**

Senator DUCKWORTH. Thank you, Madam Chair, and also Ranking Member Cruz for holding today's hearing. Our focus is on consumer protection issues, but I want to take a moment to raise a critical safety issue that at its core is about protecting every passenger that flies commercial aviation.

FAA regulations require that in the event of an emergency, passengers can evacuate an aircraft in 90 seconds. That is one and a half minutes. However, FAA evacuation simulations fail to include real life conditions common on commercial flights such as a full plane, the presence of carry-on bags, or passengers who are children, senior citizens, or persons with disabilities.

This failure to test procedures under real world conditions helps explain a 2016 incident at O'Hare International Airport when an engine fire on an American Airlines 676 forced an aborted takeoff. The crew executed the border takeoff flawlessly. However, the evacuation took nearly two and a half minutes, far longer than the 90 seconds standard. And there was one serious injury and 20 minor ones.

According to the NTSB, at all three usable exits, there were passengers evacuating with carry-on bags despite instructions to leave your bags behind. Senator Baldwin and I introduced the emergency vacating of aircraft cabin, or EVAC Act, to require realistic testing.

I look forward to hearing from our witnesses on the importance of accurate evacuation simulations. I must also express the disability community's deep frustration that our aviation system still fails to make sure every passenger with a disability is treated with dignity and respect. We have had half a century to make flying accessible for the millions of Americans with disabilities who travel by air each year.

Yet flying with a disability remains riddled with unnecessary issues that at best are frustrating and cost time and money, and at worst are demeaning and inflict harm on our customers. Don't get me started on how frequently wheelchairs get damaged in transit, a huge problem that I and many others experience far too frequently.

According to the U.S. Department of Transportation, 11,389 wheelchairs and scooters were mishandled by air carriers in 2022, up from 7,239 in 2021. Too many air carriers have demonstrated that drastically reducing the rate of broken wheelchairs and assistive devices is simply not a corporate priority.

And after years of failure, it is time for Congress to act. I want to thank Senator Baldwin for her leadership on the Air Carrier Access Amendments Act and urge my colleagues to include it in the FAA reauthorization. Of course, accessibility problems are not limited to after a flight touches down.

We should empower consumers and airline employees alike with easy access to clear information that enables one to determine whether a specific flight accommodates a certain wheelchair model or mobility aid.

We must also ensure passengers with disabilities can sit with their companions who provide assistance and require airports and air carriers and airport websites and mobile apps to be fully accessible. It is bad enough that certain carriers are making it harder to reach a live customer service agent by phone, but for customers that can't use a mouse or touch screen, an inaccessible website could leave you literally stranded when there are massive delays.

I am working on legislation that would require the DOT to examine air carriers and airport websites and mobile apps to determine if they are accessible, and issue civil penalties against those that are not.

And when mistakes happen and passengers with disabilities file a complaint with the Department of Transportation, these customers deserve transparency on whether their complaint was resolved.

Senator Fischer and I introduced a Prioritizing Accountability and Accessibility for Aviation Consumers Act to require DOT to begin publishing a detailed annual report on how quickly and effectively these consumer complaints are resolved. Before yielding, I want to thank the Chair for including the needs of regional airport passengers in today's hearings.

This past weekend, I was in Collinsville, Illinois, meeting with the directors of several of our regional airports from across our state. It will come as no surprise to anyone here when I tell you they need our help at the regional airports.

These airports are an economic lifeline to the residents and businesses they serve all across our great nation, and we need to ensure that they have what they need to keep commercial air service available and accessible in their communities.

I look forward to hearing from our witnesses on this. With that, Madam Chair, I yield back. OK. I will reserve time for Ranking Member Moran, when he comes back. And he does come to do his opening statements.

At this time, I would like to introduce our witnesses prior to recognizing them for their statements. I begin with Sara Nelson, the International President of the Association of Flight Attendants, CWA, AFL-CIO. Thank you for being here, Ms. Nelson. Mr. William McGee, Senior Fellow for Aviation and Travel, American Economic Liberties Project.

Thank you for being here. Trent Moyers, Airport Director, Pangborn Memorial Airport. Very much looking forward to hearing your perspective. Diana Moss, President of the American Antitrust Institute. Thank you for being here. And Heather Ansley, Associate Executive Director of Government Relations, the Paralyzed Veterans of America. We will begin with Sara Nelson.

**STATEMENT OF SARA NELSON, INTERNATIONAL PRESIDENT,
ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO**

Ms. NELSON. Thank you, Chair Duckworth, Chair Cantwell, Ranking Member Cruz, who is no longer here, and Ranking Member Moran for the opportunity to testify today.

As President of the Association of Flight Attendants, I am proud to represent 50,000 flight attendants at 19 airlines, ground staff and gate agents represented by our partner union, the Communications Workers of America, as well. As flight attendants, our workspaces attract passengers travel space.

We have a long history of fighting for consumer rights because our lives depend on addressing passengers' issues, too. Since deregulation, mergers have been common and typically wreak havoc on our job security, years of service at our airlines, pay, pensions, and working conditions.

We believe antitrust review is critical for workers and passengers. But there have been very little limits on consolidation. And today we have only four airlines that control 81 percent of the market. Our union has direct experience with eight mergers in the past decade, and I personally experienced more than a dozen proposed mergers, some that our union fought to block. We have never before enthusiastically endorsed a merger, but this is our position today with the proposed JetBlue/Spirit combination.

We believe the pro-competition stance of this White House, together with your critical eyes as lawmakers, the outcry from consumers, and the effective work of our aviation unions led JetBlue to design a merger plan that can actually begin to correct the unchecked consolidation of the past decade.

This is the anti-merger merger. For safety and comfort, all Spirit airplanes will be reconfigured from the 28-inch seat pitch, which is the worst in the industry, to the 32-inch seat pitch, which is the best minimum standard in the industry.

The result is far better ratio of gate agents and flight attendants to passengers, bigger seats, free Wi-Fi, unlimited snacks, and the option to forgo all of that if the passenger chooses a lower fare. This would help to address concerns we share with Senator Duckworth about safe evacuations.

We were proud to endorse the Emergency Vacating of Aircraft Cabin, EVAC Act, in the last Congress, and we look forward to the reintroduction in this Congress and for inclusion in the FAA reauthorization bill. No to tiered employment.

This merger will insource jobs currently contracted out at Spirit to make all of these aviation workers direct employees of JetBlue with higher pay and benefits. The airline will not use any contract flying with regional jets, a practice that the major airlines utilize, to keep labor costs on average 45 percent less than mainline airlines for nearly half of the domestic flights in their network.

More and better jobs. JetBlue has committed to no furloughs, no displacements, and an expedited joint contract bargaining process that will ensure flight attendants gain the benefits of the merger as soon as possible.

Adding another carrier that must participate in collective bargaining to the industry's highest standards increases the rate at which workers can improve the value of our jobs, tackle economy wide inequality, and spend more goods and services in our communities.

Maintain and expand service to our communities. Combining JetBlue and Spirit creates a network that can expand service beyond what either airline can do alone. Failing to settle this case will do nothing to change today's industry dynamics, but it will ensure things stay the same.

There is not a person in the country who would say that is OK. Everything the public hates about flying today would be better at the merged airline. We urge lawmakers to encourage the Administration to resolve any concerns with the merger and enable workers and consumers alike to experience the benefits as soon as possible.

We address many recommendations in our written testimony for safe cabin and better passenger experience. These are joint priorities with our sister union, the Association of Professional Flight Attendants, but let me close with this.

With nearly 80 years of experience and heart in aviation, the members of the Association of Flight Attendants know the realities of the aircraft cabin better than anyone. We don't just serve drinks, we save lives.

We don't just negotiate contracts, we move major policy issues like the smoking ban, no knives on planes, clean water, and safe

food on board. The air we breathe matters, and we must ensure there is always a safe seat for even our smallest passengers.

Training, rest, and adequate staffing matters as we fight fires, de-escalate conflict, revive, and breathe life. We safely usher passengers to the big business deal, the family vacation, the times of celebration, times of grief, and times of battle. We are aviation's first responders and we are the last line of defense in aviation security.

We are the first impression and the smile of aviation connecting the people of our nations. Aviation has a long history of collaboration among Government, industry, unions, scientists, and consumers.

This collaboration and careful approach to layered safety, security, health, and inclusion has built the safest mode of transportation, the backbone of the American economy, and the access that we enjoy around the world. We look forward to working with this committee, to our continued shared responsibility.

Fly with us, make progress with us. We are stronger and better together. Thank you.

[The prepared statement of Ms. Nelson follows:]

PREPARED STATEMENT OF SARA NELSON, INTERNATIONAL PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS—CWA, AFL—CIO

Introduction

Thank you Chair Cantwell, Ranking Member Cruz, Chair Duckworth, and Ranking Member Moran for convening this hearing to examine the need to strengthen consumer protections for the U.S. flying public, including bolstering Department of Transportation rules, enhancing accessibility for the disability community and exploring the intersection of competition and customer service. We are pleased the Committee is also focused on the importance of air service connectivity for small and rural communities.

My name is Sara Nelson. I am a twenty-six year union flight attendant and president of the Association of Flight Attendants-CWA, AFL-CIO (AFA), representing 50,000 flight attendants at 19 airlines across the industry. We also coordinate closely with our partner union the Communications Workers of America, our sister union the Association of Professional Flight Attendants and all of the transportation union affiliates of the Transportation Trades Department, AFL-CIO.

Flight Attendants are aviation's first responders and charged with the safety, health and security of the passengers in our care. Our work space is a passenger's travel space. We have a long history of fighting for consumer rights because we share the same space and many of the same concerns. Historically, our union has played a leading role in efforts to improve conditions for passengers and this testimony details how this continues today through several of our legislative and regulatory priorities for improving conditions on and off the plane.

Consumer Issues

The Anti-Merger, Merger: A Win for Passengers and Aviation Workers

A big win for passengers and aviation workers would be a successful merger between JetBlue and Spirit. (Note: Although this is an acquisition on the front end, the workers only experience the effects of the transaction once the financial closing is complete and the merger of operations commences. Business decisions by management should never determine the worth or value of working people. Our union ensures every Flight Attendant has equal standing during any corporate transaction. That is why we only refer to this as a "merger.")

We have experience with eight mergers in the past decade, and I personally have experience with more than a dozen proposed mergers—some that we successfully blocked. There is good reason to approach any consolidation with a heavy dose of skepticism. We have never before concluded that a merger creates improved conditions for workers and passengers, but that is our determination in this case. We believe the pro-competition stance of this White House together with the critical eye of lawmakers, the outcry from consumers, and the effective work of our aviation

unions led JetBlue to design a plan that can actually begin to correct the consolidation of pricing power among four major airlines, promote collective bargaining to the highest standards for good jobs, and improve service to our communities.

The JetBlue-Spirit combination is the first merger that we enthusiastically support because it sets competition to the highest standards for workers and consumers. Specifically, these are the protections and improvements that led to our endorsement of this merger:

Safety and Comfort. All Spirit airplanes will be reconfigured from 28" seat pitch, which is the worst in the industry, to 32" seat pitch which is the best minimum standard in the industry. This means more comfort for passengers and a far better ratio of gate agents and Flight Attendant to passengers. This improves safety, comfort, and contributes to a better flying environment that has been plagued with disruptive and violent episodes on our planes and gate areas. JetBlue will use larger airplanes and fly each plane more to maintain or even add capacity to the industry. This keeps fares low, while making flying better for everyone. Bigger seats, free wifi, unlimited snacks, and the option to forgo all of that for even lower fares if passengers so choose. This would contribute to addressing very real concerns detailed in Senator Duckworth's Emergency Vacating of Aircraft Cabin (EVAC) Act. Our union has expressed significant concerns with the shrinking cabin environment and the increased ratio of passengers to Flight Attendants. Both of these issues are improved in the merger.

JetBlue is the only carrier that has published a clear passenger bill of rights, including what the airline gives consumers if flights are delayed or canceled as a result of a preventable incident. They also proactively refund \$15 to passengers if the WiFi or Inflight entertainment is inoperative.

No Two-Tiered Employment. This merger will in-source jobs currently contracted out at Spirit to make all of these aviation workers direct employees of JetBlue with higher pay and benefits. The airline will not use any contract flying with regional jets, a practice that the major airlines utilize to keep labor costs on average 45 percent less than mainline airlines for nearly half of the domestic flights in their network. This immediately increases access to thousands of improved aviation jobs and puts pressure on the mega airlines to compete to the highest standards for workers.

More, Better Jobs. JetBlue has committed to no furloughs, no displacements, and an expedited joint collective bargaining process that will ensure Flight Attendants gain the benefits of the merger as soon as possible. Spirit management recently reached an agreement with our union to close out open contract negotiations, affecting more than 6000 Flight Attendants. The short-term contract provides immediate double-digit raises from 10-27 percent, out year additional raises, scheduling improvements and other benefits. This sets up the opportunity for significant further improvements for the combined Flight Attendant group through an expedited joint collective bargaining process already committed to in writing by JetBlue, but only if the concerns of the DOJ are resolved and this merger moves forward. Adding another carrier that must participate in collective bargaining to the industry's highest standards increases the rate at which workers can improve the value of our jobs, tackle economy-wide inequality, and spend more on goods and services in our communities.

Maintain/Expand Service to our Communities. Combining JetBlue and Spirit creates a network that can expand service beyond what either airline can do alone. For example, Spirit serves Charleston, WV today, but the airline recently announced it will be leaving the market this spring. Combined as a national carrier with more efficient planes and connections, the airline can maintain and grow service. This is good news for more consumer choice in many markets like Charleston.

Failing to settle this case will do nothing to change today's industry dynamics, but it will ensure things stay the same. There's not a person in the country who would say that's okay. Everything the public hates about flying today would be better at the merged airline.

We strongly support the JetBlue-Spirit merger and urge lawmakers to encourage the Administration to quickly move forward with their suit and adhere to decades of agency precedence to ensure the financial merger closing occurs in the near term. We want Flight Attendants, other workers, and consumers to be able to access the benefits of the merger as soon as possible.

Issues in the Passenger Cabin

A Seat for Every Passenger

Today there is no requirement to protect our smallest passengers in their own seat with a proper restraint device. Children under the age of two can fly as a "lap

child” in the same seat as their parent or guardian. The FAA¹, the National Transportation Board (NTSB), independent researchers, and Flight Attendants have all concluded this is dangerous. Studies show that lap children are at higher risk of injuries caused by falling from their parents’ laps, sudden or severe turbulence, and trauma incurred in a crash.² Indeed, in the worst-case scenario of a crash or severe turbulence, it would be effectively impossible for a parent to hold onto their unbelted child.

In 1994, for example, one infant without a seat and proper restraint died and another was severely injured after their plane had to make an emergency landing off of its runway. After investigating the crash, the NTSB determined that, had the babies been in their own, FAA-approved safety seats next to their parents, they would not have suffered significant injury.³ The majority of car seats sold in the U.S. and Canada are certified for use on aircraft. In recent decades, both the NTSB and a White House Commission on Aviation Safety and Security have recommended that the FAA prohibit infants under age 2 from sitting on their parents’ laps.⁴

In 2001, the American Academy of Pediatrics recommended requiring aircraft-approved restraint systems and discontinuing the policy of allowing a child younger than 2 years to be held on the lap of an adult during taxi, takeoff, landing and turbulence.⁵

More recently, responding to strong support from its Member States around the world, the International Civil Aviation Organization (ICAO) released the Second Edition of its Manual on the Approval and Use of Child Restraint Systems. This manual details guidance to promote the use of child restraints on a global level, simplify international operations, and make it easier for passengers traveling with CRS.⁶

There remains no credible rationale for the U.S. to fail to require that all passengers, including infants and children under the age of two, have their own seats and be properly restrained during critical phases of flight, just like requirements at all times in a car. This requirement should apply to all U.S. carriers and foreign carriers flying to the U.S. Following instruction from lawmakers, the FAA can use the ICAO guidance to address all related issues, including the harmonization of approved child restraint systems.

It’s past time to mandate this protection for our youngest passengers.

Air Turbulence

Severe turbulence is happening more frequently and is more intense. Last summer, a flight from Chicago to Salt Lake City experienced moderate turbulence that caused minor injuries to three flight attendants and one passenger⁷. July 2022, six passengers and two crew members were injured on a flight from Tampa to Nashville after unexpected turbulence. Seven were taken to the hospital with neck and back pain⁸. In December 2022, 36 people were injured and 20 people were taken to the emergency room on a flight from Phoenix to Honolulu. Four passengers and two Flight Attendants were seriously hurt⁹. On another flight in December, Three passengers and two Flight Attendants injured following severe turbulence and taken to the hospital on a flight heading from Brazil to Houston, TX¹⁰. In February 2023, two passengers and one Flight Attendant were injured following turbulence and taken to the hospital on a flight heading from Newark to Tampa¹¹. Earlier this month, a flight hit severe turbulence at 37,000 feet over Tennessee. Seven passengers were injured and taken to the hospital after the flight diverted to Washington Dulles Airport¹².

¹ https://www.faa.gov/travelers/fly_children

² https://journals.lww.com/pec-online/Fulltext/2019/10000/In_Flight_Injuries_Involving_Children_on.7.aspx and https://journals.lww.com/pccmjournals/Citation/2014/10000/Fatalities_Above_30,000_Feet_Characterizing.32.aspx

³ <https://www.forbes.com/sites/johngoglia/2013/04/18/if-the-faa-thought-flying-with-lap-kids-was-unsafe-it-would-require-kid-seats-right-wrong/?sh=67ec485e5aab>

⁴ <https://abcnews.go.com/Travel/story?id=5475316&page=1>

⁵ <https://publications.aap.org/pediatrics/article-abstract/108/5/1218/63766/Restraint-Use-on-Aircraft?redirectedFrom=fulltext>

⁶ <https://store.icao.int/en/manual-on-the-approval-and-use-of-child-restraint-systems-doc-10049>

⁷ <https://www.slttrib.com/news/2021/06/25/four-people-southwest/>

⁸ <https://www.cnn.com/2022/07/20/us/turbulence-divert-plane-injuries/index.html>

⁹ <https://www.theguardian.com/world/2023/jan/14/hawaiian-airlines-flight-turbulence>

¹⁰ <https://www.cnn.com/travel/article/united-airlines-turbulence-injuries/index.html>

¹¹ <https://simpleflying.com/occupants-hospitalized-turbulence-united-airlines-boeing-757/>

¹² <https://www.cnn.com/travel/article/lufthansa-flight-diverted-turbulence/index.htm>

For Flight Attendants and passengers, these incidents pose a serious occupational and travel risk. In a report issued on August, 10 2021¹³ the NTSB concluded:

- the Federal Aviation Administration, the National Weather Service and airline industry associations take specific actions to reduce the number of turbulence-related injuries in air carrier operations. While it seems like common sense, the NTSB's recommendations stated "Wearing a seat belt reduces the risk of serious injury for all aircraft occupants during turbulence-related accidents in Title 14 Code of Federal Regulations Part 121 air carrier operations."
- having flight attendants seated with their seat belts fastened during additional portions of the descent phase of flight would reduce the rate of flight attendant injuries due to turbulence and the rate of turbulence-related accidents overall."
- "the safest place for a child under the age of 2 is in a CRS."

We appreciate the leadership of Chair Cantwell to author key provisions in the Inflation Reduction Act (IRA) such as increased funding for the National Oceanic Atmospheric Administration (NOAA) to fund climate research for atmospheric processes to examine the causes and impacts of extreme weather. These investments will support the development of more accurate/timely weather forecasts, and improved climate change predictions. In addition, NOAA also received funding to acquire a new Gulfstream G550 Hurricane Hunter to collect data when large storms appear, which is vital for knowing where storms will hit and how strong they will be. Improved weather forecasts can have a profound impact on saving lives, jobs, businesses and communities.

Cabin Temperature—2HOT2COLD

Currently, no Federal standards define an acceptable temperature range for airplane cabins. As a result, passengers and Flight Attendants often experience discomfort, fatigue, and stress due to excessively high or low cabin temperatures. Extreme temperatures can cause passengers and crew to experience severe or life-threatening symptoms, including heat stroke, loss of consciousness, and respiratory arrest.

In 2017, a four month old baby overheated on the plane after being delayed on the tarmac for two hours and was having trouble breathing¹⁴. The Flight Attendants bagged ice to place on the baby, an ambulance was called and paramedics met the aircraft. There are numerous examples of passengers and Flight Attendants who have suffered from extreme temperatures on the plane, but this can become a priority to fix when temperature standards are put in place.

We urge the Committee to include language in the FAA reauthorization bill that will require the FAA to adopt the temperature standards recommended by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE). These standards state that the temperature onboard planes should be between 65–80 degrees on the ground (up to 85 if in-flight-entertainment is on), and up to 80 degrees during the flight.

Improve Cabin Air Quality

Except for the Boeing 787, the ventilation air that passengers and crew breathe during a flight is referred to as "bleed air" because it is bled off the engine compressors. This high-temperature and pressure "bleed air" is then cooled, mixed with recirculated air, and distributed to the cabin and flight deck for ventilation. The problem with this design is that oil intended to lubricate the engines can accidentally contaminate the bleed air stream, whether as a result of a mechanical failure, oil seals that don't close fully during an engine power change, or overservicing by maintenance staff.

In a published review of FAA maintenance databases, U.S. airlines documented an average of 5.3 oil or hydraulic fluid events per day,¹⁵ which does not include all events. In addition to the potential for long-term health effects, including neurological and respiratory damage to crew and passengers, toxic fumes can impact flight safety and security by impairing or incapacitating crewmembers. Further, fume events often recur on the same airplanes after airlines deem planes with faulty bleed systems airworthy despite not having fixed the underlying problem.

We urge the Committee to include the *Cabin Air Safety Act of 2022* (S.3944/H.R. 7267) (soon to be reintroduced in the 118th Congress) to direct the FAA to

¹³ <https://www.nts.gov/safety/safety-studies/Documents/SS2101.pdf>

¹⁴ <https://www.denverpost.com/2017/06/23/united-airlines-infant-overheats-dia/>

¹⁵ Shehadi, M; Jones, B; and Hosni, M. (2016) "Characterization of the frequency and nature of bleed air contamination events in commercial aircraft," Indoor Air, 26(3): 478–488, doi: 10.1111/ina.12211. Epub 2015 Apr 25.

issue regulations requiring: airline worker training to document fume events, suitable sensors on aircraft to detect a variety of contaminants and fumes in real time, and investigate bleed air events. The legislation also mandates that airlines provide flight crew, maintenance technicians, and emergency response teams training on how to respond to and identify the causes of fume events.

Add Naloxone Nasal Spray to Required Onboard Items

In 2019, AFA and several members of Congress petitioned the FAA to require naloxone, a life saving medicine that quickly reverses and blocks the effects of opioids, to be included onboard the aircraft. The FAA has not responded to the petition or issued guidance. While a few air carriers have added naloxone to their EMKs, it is typically the injectable naloxone rather than a preferred option, which is the nasal spray. The injectable naloxone takes longer to take effect and is not as effective as the spray.

We encourage the Committee to add language to the FAA reauthorization bill that says ‘The FAA shall issue guidance that commercial air carriers must include naloxone nasal spray on board within 90 days of enactment.’

Violent Attacks Negatively Impact Airline Crew and Passengers

A few weeks ago, the Department of Justice charged a passenger¹⁶ for allegedly attempting to open an emergency exit door while aboard a United Airlines flight from Los Angeles to Boston and then allegedly attempting to stab a Flight Attendant in the neck. AFA is proud of the crew of United Flight 2609 and relieved that no one sustained life-threatening physical injuries. Violence has no place anywhere and certainly not in a closed cabin flying several miles in the air. When incidents like this happen, it not only risks the safety of the crew involved, it takes away from Flight Attendants’ ability to respond to medical, safety, or security emergencies of other passengers. We are thankful for the FBI’s quick action on this. This is another example of the urgent need for a national banned disruptive passenger list.

In addition to the terrible assaults Flight Attendants experience while on duty, passenger service agents are experiencing an increased amount of passenger rage and their experiences often go unrecognized. These incidents vary from using vulgar language when addressing employees, using racial epithets that cause psychological harm to our agents, to punching, biting, kicking, shoving and even spitting on them. Union representatives report the highest number of calls to employee assistance programs searching for ways to cope with fatigue, stress and fear caused by these incidents.

We call on this Committee to include language in the FAA reauthorization bill that bans these passengers from flying on all airlines so they cannot commit these violent acts again.

These negative flying experiences make deep impressions and can create terrible consequences. But we must also note that the vast majority of interactions we have are positive and we can especially celebrate the ways crews across the industry have pulled together to support each other. As with everything we do, Flight Attendants have incredible emotional intelligence to assess the subtleties of every situation, step up for every crewmember when they need a break and successfully get tens of thousands of flights and millions of people safely to their destination without event and even with a smile.

Bare Minimum Staffing Levels

Staffing of Flight Attendants on planes, at the gate, and in ground support was cut to minimums pre-COVID. There is no “give” in the system. Pre-COVID airlines counted on high overtime hours to staff the operation. With a seasoned workforce, and a normal hiring rate for typical attrition, the frontline workforce knew our jobs well and often “made it work” when operational hiccups occurred.

According to the Bureau of Transportation Statistics (BTS), U.S. airlines carried 194 million more passengers in 2022 than in 2021, up 30 percent year-to-year¹⁷. Yet, almost all domestic flights are staffed with the minimum number of Flight Attendants, so when something goes wrong there’s no additional crew already in the operation to help staff flights. When we think of the disruptive passenger incidents we’ve seen, often there is a single flight attendant facing unhinged rages.

Adding the conditions of the pandemic, which include higher rates of sickness among the workforce, difficulties with commuting to work on full planes, compressed cabin environments, increased turbulence, weakened infrastructure to support oper-

¹⁶ <https://www.justice.gov/usao-ma/pr/man-arrested-attempting-open-emergency-exit-door-aboard-flight-boston>

¹⁷ Full Year 2022 U.S. Airline Traffic Data | Bureau of Transportation Statistics (bts.gov)

ational irregularities, a combative environment, mass retirements with fewer seasoned workers to mentor new employees on the job, and a somewhat chaotic network that was a response to new trends of passenger demand and little ability to forecast—Flight Airlines and other aviation workers are feeling the stress and strain of an operation stretched to its limit.

Staffing at the Gate

Gate agents are a vital part of a multilayered airline security and safety process at the airport and their importance can not be understated. The safety of ground service workers is a priority. At the gates, oftentimes one passenger service agent is left to board full planes by themselves creating communication issues during the boarding process. And when a flight gets delayed or canceled that same agent or sometimes no one is left in the terminal to assist passengers—making an already difficult situation worse.

The airlines and the airports are too reliant on overtime hours to meet basic operational metrics. This way of doing business needs to stop or the industry will be run into the ground and it puts safety at risk.

Increase staffing at the gate and on each flight. We need more frontline workers in the airports and on planes who are able to answer questions, identify problems early in order to de-escalate, or simply have backup from other workers when issues get out of hand or require physical restraint and a law enforcement response.

Crew Scheduling Difficulties

Excessive call wait times to get through to Crew Scheduling and FAST to conduct routine tasks—calling off sick leave to return to schedule, to obtain staffing, to secure hotels to ensure rest, rescheduling after weather induced irregular operations, changes to Reserve assignments and the list goes on. When we can't reach scheduling or get crewed that has a ripple effect on other flights. The compounding effect is massive delays or cancellations.

Schedule and Operational Disruptions

Flight attendants are on the frontlines when an operational meltdown occurs, and they are expected to address passenger concerns. But Flight Attendants have been left empty handed or stranded themselves without support from management who are running the airline.

The summer of 2022 was one of the worst in recent history in terms of chaotic scheduling and other workplace woes. Flight attendants at United and Southwest airlines staged protests at airports across the U.S. to draw attention to this and urged our airlines to fix problems that were creating havoc for flight attendants and travelers alike.

Update Emergency Aircraft Evacuation Standards

As part of implementing Sections 337 and 577 of the FAA Reauthorization Act of 2018,¹⁸ the FAA conducted a study in late 2019 through early 2020 to determine the effects of different seat dimensions and spacing on facilitating emergency evacuations. However, the FAA used simulated laboratory conditions, and not a real airplane, to conduct its evaluation. Further, the study sample did not include any children, adults over 60, or people with disabilities as participants.¹⁹

Since children, older adults, and people with disabilities are the least likely to be able to evacuate an airplane in a safe and timely manner, the FAA's study did not demonstrate or accurately depict if all passengers can safely evacuate an airplane in under 90 seconds (the standard amount of time for an emergency evacuation). Indeed, the FAA itself conceded that, because they did not include these groups in their study, the study's results were "not necessarily definitive."²⁰

AFA supports Senator Duckworth's Emergency Vacating of Aircraft Cabin (EVAC) Act, which will be reintroduced in the 118th Congress.

Conclusion

We thank the committee for this opportunity to testify. Improvements to our workspace directly enhance the passenger's travel experience. Aviation has a long history of collaboration among government, industry, unions, scientists, and consumers. This collaboration and careful approach to layered safety, security, health, and inclusion has built the safest mode of transportation, the backbone of the Amer-

¹⁸ <https://www.congress.gov/bill/115th-congress/house-bill/302/text>

¹⁹ <https://www.faa.gov/sites/faa.gov/files/2022-03/PL-115-254-Sec-337-Aircraft-Cabin-Evacuation-Standards.pdf>

²⁰ <https://www.faa.gov/sites/faa.gov/files/2022-03/PL-115-254-Sec-337-Aircraft-Cabin-Evacuation-Standards.pdf>

ican economy, and the access that we enjoy around the world. We look forward to working with this committee to continue our shared responsibility to ensure a safe, inclusive, efficient and reliable aviation system that brings us together at home and around the world.

Senator DUCKWORTH. Thank you, Ms. Nelson. And I do want to apologize for not recognizing previously the honorable Jeff Shane. Thank you for your service as a Former Undersecretary at the Department of Transportation. Welcome. I will now recognize Mr. Moyers for his statement.

**STATEMENT OF TRENT MOYERS, DIRECTOR OF AIRPORTS,
CHELAN DOUGLAS REGIONAL PORT AUTHORITY**

Mr. MOYERS. Thank you. Thank you, Chair Cantwell, Ranking Member Cruz, Chair Duckworth, and Ranking Member Moran for the opportunity to testify. My name is Trent Moyers. I am the Director of the Pangborn Memorial Airport in Wenatchee, Washington.

While I don't speak for the hundreds of airports and communities who are facing air service challenges, I believe our experience in Central Washington's Wenatchee Valley is an example of the impacts felt by airports nationwide. Commercial air service began in Wenatchee in 1945.

Fast forward to 2019, and we had a record year for enplanements, with more than 64,000 passengers departing from our airport. As the reality of the pandemic took hold in 2020, that number dropped to 27,000. While passenger numbers rose to 48,000 the next year in 2021, last year enplanements fell again to 35,000. Today—sorry. Service in Wenatchee and many small airports has not returned to pre-pandemic levels, largely due to a lack of airline capacity.

The number of daily flights to our airport has gone from four in recent years down to one. The post-pandemic recovery of air service continues to be challenging Wenatchee, but we know we are not alone.

Today, 76 percent of airports have less air service than before the pandemic. 14 U.S. airports have lost all commercial air service. And 53 airports, like ours, have lost over half of their flights. The Wenatchee Valley is known proudly as the apple capital of the world and is home to a population of approximately 120,000.

In addition to a robust agricultural economy, a relatively new type of farm has cropped up thanks to our affordable and clean hydroelectric energy, server farms, both invest heavily in our area. Tree fruit farms and server farms are linked to the global economy, and as such, these industries have a need to connect with their consumers and suppliers far beyond our region.

In Chair Cantwell's opening remarks and last week mentioned during the hearing regarding aviation workforce issues, you mentioned that over 80 percent of economic development occurs within ten miles of an airport. The statement is true in Wenatchee, where just one mile from the airport, Microsoft has completed construction of the first of six 240,000 square foot data centers that has created 50 full time jobs, with plans to invest a total of \$3 billion in the community.

Another example of a high-tech industry finding its way to Wenatchee occurred in 2018 when Diamond Foundry, a company located and headquartered in San Francisco, established a diamond growing facility in Wenatchee.

Air transportation accessibility was among the key factors that contributed to their selection of Wenatchee as a suitable site. In the Wenatchee Valley, 850 people drive every day to an airport other than Pangborn because connectivity from Wenatchee is limited. A single flight per day to Seattle means only 76 people can directly access air transportation to or from Wenatchee without spending 3 hours driving.

Finally, I want to note that in Wenatchee, commercial air service saves lives. Last year, Airlift Northwest, an air ambulance operator based at our airport conducted 700 ambulance flights. They depend on our commercial air service to deliver blood supplies and flight nurses, and in the winter, they are able to land and take off because of our FAA requirements to remove snow from the runway in support of air carrier operations.

Our community needs continued access to commercial aviation to keep these essential services. Given all of these impacts, Congress should act to restore—to revitalize air service in small and rural communities. Senator Cantwell has been a leader in promoting the SCASDP Program, and Senator, I thank you for that.

Possible actions could include allowing greater flexibility in existing programs. Airline business strategies change over time, and the terminal grant should be able to meet those changing market demands. If adequate incentives that are attractive to airlines and supportive of the communities, they serve are available, the likelihood of successful airline recruitment improves.

The upcoming FAA reauthorization presents a key opportunity to examine and improve air access for small communities. For someone who manages a small airport, the correlation between airport improvement programs and air service development and retention programs is clear. The challenge of an airport with a limited budget and limited service means that sometimes being forced to choose between infrastructure improvements and air service incentives is a reality.

Paying the 10 percent local share of an FAA funded project can mean sacrificing other priorities, like pursuing air service expansion. I would encourage the Committee to restore the 95 percent Federal cost share for small airports that was put in place in the 2003 FAA bill to help address this challenge.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

[The prepared statement of Mr. Moyers follows:]

PREPARED STATEMENT OF TRENT MOYERS, DIRECTOR OF AIRPORTS,
CHELAN DOUGLAS REGIONAL PORT AUTHORITY

Thank you, Chair Cantwell, Ranking Member Cruz, and members of the committee for the opportunity to testify today. My name is Trent Moyers, and for the past 10 years I have served as the Director of the Pangborn Memorial Airport, located in Wenatchee, Washington.

My aim today is to discuss air service challenges in my own community and highlight common themes of broader, national concern that are impacting communities throughout the county. While I do not speak for the hundreds of airports and com-

munities who are facing air service challenges across the nation, I believe our experience in Central Washington’s Wenatchee Valley is an example of the impacts felt by small airports nationwide.

Commercial Air Service Challenges in Wenatchee

Our airport is named after the pilot Clyde Pangborn, who along with his co-pilot Hugh Herndon were the first people to fly non-stop across the Pacific Ocean from Misawa, Japan to East Wenatchee, WA in 1931. That historic event in a single-engine airplane took 41 hours to accomplish. Fourteen years later, Northwest Airlines became the first carrier to provide air service to Wenatchee. Fast forward to 2019, and we had a record year for enplanements, with 64,609 passengers passing through our airport. As the reality of the pandemic took hold, in 2020 that number dropped to 27,008. While passenger numbers rose to 48,338 in 2021, last year, enplanements fell again to 34,700.

Air service has not rebounded at Pangborn primarily because we have seen the four daily flights to Seattle prior to the pandemic now reduced to one. That means the number of daily seats for passengers in our market has been reduced from 304 down to only 76 per day. Clearly, the post-pandemic recovery of air service continues to be challenging in Wenatchee, but we know we’re not alone. Today, 76 percent of U.S. airports have less air service than before the pandemic. Fourteen U.S. airports have lost all commercial air service, and 53 airports, like ours, have lost over half of their flights.

The Wenatchee Valley is known as “the apple capital of the world” and is home to a population of approximately 120,000. In addition to a robust agricultural economy, a relatively new type of farm has cropped up thanks to our affordable, clean, and renewable hydro-electric energy: server farms. This hi-tech industry has invested heavily in our area. Companies such as Microsoft, Intuit, Dell, and Sabey all have a presence in the region. Tree fruit farms and server farms are both linked to the global economy. As such, these industries have a need to connect with their consumers and suppliers far beyond the Wenatchee Valley.

Last week, during this Committee’s hearing regarding aviation workforce issues, Chair Cantwell mentioned that around 80 percent of all economic development occurs within 10 miles of an airport. This statement is verifiably true in Wenatchee where less than one mile from Pangborn Memorial airport, Microsoft has completed construction on the first of three 240,000 square foot data centers that has created 50 full-time jobs. At buildout, the total estimated investment at this location will be \$1.5 billion. Microsoft has applied for building permits to construct three more similarly sized data centers approximately three miles from the airport in nearby Malaga; investing another \$1.5 billion in the process and creating additional jobs.

Another example of hi-tech industry finding its way to our region occurred in 2018 when Diamond Foundry, a company headquartered in San Francisco, established a diamond growing facility in Wenatchee. One year later, Diamond Foundry began producing diamonds using Wenatchee’s hydroelectric power sources. The technology used in their laboratory setting replicates nature’s own process to produce “gem-quality” diamonds for retail as well as diamond-based semiconductors. Along with their need for affordable, clean energy to maintain a zero-carbon footprint, Diamond Foundry also cited air transportation accessibility as a key reason that contributed to their selection of the Wenatchee site.

Airports of all sizes bolster their local economies by connecting passengers and cargo with where they need to go, but it’s important to note that having commercial air service also directly provides workforce opportunities for their communities, from airline and TSA staff, to aircraft servicing, administration, operations and maintenance, and public safety.

A well-used colloquialism in the aviation industry is “if you’ve seen one airport, you’ve seen one airport.” It’s important to recognize the unique qualities of all airports and the communities they serve. However, there is a common theme wherever the struggle to regain or retain air service continues, regardless of location: air service is a critical component of the local economy.

There are 245 nonhub airports in the U.S. and its territories—airports that have at least 10,000 passengers annually, but less than 0.5 percent of the national total. The following are just a few examples of communities with a nonhub airport that have been impacted by reductions in air service:

In Illinois—Champaign/Urbana has just 60 percent of the number of seats that it had before the pandemic. More than 75 percent of all passengers in the area drive to Chicago to access flights.

In Kansas—Topeka is currently without air service. It seems unlikely the state capital will regain service without a large enough financial incentive for an air

carrier to restore service. For now, most consumers who visit via air fly in and out of its closest neighbor 70 miles away, Kansas City, Missouri.

In Nevada—Elko (an airport I used to manage) is geographically challenged when it comes to air service even though there are major airports in every direction: the closest option is a three-hour drive east to Salt Lake City, UT. The other airports are Reno, NV (more than four hours west), Boise, ID (four hours north), and Las Vegas, NV (seven hours south). Currently, Elko has one flight per day to Salt Lake City.

In the Wenatchee Valley, 850 people drive every day to an airport other than Pangborn because connectivity from Wenatchee is limited. A single flight per day to Seattle means only 76 people can directly access air transportation from Wenatchee without spending at least 3 hours driving. Compounding this issue even further is the fact that there is no direct interstate access to Wenatchee. The closest interstate, I-90, is 40 miles away via a two-lane highway. Wenatchee is one of only eight Metropolitan Areas nationwide with no direct access to an interstate or four-lane highway.

This issue of connectivity is further exacerbated for those driving to Seattle as the drive requires crossing mountain passes. On any given day, highway closures due to avalanche control, wildland fires, or motor vehicle accidents are possible. Thus, there are times when air service is the only option in or out of Wenatchee for people headed to Seattle and beyond.

Current Airline Incentives Don't Meet the Need

Federal support for rural airport service from programs like Essential Air Service (EAS) and the Small Community Air Service Development Program (SCASDP) is vital. But Wenatchee's story shows why today the current level of investment doesn't come close to addressing the challenge. At Pangborn, we were awarded a SCASDP grant in 2018, for \$700,000, to attract new air service. To successfully compete for that grant, we raised \$401,000 from the local community. Even with this level of support, we have yet to attract a carrier to provide new service.

The Department of Transportation just last week released its notice of funding for this year's SCASDP program. \$15 million is available for a maximum of 40 awards, which pencils out to an average award amount of only \$375,000. Based on my experience, I believe with this level of investment it will be difficult for many communities to successfully secure new service from airlines. If we are to do more to restore air service to small and rural communities, we need to look at what changes to these programs need to be made to make them more effective.

The President of the Air Line Pilot Association, Jason Ambrosi, testified before this Committee last week that, *"We believe air service to small and rural communities is a national responsibility and that safe, efficient, and reliable air service to these communities is a critical component of our national air transportation system."*

I concur with Mr. Ambrosi that Congress should take action to restore or revitalize air service in small and rural communities. Possible actions could include allowing greater flexibility in existing EAS and SCASDP programs. If adequate incentives that are attractive to airlines and supportive of the communities they serve are available, the likelihood of successful airline recruitment improves. An airline that flies a route that does not foster resiliency is unlikely to operate beyond the life of the grant funds.

Suggestions offered by Mr. Ambrosi to amend EAS included "changing the subsidy and enplanement cap, allowing air carriers to renegotiate EAS contracts to account for unforeseen operating costs, revising the DOT's calculation for driving distance, allowing communities that lost EAS service to regain or reestablish eligibility, and revise the DOT's process for carrier selection." I believe that similarly providing greater flexibility for SCASDP, expanding on actions taken in the 2018 bill, could similarly provide benefits for non-EAS airports, along with ensuring the level of grant funding is sufficient to incentivize air carriers to add service for the long term. Addressing workforce challenges throughout the aviation industry must also be a priority.

Funding that our community puts towards recruiting air service is funding that can't go towards airport infrastructure. For someone who manages a small airport, the correlation between air service development and retention programs and airport improvement programs is evident. Both are impactful components of FAA reauthorization for airports of our size. Without the support of FAA funding, the ability for small airports to complete capital improvement projects is daunting, if not impossible.

Fortunately, the Airport and Airway Revenue Act of 1970 figuratively and literally paves the way for airports to ensure they continue to remain viable. Commer-

cial service airports of all sizes, ranging from Wenatchee to Atlanta, work diligently to comply with FAA standards while meeting the growing needs of their communities.

The challenge of an airport with limited air service and a limited budget means that sometimes choosing between infrastructure projects and air service incentives is a reality. At Pangborn, we face particular funding challenges because so much of our surrounding area is owned by the Federal government (in our case, as National Forest land). 79 percent of Chelan County is Federal land, which deprives us of the ability to collect tax revenue on these lands which could be put towards airport improvements. Congress has previously recognized this challenge and in 2003 increased the Federal share for Airport Improvement Program (AIP) projects from 90 to 95 percent for small airports in states with a high share of Federal lands. That provision expired in 2011. Restoring the Federal share to 95 percent would provide significant help to Wenatchee and communities like ours that are deprived of tax revenues due to high levels of Federal land holdings.

Closing Remarks

Ninety-two years ago, our airport's namesake Clyde Pangborn bravely and literally took off into the unknown and accomplished what had never been done before. The issues we face together to safeguard the future of accessible air transportation are challenging in their own right, and I want to thank the Chair and the Members of the Committee for their thoughtful leadership on these critical issues.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have, and to working with the Committee to find ways to ensure air service is readily accessible to communities nationwide.

Senator DUCKWORTH. Thank you, Mr. Moyers. I now recognize Mr. McGee.

STATEMENT OF WILLIAM MCGEE, SENIOR FELLOW FOR AVIATION AND TRAVEL, AMERICAN ECONOMIC LIBERTIES PROJECT

Mr. MCGEE. Thank you, Chair Cantwell, Ranking Member Cruz, Chair Duckworth, Ranking Member Moran, and members of the Committee. My name is William Jay McGee and I am the Senior Fellow for Aviation and Travel at the American Economic Liberties Project. Starting in 1985, I spent 7 years in airline flight operations management, and I am licensed by the Federal Aviation Administration as an aircraft dispatcher. I then became an aviation journalist and author. For the last 20 years, I have been an airline passenger advocate, testifying on consumer rights, competition, consolidation, and safety issues, and I served as a lone consumer advocate on Transportation Secretary LaHood's future of Aviation Advisory Committee.

The nation's airline industry has broken, and it has found us lurching from crisis to crisis, meltdown to meltdown, as the interests of consumers, workers, and entire regions of the country are subjugated to the interests of a handful of institutional investors, lobbyists, and senior executives.

Every day, passengers are faced with fewer choices, higher fares, and a plethora of junk fees. Flight disruptions have become the norm rather than the exception. And when things go wrong, as they so often do now, we are at the mercy of the airline's own contracts of carriage. These are rules that are written by and most assuredly for the airlines.

We have seen new lows in customer service despite a \$54 billion taxpayer bailout during COVID-19. Over the last 2 years alone, we have seen record numbers of flight delays and cancellations, \$10 billion in unpaid refunds, tighter and tighter seats that pose not only health, but emergency evacuation threats, not just to the dis-

abled, but to all passengers, and ubiquitous fees that President Biden referenced in his recent State of the Union address, including the nefarious practice of charging families with young children to sit together. Airfares have never been more confusing and less tied to the cost of operation.

Overall, passengers have never been more dissatisfied. Airline labor has been decimated by layoffs and outsourcing. Entire regions have been disconnected from global access, and major cities have lost the airport hubs and frequent service that incite corporations to move headquarters.

The FAA safety net is eroding, and at no time in the industry's 109-year-old history have Americans had less choice. There are now fewer scheduled passenger airlines than in 1978. The big four oligopoly controls an unprecedented 80 percent of the market, and we just saw a 14-year dearth from 2007 to 2021 of no new entrant airlines.

These are the symptoms, not the causes of much larger difficulties. The 1978 Airline Deregulation Act promised to introduce competition, lower fares, and expand access to flying for millions of Americans.

And instead, we have seen more than 100 airline bankruptcies in the last four decades and dozens of mergers and acquisitions rubberstamped by the U.S. Departments of Justice and Transportation.

Today, we find this industry in dire straits. No single answer will resolve all the problems, but there are several actions that the Executive and legislative branches could take. First, AELP urges the members of the Senate Commerce Committee to consider the pro-consumer legislation we have supported in recent months, including the Airline Passengers Bill of Rights, which would require compensation for flight delays and cancellations, establish minimum seat size standards, and would require compensation for involuntary denied boarding.

Second, the Forbidding Airlines from Imposing Ridiculous Fees Act, which would prohibit airlines from charging unreasonable fees. Third, the Family Flies Together—excuse me, Families Fly Together Act so that passengers do not have to pay fees to ensure children under 13 are seated with their families. And fourth, the Cash Refunds for Flight Cancellations Act, which would force airlines to pay cash and not vouchers, which can expire when they cancel flights.

Also, any further consolidation of the industry should be halted. AELP opposes the proposed merger of JetBlue and Spirit and we applaud the Departments of Justice and Transportation for opposing this harmful acquisition. Third, the Airline Deregulation Act included a Federal preemption clause which allows Congress and the U.S. Department of Transportation the only authority to oversee the airlines.

Americans have fewer rights when interacting with airlines than they have with virtually any other consumer industry. AELP has drafted model legislation calling for the elimination of preemption, and we are working with members to see that is introduced soon as part of this year's FAA Reauthorization Act.

Finally, we need to fundamentally reconsider our approach to regulating the airline industry. It faces immense incentives to consolidate, to tack on extra fees, and to erode service quality. Any far-sighted policy solution needs to eliminate these underlying incentives, which mean seriously discussing options to comprehensively regulate the industry as we have. Thank you very much.

I will be happy to answer any questions from the Committee.

[The prepared statement of Mr. McGee follows:]

PREPARED STATEMENT OF WILLIAM J. MCGEE, SENIOR FELLOW FOR AVIATION AND TRAVEL, AMERICAN ECONOMIC LIBERTIES PROJECT

Thank you, Chairperson Cantwell, Ranking Member Cruz, Chairperson Duckworth, Ranking Member Moran, and Members of the Committee. My name is William J. McGee, and I am the Senior Fellow for Aviation and Travel at the American Economic Liberties Project, a nonprofit organization dedicated to addressing the problem of concentrated economic power in America today. Starting in 1985, I spent seven years in airline flight operations management, and I am licensed by the Federal Aviation Administration (FAA) as an Aircraft Dispatcher. I then became an aviation investigative journalist, columnist, and author, writing extensively about the industry. For the last 20 years I have been an airline passenger advocate, testifying on consumer rights, competition, consolidation, safety, and security issues, and serving as the lone consumer advocate on Transportation Secretary LaHood's Future of Aviation Advisory Committee.

The nation's airline industry is broken, and it has found us all lurching from crisis to crisis, meltdown to meltdown, as the interests of consumers, workers, and entire regions of the country are subjugated to the interests of a virtual handful of institutional investors, lobbyists, and senior executives. Every day passengers are faced with fewer choices, higher fares, and a plethora of junk fees added onto airfares. Flight disruptions have become the norm rather than the exception, and when things go wrong—as they so often do now—we are at the mercy of the airlines' own Contracts of Carriage, rules written by and most assuredly for the airlines. American Airlines is about to launch "New Distribution Capability," which will make airfares more opaque than ever.¹ Despite the industry notching record consumer complaints in recent years, Frontier Airlines may well have been speaking for all U.S. airlines last November when it permanently shut down its telephone call centers; the message was clear: don't bother calling, because we don't want to hear from you.²

We have seen new lows in customer service, despite a \$54 billion taxpayer bailout during Covid-19. Over the last two years alone we have seen record numbers of flight delays and cancellations, \$10 billion in unpaid refunds, tighter and tighter seats that pose health and safety threats not just to the disabled but to all passengers, and ubiquitous junk fees that President Biden referenced in his recent State of the Union address, including the nefarious practice of charging families with young children to sit together. Airfares have never been more confusing, more opaque, and less tied to the cost of operation. Every day some 303 million fares are uploaded worldwide. We see significant threats to the Nation's stellar aviation safety record overlooked, particularly with FAA oversight of outsourced aircraft maintenance to foreign repair stations and oversight of manufacturers, as exemplified by the Boeing 737 MAX debacle; efforts to weaken pilot standards; and a refusal to mandate restraints for children under 2. The industry shows tremendous regional inequities, with entire sections of the country denied fair access to air travel, as only larger cities and population centers have frequent and nonstop flights at reasonable cost. Overall, passengers have never been more dissatisfied, airline labor has been

¹ American Airlines Newsroom, "A Modern Retailing Experience: American Airlines Signs New Agreements With All Three Major Global Distribution Systems," October 24, 2022, <https://news.aa.com/news/news-details/2022/A-Modern-Retailing-Experience-American-Airlines-Signs-New-Agreements-With-All-Three-Major-Global-Distribution-Systems-MKG-OTH-10/default.aspx>.

² Ed Markey, Press Release, "In Wake of Holiday Travel Chaos, Senators Markey, Blumenthal, Reps. Cohen, Garcia, Khanna Reintroduce Legislation to Ground Airlines' Skyrocketing Fees," January 31, 2023, www.markey.senate.gov/news/press-releases/in-wake-of-holiday-travel-chaos-senators-markey-blumenthal-reps-cohen-garcia-khanna-reintroduce-legislation-to-ground-airlines-skyrocketing-fees; Department of Transportation, Air Travel Consumer Report, February 2021, www.transportation.gov/sites/dot.gov/files/2021-02/February%202021%20ATCR.pdf; Giulia Heyward, "Frontier Airlines drops its customer service line," NPR, November 26, 2022, www.npr.org/2022/11/26/1139291958/frontier-airlines-drops-its-customer-service-line.

decimated by layoffs and outsourcing, and major cities have lost the airport hubs and frequent service that incite corporations to move headquarters. At no time in the industry's 109-year-old history have Americans had fewer choices in commercial air service, and at no time have the adverse effects on consolidation been so harmful.³

In recent months AELP has been very vocal on a variety of airline consumer issues, including:

- fighting to provide basic passenger rights (such as those that are mandatory in the European Union, Canada, and other nations) so that passengers are guaranteed compensation for flight delays, flight cancellations, and involuntary bumping, and ensuring that aircraft seat sizes meet minimum size dimensions
- fighting to ensure that airlines are prohibited from charging unreasonable “junk fees”
- fighting to prevent airlines from charging fees for families with children under 13 to sit together in flight
- fighting to ensure consumers are given full cash refunds when their flights are canceled

The United States has not had a national discussion about the state of our commercial aviation system for 45 years, and the problems that have arisen since the 1970s grow more acute month after month. We are long overdue for such a broad discussion, a discussion which transcends the latest crisis du jour—unpaid refunds during the pandemic, flight cancellations due to crew shortages, Southwest Airlines' holiday IT meltdown, the FAA's NOTAM outage. These are the symptoms, not the causes, of much larger difficulties. The airlines are broken, and the regulatory model overseeing the airlines is just as broken.

The Failures of Deregulation

We in the United States often tell ourselves a story about airline deregulation, and it goes something like this. The airline industry used to be regulated by a cumbersome, slow bureaucracy called the Civil Aeronautics Board, which set the routes that airlines could fly, set the fares that they were allowed to charge consumers, and became captured by the big airlines such that no new-entrants were allowed. In 1978, we passed the Airline Deregulation Act which allowed new airlines to enter the market and charge whatever prices the market would bear, promising to introduce competition, lower fares, and expand access to flying for millions of Americans. The airlines and the defenders of deregulation will tell you that deregulation generated three great improvements in air travel: 1) more Americans started flying; 2) fares started dropping; and 3) the safety record started improving.⁴

This story can be compelling. However, in the 45 years since the Airline Deregulation Act was passed in 1978, one by one the central promises of more competition and better service have been broken. What they fail to note is that ALL THREE of these trends started long before deregulation, and in all three cases the improve-

³Bureau of Transportation Statistics, On-Time Performance—Reporting Operating Carrier Flight Delays at a Glance, www.transtats.bts.gov/homedrillchart.asp; Senator Markey, Press Release, “Senators Markey and Blumenthal Blast Airlines' Inadequate Response to their Request to Eliminate Expiration Dates for All Pandemic-Related Flight Costs,” June 1, 2021, www.markey.senate.gov/news/press-releases/senators-markey-and-blumenthal-blast-airlines-inadequate-response-to-their-request-to-eliminate-expiration-dates-for-all-pandemic-related-flight-credits; Comments of American Economic Liberties Project, Consumer Action, Consumer Federation of America, Ed Perkins on Travel, National Consumers League, and U.S. PIRG, Docket No. FAA–2022–1001, November 1, 2022, nclnet.org/wp-content/uploads/2022/11/NCL-et-al-SS-RFC-Comments-FINAL-AS-FILED.pdf; American Economic Liberties Project, “Congress and DOT Must Permanently End Family Seating Fees,” Press Release, February 21, 2023, www.economicliberties.us/press-release/congress-and-dot-must-permanently-end-family-seating-fees/; Transport Workers Union Local 514, “Aircraft Maintenance Outsourcing,” June 6, 2019, twu514.org/aircraft-maintenance-outsourcing-summit-video/; Department of Transportation Office of Inspector General, Boeing 737 MAX, www.oig.dot.gov/related-library-items-tags/boeing-737-max; Department of Transportation, The Future of Aviation Advisory Committee Final Report, April 11, 2011, www.transportation.gov/sites/dot.gov/files/docs/faac-final-report-for-web.pdf; Department of Transportation, Domestic Airline Consumer Airfare Report, www.transportation.gov/office-policy/aviation-policy/domestic-airline-consumer-airfare-report-pdf; Alana Semuels, “Airlines Are Terrible. Small Cities Are Still Paying Them Millions of Dollars to Stick Around,” Time Magazine, January 17, 2023, time.com/6247052/airlines-deregulation-american-inequality/.

⁴S. 2493, Airline Deregulation Act, 95th Congress, 1978 <https://www.congress.gov/bills/95th-congress/senate-bill/2493/text>; Edward M. Kennedy, “Airline Regulation by the Civil Aeronautics Board,” Journal of Air Law and Commerce, 1975, scholar.smu.edu/cgi/viewcontent.cgi?article=2106&context=jalc.

ments were greater prior to 1978. The decline in passenger fares, in particular, actually slowed down post-deregulation.⁵

Consolidation

Deregulation was based on faulty premises—that eliminating government oversight would introduce competition, lower prices, and better customer experience—and ignoring the positive role that government regulation had played in stabilizing the industry. In the 1980s, when deregulation led to a series of price wars between major airlines and put many of them out of business by the 1990s, proponents of deregulation saw these developments as positive. Competition was at work to bring prices down for flyers. However, without any oversight to stabilize the industry from price wars of this sort, the industry faced stark choices to either risk bankruptcy or to consolidate into larger airlines.

These pressures eliminated many airlines through either bankruptcy or merger activity. We have seen more than 100 bankruptcies in the last four decades, many due to major carriers driving out smaller, Low Cost Carriers (LCCs). As a result:

- We currently have fewer domestic scheduled passenger airlines than we have had since the 1910s, and the dozens of former carriers include such iconic brands as Pan Am, Eastern, TWA, America West, ATA, Midwest, Northwest, Continental, AirTran, U.S. Airways, and Virgin America.
- We currently have fewer major carriers than at any time, with an oligopoly of four major carriers and their partners—American, Delta, Southwest, and United—controlling 80 percent of the domestic market.
- We recently had the longest drought in airline history, from 2007 to 2021, of no new-entrant scheduled airlines for 14 years.⁶

Making this situation worse, under deregulation we have seen a weaker DOJ on antitrust and merger enforcement. Dozens of mergers and acquisitions have been rubber-stamped by the U.S. Departments of Justice (DOJ) and Transportation (DOT) in recent decades, including the “mega-mergers” of Delta-Northwest, United-Continental, and American-US Airways that morphed the Big Six network hub-and-spoke airlines into the Big Three. For context, Airlines for America reports that in the 60 years from 1930 to 1990 there were 28 mergers & acquisitions among U.S. airlines, but in the next 30 years through 2020—half that span—there were 29. Third, Wall Street investors engage in “common ownership” practices by simultaneously investing in all of the four largest airlines, thereby discouraging true competition, and providing a higher barrier to entry for low fare competitors than ever existed during the regulated era.⁷

And despite all of this consolidation, the industry is still not stable or consistently profitable, as seen by its need for a specific bailout from the Federal government every time there is a significant economic crisis. This is an industry that socializes the losses and privatizes the profits. American taxpayers provided the airlines with a \$54 billion bailout during Covid, but that has not stopped the industry from prioritizing stock dividends, buybacks, and executive bonuses.⁸

⁵Airlines for America, “Air Travelers in America: Annual Survey,” June 23, 2022, www.airlines.org/dataset/air-travelers-in-america-annual-survey/; William C. Goodman, “Transportation by air: job growth moderates from stellar rates,” Bureau of Labor Statistics, March 2000, www.bls.gov/opub/mlr/2000/03/art3full.pdf; Boeing, “Statistical Summary of Commercial Jet Airplane Accidents: Worldwide Operations 1959–2021,” August 2022, www.boeing.com/resources/boeingdotcom/company/about_bca/pdf/statsum.pdf.

⁶Airlines for America, U.S. Airline Bankruptcies, August 24, 2022, www.airlines.org/dataset/u-s-bankruptcies-and-services-cessations/; Airlines for America, U.S. Airline Mergers and Acquisitions, January 17, 2023, www.airlines.org/dataset/u-s-airline-mergers-and-acquisitions/; Statista, Leading airlines in the U.S. by domestic market share 2021, February 3, 2023, www.statista.com/statistics/250577/domestic-market-share-of-leading-us-airlines/; William J. McGee, Comments Concerning the U.S. Airline Industry, Response to Request for Information on Merger Enforcement, April 2022, www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf.

⁷Airlines for America, “U.S. Airline Bankruptcies,” August 24, 2022, www.airlines.org/dataset/u-s-bankruptcies-and-services-cessations/; Mergers and Acquisitions, January 17, 2023, www.airlines.org/dataset/u-s-airline-mergers-and-acquisitions/; William J. McGee and Lee Hepner, “How to Address the Air Travel Crisis: Eliminating The Airlines’ Legal Liability Shield,” American Economic Liberties Project, September 2022, www.economicliberties.us/wp-content/uploads/2022/09/2022-9-07-AirTravelCrisis-Quick-Take-FINAL.pdf.

⁸Consumer Reports, “CU to Testify on Dangers of United/Continental Merger at House Hearing,” June 15, 2010, www.consumerreports.org/media-room/press-releases/2010/06/cu-to-testify-on-dangers-of-unitedcontinental-merger-at-house-hearing/; William J. McGee, “It’s Time to Finally Fix Air Travel,” New York Times, January 13, 2023, www.nytimes.com/2023/01/13/opinion/faa-air-travel-regulation-outage.html; Southwest Airlines Investor Relations, “Southwest

What to Do Now

We find this industry in dire straits, and no one simple answer will resolve all of the problems, but there are several actions that the executive and legislative branches could take.

First, AELP urges the Members of the Senate Commerce Committee to consider the pro-consumer legislation we have supported in recent months. This includes:

- The “Airline Passengers’ Bill of Rights,” which among other provisions includes compensating passengers for flight delays and cancellations, mandating minimum seat size standards, and providing compensation for involuntary denied boarding: www.markey.senate.gov/news/press-releases/senators-markey-blumenthal-lead-in-introducing-legislation-to-bolster-airline-passenger-protections#:~:text=Among%20a%20host%20of%20key,%241%2C350%20to%20passengers%20denied%20boarding
- The “Forbidding Airlines from Imposing Ridiculous (FAIR) Fees Act,” which would prohibit airlines from charging unreasonable fees: www.markey.senate.gov/news/press-releases/in-wake-of-holiday-travel-chaos-senators-markey-blumenthal-reps-cohen-garcia-khanna-reintroduce-legislation-to-ground-airlines-skyrocketing-fees
- The “Families Fly Together Act,” to ensure that passengers do not have to pay fees to ensure children under 13 are seated with their families: www.markey.senate.gov/news/press-releases/as-president-targets-junk-fees-and-airlines-fail-flyers-senator-markey-introduces-families-fly-together-act-so-parents-dont-pay-to-sit-with-their-children
- The “Cash Refunds for Flight Cancellations Act,” which would force airlines to pay cash refunds when they cancel flights: <https://raskin.house.gov/2023/2/raskin-markey-blumenthal-and-cohen-reintroduce-cash-refunds-for-flight-cancellations-act-to-protect-rights-of-airline-passengers>

Second, any further consolidation of the industry should be halted. AELP strongly opposes the proposed merger of JetBlue Airways and Spirit Airlines, because it will eradicate the Nation’s largest Ultra Low Cost Carrier (ULCC), drive up fares nationwide, and position JetBlue not to fight the Big Four but to expand the oligopoly into the Big Five. We applaud the Department of Justice and the Department of Transportation for opposing this harmful acquisition. According to the DOJ: “Spirit estimates that when it starts flying a route, average fares fall by 17 percent; JetBlue estimates that when Spirit stops flying a route, average fares go up by 30 percent.” In fact, last year AELP called for the DOJ and Federal Trade Commission to impose a moratorium on ALL airline mergers until the widespread negative effects of all this consolidation can finally be examined by the DOJ and DOT.⁹ Third, state governments and citizens should be given greater rights to police the industry. One of the most harmful byproducts of deregulation was the inclusion of a Federal preemption clause, which effectively gave only Congress and the U.S. Department of Transportation authority to oversee the airlines. For 45 years this has meant that state courts, state attorneys general, and state legislatures have been largely powerless in reigning in the excesses of the industry’s anti-competitive greed and mistreatment of passengers, and consumers have had fewer rights when interacting with airlines than they have with virtually any other consumer industry. AELP has drafted model legislation calling for the elimination of preemption, and we’re working with Members to see that it will soon be introduced as part of this year’s FAA Reauthorization Act.¹⁰

Airlines Reinstates Quarterly Dividend,” December 7, 2022, www.southwestairlinesinvestorrelations.com/news-and-events/news-releases/2022/12-07-2022-114528327; Rajesh Kumar Singh, “CU to Testify on Dangers of United/Continental Merger at House Hearing,” Reuters, August 18, 2022, www.reuters.com/business/aerospace-defense/airline-unions-launch-campaign-against-stock-buybacks-2022-08-18/.

⁹Complaint, United States v. Jetblue Airways Corporation, Case 1:23-cv-10511, March 7, 2023, <https://www.justice.gov/opa/press-release/file/1572461/download>; American Economic Liberties Project, “Economic Liberties Applauds DOJ for Blocking JetBlue-Spirit Merger, Urges DOT to Join in Protecting Passengers, Workers & Communities,” March 7, 2023, www.economicliberties.us/press-release/economic-liberties-applauds-doj-for-blocking-jetblue-spirit-merger-urges-dot-to-join-in-protecting-passengers-workers-communities/; William J. McGee, Comments Concerning the U.S. Airline Industry, Response to Request for Information on Merger Enforcement, April 2022, www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf.

¹⁰William J. McGee and Lee Hepner, “How to Address the Air Travel Crisis: Eliminating The Airlines’ Legal Liability Shield,” American Economic Liberties Project, September 2022,

Fourth, we need to fundamentally reconsider our approach to regulating the airline industry. Blocking further consolidation in the industry and providing passengers with greater legal recourse are certainly improvements, but they do not attack the root causes of the problem. The airline industry faces such immense incentives for consolidation that blocking a single merger, or five mergers, will not solve. And airlines likewise exist in an unstable market environment that gives them strong incentives to take advantage of, abuse, and rip off consumers. Any farsighted policy solution needs to eliminate these underlying incentives in the industry, rather than put a Band-Aid on the problems that they cause. This means seriously reconsidering options to more comprehensively regulate the industry once again.

Thank you very much. AELP will be happy to respond to any questions from the Committee.

Senator DUCKWORTH. Thank you, Mr. McGee. Now recognize Dr. Moss.

**STATEMENT OF DIANA L. MOSS, PRESIDENT,
AMERICAN ANTITRUST INSTITUTE**

Dr. MOSS. Thank you. Chair Cantwell and Duckworth, and Ranking Members Cruz and Moran, and members of the Committee. It is an honor to be here today to lend the American Antitrust Institute's perspective to consumer protection and connectivity in the U.S. air transportation system.

My testimony approaches this important issue through the lens of competition and how more, not less, is the best vehicle for protecting consumers. It makes the case for why we need both, strong antitrust enforcement, and coherent regulatory policy working together to get there.

The trend toward concentration in the U.S. airline markets continues. There have been almost 20 mergers involving domestic carriers in the last two decades, six of which have involved mergers of major legacy and low-cost carriers. Two recent merger proposals have been made, Spirit and Frontier, which was aborted last year. JetBlue and Spirit, which was recently challenged by the U.S. Department of Justice.

And a joint venture codeshare between American and JetBlue, otherwise known as the Northeast Alliance, where we await a decision on the legality of the codeshare in Federal Court. The last 20 years have been marked by the sequential elimination of competing airlines, mounting antitrust concerns, and no meaningful greenfield entry of new carriers. Today, the sector is dominated by a tight oligopoly of carriers.

A common justification for airline mergers and joint ventures is to bulk up to compete better against other large rivals. This has never been a valid legal basis for allowing any merger under U.S. antitrust law.

It puts air passenger service markets on the slippery slope of rising concentration and higher barriers to entry to smaller rivals. Recent proposals would further erode competition to the detriment of consumers.

My written testimony addresses the four major issues, four major following issues. First, a loss of competition in passenger markets affects airfares and ancillary fees, but it also affects quality of service. As an important non-price dimension of competition, quality

has only recently gained attention, but more is needed on how consolidation reduces competitive pressures for carriers to maintain and enhance quality.

This includes metrics such as on time performance, minimization of delays and cancellations, minimization of consumer complaints, and transparency in airfare distribution. Second, airline consolidation is unlikely to produce enhanced connectivity for travelers. Airlines often promise enhanced connectivity, such as new or more frequent service offerings on combined networks. But analysis shows that these claims do not always materialize. In fact, some mergers actually create inefficiencies.

Third, competition is essential for consumer choice and the stability and resiliency of the passenger air system. Consolidation threatens diversity of carriers to serve, for example, consumers who are price sensitive and for whom bundled fare fee low-cost models are ideal.

A less competitive air transportation system is less likely to withstand shocks, such as pandemic and extreme weather, or to recover quickly from them. Finally, promoting competition and protecting consumers requires strong antitrust enforcement and coordinated regulatory oversight.

While antitrust enforcement in the airline industry appears to be on the uptick, regulatory policy has lagged behind. AAI has advocated for major regulatory overhauls at DOT to create coherent competition policy that bootstrap stronger enforcement.

This includes revisiting DOT's policy approach to approving joint ventures and granting immunity. Immunize joint ventures not only affect competition on international routes, but also on behind the gateway routes to smaller domestic destinations.

Another priority should be to redesign the FAA's slot allocation program to more efficiently allocate takeoff and landing slots at congested airports. Slots are critical for smaller and newer carriers to enter markets to serve smaller destinations.

Common use gates at airports are also a potential tool for promoting competition and spurring entry by smaller rivals. Finally, further consolidation could well result in the loss of important hubs that provide consumers with access to air transportation.

Past mergers have resulted in the de-hubbing of important parts of the U.S., such as the Midwest, with the loss of Memphis, Cleveland, and Saint Louis. It is vital that service to smaller communities be maintained as part of a competitive air system. AAI appreciates the opportunity to testify at this important hearing, and I look forward to your questions.

[The prepared statement of Dr. Moss follows:]

PREPARED STATEMENT OF DIANA L. MOSS, PRESIDENT,
AMERICAN ANTITRUST INSTITUTE

Thank you Chair Cantwell, Ranking Member Cruz, and Members of the Committee. It is an honor to be here today to lend the American Antitrust Institute's (AAI's) perspective to consumer protection and connectivity in the U.S. air transportation system. AAI is an independent, nonprofit organization devoted to promoting competition that protects consumers, businesses, and society.¹ We serve the public

¹ See <https://www.antitrustinstitute.org>.

through research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy. AAI has advocated for strong antitrust enforcement and competition policy in passenger air transportation for more than two decades. This is supported by research and education on the competition, consumer, and labor implications of airline mergers, joint ventures, slot allocation, antitrust immunity for alliances, and the distribution of airfare and schedule information.²

I. Summary of Major Issues

My testimony addresses the following major issues:

- *A loss of competition in passenger air transportation markets affects airfares and ancillary fees and quality of service.* As an important non-price metric of competition, the quality of products and services has only recently gained attention by antitrust enforcers. More attention should be paid to how consolidation in the U.S. passenger air transportation markets reduces competitive pressure to maintain and enhance quality of service.
- *Airline mergers and joint ventures are unlikely to produce enhanced “connectivity” for travelers.* U.S. air carriers have long justified proposed mergers and joint ventures on the basis of enhanced consumer benefits, or the ability of merged carriers to offer new or more frequent service on combined networks. But analysis shows these claims do not always materialize and, in fact, some mergers actually create inefficiency.
- *Competition is essential for consumer choice and the stability and resiliency of the passenger air transportation system.* Consolidation in U.S. passenger air transportation markets has reduced choice for consumers. This means fewer options for consumers who want to purchase service that meets their needs. An air transportation system that features fewer rivals is also less likely to withstand shocks such as pandemic and extreme weather and to recover quickly from them.
- *Promoting competition and protecting consumers requires strong antitrust enforcement and coordinated regulatory oversight.* Historically, there has been less coordination on airline competition matters such as mergers, joint ventures, and slot allocation between the U.S. Department of Justice (DOJ) and Department of Transportation (DOT). Coordination across these two prongs of government is essential for promoting competition and protecting consumers.

II. Introduction

The trend toward concentration in U.S. airline markets continues. There have been almost 20 mergers involving domestic carriers in the last two decades, six of which have involved mergers of major legacy or low-cost carriers (LCCs) or ultra-low-cost carriers (ULCCs).³ This period of time has been marked by the sequential elimination of competing airlines, mounting antitrust concerns in passenger air transportation markets, and no meaningful greenfield entry of new carriers. Today, the U.S. passenger airline system is dominated by a tight oligopoly of carriers, with a small fringe of LCCs and ULCCs.

A common justification for airline mergers and joint ventures is to bulk up to compete better against other large competitors.⁴ This has never been a valid legal or economic rationale for allowing any merger under U.S. antitrust law. Moreover, it puts passenger air service markets on the slippery slope of ever-rising concentration and erects barriers to entry to new, smaller rivals. Recent proposed mergers and joint venture agreements, including the mergers of Frontier-Spirit and JetBlue-Spirit, and the American-JetBlue codeshare (the “Northeast Alliance”) would further erode competition, to the detriment of consumers and workers.

These deals threaten higher airfares and ancillary fees, lower quality of service and less innovation, and less choice for consumers; and lower wages and less bargaining power for airline workforces. The further loss of competition through mergers and joint venture agreements is also likely to reduce the stability and resiliency of the air transportation system by eliminating redundancy and diversity of carriers.

² See <https://www.antitrustinstitute.org/issues/airlines/>.

³ U.S. Airline Mergers and Acquisitions, AIRLINES FOR AMERICA (Jan. 17, 2023), <https://www.airlines.org/dataset/u-s-airline-mergers-and-acquisitions/>.

⁴ See, e.g., JetBlue Releases Analysis Further Demonstrating Procompetitive Benefits of Combination with Spirit, JETBLUE (Mar. 6, 2023), <https://news.jetblue.com/latest-news/press-release-details/2023/JetBlue-Releases-Analysis-Further-Demonstrating-Procompetitive-Benefits-of-Combination-with-Spirit/default.aspx>.

Antitrust concerns over the harmful effects of consolidation are on the rise. For example, the DOJ filed suit against United and Delta in 2015, alleging the illegal acquisition of takeoff and landing slots at Newark's Liberty International Airport.⁵ The DOJ also filed suit against American and JetBlue in 2021, alleging that the carriers' Northeast Alliance codeshare agreement violated Section 1 of the Sherman Act.⁶ Finally, the DOJ filed suit in March 2023 to block the merger of JetBlue and Spirit, alleging that the merger would eliminate head-to-head competition, facilitate anticompetitive coordination, and reduce consumer choice.⁷ Private antitrust class actions have also been brought against U.S. carriers, including the 2010 case involving anticompetitive collusion on baggage fees between then low-cost-carriers Southwest and AirTran.⁸

High and rising market concentration is the root of the competitive concerns in the foregoing antitrust cases. Dominant carriers and oligopolies of carriers have strong incentives to protect their dominant positions and to coordinate to keep capacity tight and airfares and fees high, respectively. Preventing further increases in market concentration that hurts consumers and workers, and jeopardizes the stability and resiliency of the passenger air transportation system will require a coordinated response by legislators, enforcers, and regulators. Such a response, which should have been implemented years ago, should be a high priority for Federal and state governments.

III. A Loss of Competition in Passenger Air Transportation Markets Affects Airfares and Ancillary Fees and Quality of Service

Airline mergers and joint ventures affect competition in two major ways. One is the elimination of head-to-head competition between merging or joint venture carriers. A second is stronger incentives for the remaining carriers in the market to coordinate, rather than compete. Both of these competitive effects result in a range of adverse price and non-price effects. For example, on routes where mergers and joint ventures eliminate a head-to-head competitor or result in a smaller number of carriers on the routes, airfares are likely to rise. For mergers involving ULCCs or ULCCs, which use a bundled model with separate ancillary fees for baggage, priority boarding, and other services, eliminating competition will put upward pressure on those fees.⁹

The stepwise elimination of competition in passenger air transportation markets over the last two decades has also raised questions around the degradation in quality of service. Adverse effects result from, for example, less competitive pressure to quickly and smoothly integrate the systems of merging carriers, including information technology, labor workforces, frequent flyer programs, and aircraft configurations. Evidence from previous airline mergers indicates that combining airline systems post-merger has been expensive and protracted. For example, U.S. Airways explained in 2006 that *"The integration of U.S. Airways Group and America West Holdings has been and will continue to be costly, complex and time consuming, and management will continue to devote substantial effort to that integration and may have its attention diverted from ongoing operational matters or other strategic opportunities."*²¹ United-Continental also struggled with system integration post-merger, problems that directly affected quality of service and caused significant public backlash.

A loss of competition also reduces competitive pressure on carriers to maintain or enhance quality post-merger. This increases consumer search costs and inconvenience and degrades the passenger experience. Mergers and joint ventures that combine: (1) ULCCs with poor-quality records, or (2) mixed models such as a ULCC and full-service carrier, increase the risk that quality deteriorate post-consolidation. For example, AAI examined the service quality records of Spirit and Frontier from 2015 to 2021 and found that Spirit ranked, on average, in the bottom twentieth percentile

⁵U.S. v. United Continental Holdings, Inc. and Delta Air Lines, Inc., Verified Complaint, Case No. 2:33-av-00002 (D.N.J., filed Nov. 10, 2015).

⁶U.S., et al., v. American Airlines Group Inc. and JetBlue Airways Corporation, Complaint, Case No. 1:21-cv-11558 (D. Mass., filed Sept. 21, 2021).

⁷U.S., et al., v. JetBlue Airways Corp. and Spirit Airlines, Inc., Complaint, Case No. 1:23-cv-10511 (D. Mass., filed Mar. 7, 2023).

⁸In Re Delta/AirTran Baggage Fee Antitrust Litigation, Case No. 1:09-cv-01391-TCB, (N.D. Ga., filed Aug. 2, 2010).

⁹See, e.g., Letter from the American Antitrust Institute to the Honorable Jonathan Kanter, Re: Antitrust Review of the Spirit Airlines-Frontier Airlines Merger, AMERICAN ANTITRUST INST. (Apr. 5, 2022), at § IV.A., https://www.antitrustinstitute.org/wp-content/uploads/2022/04/AAI_Spirit_Frontier_Letter-to-DOJ_4.5.22.pdf.

for on-time arrivals while Frontier ranked in the bottom sixth percentile¹⁰ Spirit ranked, on average, in the top twentieth percentile for the most customer complaints while Frontier ranked in the top thirty-fifth percentile.¹¹

The elimination of competition between Spirit and Frontier, should the carriers have merged, would likely have exacerbated their history of poor service quality performance, to the detriment of consumers. It is vital, therefore, that antitrust enforcement and sector regulation look carefully at how airline competition affects the price and non-price dimensions of competition.

IV. Airline Mergers and Joint Ventures Are Unlikely to Produce Enhanced “Connectivity” for Travelers

There are two categories of benefits or “efficiencies” that are typically offered by airlines seeking to justify mergers, joint ventures, and requests for antitrust immunity for alliances. One category is cost savings that are projected to result from integrating information systems, better utilization of gate space and other facilities such as hangars and leaseholds, and increased operational efficiency. A second category of efficiencies is network benefits from post-merger capacity management and enhanced connectivity for consumers. There are a number of potential sources of network benefits: adding destinations to the combined network, offering more round-trip options on existing routes, converting interline service into single line service, optimizing the combined fleet of aircraft across a larger network, and scheduling improvements.

Efficiencies from airline consolidation have been the focus of considerable analysis and growing skepticism. As one expert summed up a decade ago: “*It is pretty difficult looking at the U.S. airline industry [to believe] that mergers are actually going to lower costs. There is no evidence that they deliver more cost-efficiency.*”¹² Claims of network benefits are viewed even more skeptically. A number of factors create a highly fluid landscape, against which efficiencies claims become highly uncertain. These include: (1) different economics of hub-and-spoke networks operated by the legacy network carriers and the point-to-point networks operated by ULCs and ULCCs, (2) entry and exit into route-level markets, (3) strategic pricing by other carriers, and (4) profitability of routes.

There are three major examples that undercut claims that airline consolidation improves connectivity and benefits consumers. First, analysis of past airline mergers reveals that network benefits from increased connectivity after the Delta-Northwest, United-Continental, and Southwest-AirTran mergers did not fully materialize. Indeed, airlines cut airport-pairs from their systems post-merger and ULCs cut a substantially higher percentage than did legacy airlines.¹³ More recently, AAI analyzed claims of network benefits from combining the Spirit and Frontier networks. Changes in entry and exit on routes between 2015 and 2021 showed that the carriers exited more than 50 percent of routes and entered only 35-40 percent of routes.¹⁴ This high rate of churn in the Spirit and Frontier route systems strongly suggests that the carriers would still have engaged in rapid entry and exit from route-level markets had they merged, undercutting claims of long-term enhanced connectivity.

The economic reality is that airlines will only enter and remain in markets when they are profitable. Otherwise, they will exit routes. This fact casts significant doubt on claims that post-merger, carriers will increase long-term connectivity for consumers. Southwest Airlines confirmed this in 2011 at a Senate Judiciary Committee hearing on the Southwest-AirTran merger. There, Senator Kohl asked Southwest’s CEO Gary Kelly: “*Would you at this time commit to maintaining AirTran’s service and its growth plans at Mitchell Airport after this merger takes place?*” Mr. Kelly responded: “*Mr. Chairman, we are very enthused about Milwaukee. We are very en-*

¹⁰*Id.* Citing Air Travel Consumer Reports, U.S. Dep’t. of Transportation, Office of Aviation Consumer Protection, June 2015, June 2018, and June 2021 reports, <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

¹¹AAI research shows that ULCs have historically had the most delays. For example, over the period 2004–2013, regional carriers saw a slight decline in delays, hub-and-spoke carriers showed an 11 percent increase in delays, but low-cost carriers showed a 47 percent increase in delays. See, Diana L. Moss, *Delivering the Benefits? Efficiencies and Airline Mergers*, American Antitrust Inst. (Nov. 21, 2013), at 15–16, https://www.antitrustinstitute.org/wp-content/uploads/2013/12/AAI_USAir-AA_Efficiencies-1.pdf.

¹²Kristen Leigh Painter, *United Airlines is one big company, but not yet one happy family*, DENVERPOST.COM (Sept. 8, 2013), http://www.denverpost.com/business/ci_24036565/united-airlines-is-one-big-company-but-not.

¹³*Delivering the Benefits? Efficiencies and Airline Mergers*, *supra* note 11, at § VI.

¹⁴AAI Letter to DOJ on Spirit-Frontier, *supra* note 9, at § III.C.

thused about continuing to grow Southwest Airlines . . . I just cannot guarantee that we will have the fiscal ability to do that.”¹⁵

Second, past airline consolidation has resulted in the “de-hubbing” of cities in the hub-and-spoke networks of the legacy airlines. High profile examples of hub cut-backs include Cincinnati (Delta) where scheduled departures between 2007 and 2021 declined by 63 percent, Cleveland (Continental) with a 25 percent decrease, Memphis (Northwest), with a 35 percent decrease, Pittsburgh (US Airways), with a 40 percent decrease, and St. Louis (American), with a 25 percent decrease.¹⁶ The de-hubbing of the Midwest has had material impacts on the accessibility of passenger air service for a major segment of the U.S., with outsized effects on smaller communities where consumers are forced to travel greater distances to access airports.

Third, the DOT has approved numerous airline joint venture alliances involving carrier cooperation on activities such as: interlining with carrier partners, sharing frequent flyer programs, codesharing, coordinating pricing and schedules, and fully integrated, immunized revenue and profit-sharing joint-venture type coordination.¹⁷ Immunity for airline alliances is a form of express statutory immunity that is granted by DOT under its public interest standard, pursuant to 49 U.S.C. § 41308–309. There are currently 25 active immunized alliances.¹⁸ Alliance carriers support requests for immunity by asserting, among other things, that passengers benefit from integrating itineraries on connecting routes, thus enhancing competition in behind-or beyond-the-gateway segments and lowering fares.

However, recent economic studies of the benefits cast doubt on the benefits of immunity.¹⁹ For example, immunity may lead to less competition—on non-stop and one-stop routes—in transatlantic markets.²⁰ Moreover, while immunized JVs may increase capacity at hubs, it comes at the expense of services elsewhere in the network.²¹ When alliance carriers compete with a non-alliance interlining carrier, the latter are foreclosed, increasing disparities in market share and decreasing interlining traffic.²² The evidence on the costs and benefits of immunity highlights how consolidation and coordination can decrease connectivity for consumers and why DOT should take a more cautious approach to granting immunity.

V. Competition is Essential for Consumer Choice and the Stability and Resiliency of the Passenger Air Transportation System

Competition is essential to enable consumers to choose air service that meets their needs and pocketbooks, as well as for promoting the stability and resiliency of the passenger air transportation system. Past consolidation has eroded these important features of competition in the passenger air transportation system. As air travel has become more accessible to different segments of consumers, the industry has satisfied different types of demand with different business models and pricing structures. The legacy airlines still adhere primarily to a full-service model, with integrated pricing for air service and ancillary services. The ULCC model (*e.g.*, Spirit and Frontier) features unbundling of ancillary fees (*e.g.*, baggage, boarding, seat selection, etc.) from fares as part of a “fare+fee” model. JetBlue offers a hybrid, LLC and full-service, model.

The DOJ’s recent lawsuit challenging the merger of JetBlue and Spirit focuses on effects that are central to the importance of maintaining a diverse system of car-

¹⁵ The Southwest/AirTran Merger and its Impact On M-7 Businesses, Consumers, and the Local Economy, Hearing Before the Subcommittee On Antitrust, Competition Policy And Consumer Rights of the Committee on the Judiciary, United States Senate, 112th Congress (Feb. 25, 2011).

¹⁶ *Delivering the Benefits? Efficiencies and Airline Mergers*, *supra* note 11, at § VI.

¹⁷ See Paul Stephen Dempsey, *Airline Alliances* 13 (Institute of Air & Space Law, 2011), <https://www.mcgill.ca/iasl/files/iasl/ASPL614-Alliances.pdf>.

¹⁸ *Airline Alliances Operating With Active Antitrust Immunity*, U.S. DEP’T. OF TRANS. (updated Apr. 3, 2019), <https://www.transportation.gov/office-policy/aviation-policy/airline-alliances-operating-active-antitrust-immunity>.

¹⁹ See, *e.g.*, William Gillespie & Oliver M. Richard, *Antitrust Immunity Grants to Joint Venture Agreements: Evidence from International Airline Alliances* at 7 (Economic Analysis Group Discussion Paper, EAG 11–1, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1764083.

²⁰ W. Tom Whalen, *A Panel Data Analysis of Code-Sharing, Antitrust Immunity, and Open Skies Treaties in International Aviation Markets*, 30 REV. INDUS. ORG. 39 (2007).

²¹ Volodymyr Bilotkach & Kai Hüschelrath, *Balancing Competition and Cooperation: Evidence from Transatlantic Airline Markets* (Discussion Paper No. 15–059, August 2015), <http://ftp.zew.de/pub/zew-docs/dp/dp15059.pdf>.

²² Volodymyr Bilotkach & Kai Hüschelrath, *Airline Alliances, Antitrust Immunity, and Market Foreclosure* at 8–10 (ZEW Discussion Paper No. 10–083, 2012), <ftp://ftp.zew.de/pub/zew-docs/dp/dp10083.pdf>.

riers. For example, the complaint alleges that the elimination of Spirit—one of two national ULCCs—would make it easier for remaining rivals to coordinate on price and capacity.²³ But the complaint also alleged that the elimination of Spirit reduces important choice for consumers. In its letter to the DOJ on the proposed merger of Spirit and Frontier, AAI emphasized that the merger would lessen pressure on the merging parties to compete on ancillary fees under their fare+fee model, harming consumers that are particularly price sensitive.²⁴

It is also clear that competition is necessary for the stability and resiliency of the passenger air service system. For example, early in the COVID-19 pandemic, disruption threatened and immobilized critical supply chains and systems. Many of these supply chains were marked by a lack of competition, creating bottlenecks and a lack of stability in the system that had serious consequences for consumer welfare, safety, and security.²⁵ Supply chains that feature robust competition at various levels are far more likely to ensure the reliable and stable distribution of products and services because there are more competitors working to fill the void.

The wave of consolidation that fundamentally reshaped the passenger air system in the U.S. over the last two decades has likely reduced the ability of the system to withstand external shocks. For example, the COVID-19 pandemic created shortages of pilots, crews, and other workforces while the industry struggled with plummeting demand and lower revenues.

Fewer carriers, loss of competitive redundancy on routes, and higher barriers to entry for smaller entrants contribute to less resiliency in the system to withstand disruption. And in late December 2022, extreme weather created a cascading failure on the Southwest Airlines system.²⁶ The airline cancelled a significant percentage of flights, relative to other legacy, ULC, and ULCC carriers, stranding travelers and creating wider system disruption.²⁷

These examples of disruption to the passenger air transportation system highlight the importance of maintaining a diversity of carriers *and* competition between carriers. Mergers that eliminate competition between carriers with similar business models (e.g., legacy or ULCC) or between carriers with similar network models (e.g., hub-and-spoke or point to point) eliminate important diversity and competition that is essential for maintaining stability and resiliency in the passenger air system.

VI. Promoting Competition and Protecting Consumers Requires Strong Antitrust Enforcement and Coordinated Regulatory Oversight

While antitrust enforcement in the U.S. airline industry appears to be on the up-tick, regulatory policy has not kept up with promoting competition. With a looser and often liberally interpreted public interest standard, the DOT has approved dozens of joint ventures that eliminate competition, blessing many of them with antitrust immunity so carriers engage, without impunity, in anticompetitive coordination, to the detriment of consumers.

Nor has DOT stepped in to block airline mergers. It is, therefore, more important than ever for the two prongs of a public policy approach to promoting competition in airline markets to work together.

AAI has advocated for major regulatory overhauls at DOT to create coherent competition policy that bootstraps stronger antitrust enforcement in the airline sector. First, DOT's policy approach to approving joint venture agreements should be re-evaluated.²⁸ AAI has advocated for measures that recognize the increasingly high hurdle for justifying grants of antitrust immunity for joint ventures that eliminate head-to-head competition in exchange for amorphous benefits elsewhere in alliance networks. This higher level of scrutiny and vigilance should also extend to coopera-

²³ DOJ Complaint in JetBlue-Spirit, *supra* note 7.

²⁴ AAI letter to DOJ on Spirit-Frontier, *supra* note 9.

²⁵ Diana L. Moss and Laura Alexander, *When COVID-19 is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains*, AMERICAN ANTITRUST INST. (May 7, 2020), https://www.antitrustinstitute.org/work-product/when-covid-19-is-the-symptom-and-not-the-disease-consolidation-competition-and-breakdowns-in-food-supply-chains/#_ftn4.

²⁶ *Delays, cancellations continue for Southwest Airlines at Denver airport, days after freezing weather passes*, CPR NEWS (Dec. 26, 2022), <https://www.cpr.org/2022/12/26/delays-cancellations-continue-for-southwest-airlines-at-denver-airport-days-after-freezing-weather-passes/>.

²⁷ On-Time Performance—Reporting Operating Carrier Flight Delays at a Glance. U.S. DEP'T. OF TRANS., BUREAU OF TRANS. STATS., queried for December 2022, https://www.transtats.bts.gov/Home/DrillChart_Month.asp?5ry_lrn4=FDDF&N44_Qry=E&5ry_Pn44vr4=DDD&5ry_Nv42146=DDD&heY_fryrp6lrn4=FDDF&heY_fryrp6Z106u=EF.

²⁸ Letter to Honorable Pete Buttigieg and AAG Richard Powers, Re: Airline Joint Ventures in the Era of Oligopoly: Realigning Regulatory Policy with Tougher Antitrust Enforcement, AMERICAN ANTITRUST INST. (Oct. 13, 2021), https://www.antitrustinstitute.org/wp-content/uploads/2021/10/AAI-Ltr-on-NEA_10.13.21_Final.pdf.

tive service agreements and codeshares. AAI urges DOT to consider a more robust process and specific criteria for making its public interest determinations in these cases.

Second, Federal regulatory policy should focus on approaches that recognize the reality of the oligopoly of carriers that dominates the U.S. landscape. While the Federal Aviation Administration's initiatives on the slot allocation program is a move in the right direction, the difficulty faced by smaller carriers in securing slots at congested airports, which facilitate entry and competitive discipline, indicates the need to overhaul the slot administration system. AAI encourages DOT to consider a rulemaking to develop a new model and market design for slot allocation that will result in more efficient outcomes and control for market power. Common use gates at airports also increase ease of access by smaller rivals, and prevent hoarding of critical inputs by dominant players or tight oligopolies of carriers. AAI thus encourages the DOT to consider initiatives that create more access through such a program.

VII. Conclusions

AAI appreciates the opportunity to testify at this important hearing. We stand ready to assist the Committee members, DOT, DOJ, and state-level agencies in crafting ways to improve inter-agency coordination to promote competition in the passenger air transportation markets, for the benefit of consumers.

Senator DUCKWORTH. Thank you, Dr. Moss. I now recognize from PVA, Ms. Ansley.

STATEMENT OF HEATHER ANSLEY, ASSOCIATE EXECUTIVE DIRECTOR, GOVERNMENT RELATIONS, PARALYZED VETERANS OF AMERICA

Ms. ANSLEY. Thank you, Chair Cantwell, Ranking Member Cruz, Chair Duckworth, and Ranking Member Moran, and members of the Committee. Paralyzed Veterans of America thanks you for holding this important hearing to consider the experience of air travel passengers in the development of the next FAA reauthorization.

The Air Carrier Access Act, or ACAA, was signed nearly 40 years ago and prohibits disability-based discrimination in air travel. Unfortunately, the air travel experience of passengers with disabilities, particularly for those who use wheelchairs, is at best frustrating and at worst it is unsafe.

PVA's President Charles Brown fractured his tailbone in 2019 when he was dropped in the aircraft boarding process. As a result of his injuries, he spent months in a VA medical center. He is lucky to be alive.

Unfortunately, his story is not unique. Multiple disability organizations led by PVA conducted a survey following the 35th anniversary of the air carrier law. Many wheelchair users reported that the narrow aisle chairs they must use to board into planes are difficult or unsafe to use.

In fact, 16 percent of respondents reported having been dropped, just like Mr. Brown, and 23 percent reported having been injured in the process. Nearly 70 percent of wheelchair and scooter users reported having their device damaged by an airline. Furthermore, almost 56 percent said that their device had been delayed and 17 percent reported it had been lost. When problems occur, passengers have few options.

Although the last FAA reauthorization allowed the Department of Transportation to assess triple the amount of the allowable fine for wheelchair damage or injury to a passenger with a disability, the Department has yet to assess any fines under this provision.

Despite a significant focus in the last reauthorization on improving the safety and dignity of passengers with disabilities, the needle has barely moved. In fact, the percentage of wheelchairs and scooters mishandled in 2022 was the same percent as those lost, damaged or delayed in 2019.

Unlike trains, busses, and other transportation vehicles regulated by the Americans with Disabilities Act, aircraft have very few, if any, features to facilitate access by passengers with disabilities. There is no guaranteed path of travel to allow a wheelchair user to board the plane. There is no designated wheelchair secure area for them to fly while seated in their device.

No accessible lavatory on the vast majority of single aisle aircraft, and limited or no communications accessible to those who are deaf or blind. We strongly believe that the Air Carrier Access Amendments Act must be included in the next FAA reauthorization to provide a safe and dignified air travel experience for passengers with disabilities. This legislation would require airlines to operate aircraft that meet basic accessibility standards and improve enforcement of the law.

Specifically, the Amendments Act would require the Secretary of Transportation, through direct consultation with the U.S. Access Board, to formulate disability access standards for aircraft. Needed standards are as simple as including a path of travel to allow a wheelchair user to board in their own device and roll to a designated passenger seat, most likely at the front of the aircraft, and then transfer into that passenger's seat, or fly from their chair if that is deemed technologically feasible.

This would allow wheelchair users to avoid using an aisle chair for boarding and deplaning and decrease the possibility of injury. In terms of wheelchair stowage, the standards would require more options for manual wheelchairs to be stowed inside the cabin and ensure that cargo doors and holds allow power wheelchairs to be in plane and stowed upright to protect the devices from damage and airline workers from injury.

The Amendments Act would also strengthen enforcement of the law by requiring the Department of Transportation to levy civil penalties in situations such as physical harm to a disabled passenger or a damage to a wheelchair, and to refer certain complaints to the Department of Justice.

The legislation would also restore the ability of passengers with disabilities to have their rights protected by the courts. Increased aircraft accessibility and improved enforcement options will lead to a safer travel experience for disabled veterans and other people with disabilities who have waited decades for safe access to air travel.

The time to act is now. In closing, I also want to note our support for including provisions in the reauthorization that would require greater analysis and aggregation of wheelchair mishandling data to look for trends and facilitate development of solutions, improved access to seating accommodations, increased flight options at no additional cost if a passenger's wheelchair cannot be stowed on their aircraft, and continued research on the technical and economic feasibility of airlines in implementing in-cabin wheelchair restraint systems.

We sincerely thank you for the opportunity to present our views and would be happy to answer any questions.
[The prepared statement of Ms. Ansley follows:]

PREPARED STATEMENT OF HEATHER ANSLEY, ASSOCIATE EXECUTIVE DIRECTOR,
GOVERNMENT RELATIONS, PARALYZED VETERANS OF AMERICA

Chair Cantwell, Ranking Member Cruz, and members of the Committee, Paralyzed Veterans of America (PVA) thanks you for holding this important hearing to consider the experience of air travel passengers in the development of the next reauthorization of the Federal Aviation Administration (FAA). PVA, a congressionally chartered veterans service organization, serves veterans who have incurred a spinal cord injury or disorder. The vast majority of our members use wheelchairs or other assistive devices for mobility and have a strong interest in ensuring that commercial air travel is safe and dignified for all passengers with disabilities.

Almost 40 years ago, President Ronald Reagan signed the Air Carrier Access Act (ACAA) into law. The ACAA prohibits disability-based discrimination in air travel and requires air carriers to provide accessibility for and accommodations to passengers with disabilities. PVA led the advocacy efforts for passage of the law based on the experiences our members encountered while traveling by air, including being refused passage simply because of their disability. Four years after the passage of the ACAA, Congress passed another PVA-supported bill, the Americans with Disabilities Act (ADA). Although the ADA requires disability access in airports, shuttles, and other forms of mass transportation, it does not apply to commercial air travel.

The ACAA advanced equal opportunity for passengers with disabilities. It required air carriers to provide passengers with disabilities the opportunity to preboard, if additional time or assistance is needed to board the aircraft; timely assistance in boarding and deplaning; proper stowage of assistive devices; and appropriate seating accommodations. After decades of discrimination in air travel, the passage of the ACAA gave hope to passengers with disabilities that their air travel experience would improve.

Despite the ACAA's protections, the current air travel experience for passengers with disabilities, particularly wheelchair users, is, at best, frustrating and, at worse, unsafe. Wheelchair users must surrender their customized wheelchair for stowage either in cargo or, in the case of certain manual wheelchairs, the cabin. The passenger must then be transferred to an aisle chair that allows them to enter the aircraft and traverse the aircraft's aisle, which is very often narrower than the passenger being pushed through it. Aisle chairs are devices designed solely to navigate the narrow aisle. The chairs are often too small for the individual, have limited padding, cannot be propelled by the user, and are prone to tipping. Once on the aisle chair, the passenger is then maneuvered backwards onto the aircraft and pulled down the aisle to the passenger seat. The struggle then begins anew to transfer the passenger from the aisle chair to the seat within the tight confines of the cabin.

Throughout the boarding and deplaning process, passengers are assisted by airline staff or, more frequently, their contractors. Many of these individuals have limited training, are unable to effectively communicate with passengers, and are required to lift and transfer individuals with significant disabilities without sufficient staffing and other resources. The boarding and deplaning process does not protect the health and safety of passengers with disabilities. Instead, it is unsafe, and regularly results in passengers receiving, at the very least, bumps and bruises and, in other cases, far more significant injuries.

Unlike mass transportation vehicles regulated by the ADA, aircraft have very few, if any, features to facilitate access by passengers with disabilities. There is no guaranteed path of travel to allow a wheelchair user to board the plane, no specially designated area for them to fly while seated in their wheelchair, no wheelchair accessible lavatory on the vast majority of single-aisle aircraft, and limited or no communications accessible to those who are deaf or blind.

The lack of accessibility features has resulted in significant safety issues for passengers with disabilities, particularly wheelchair users. PVA's President, who lives in Florida, was severely injured four years ago when he was dropped while attempting to board an aircraft. He fractured his tail bone as a result of this incident and subsequently developed skin breakdown and a bone infection. As a result of his injuries, he spent several months inpatient at a VA medical center.

PVA's Immediate Past President, who lives in Washington, testified before the House Transportation and Infrastructure Committee, Aviation Subcommittee in 2019 about a time when he had severely injured his hip and needed to fly for PVA

business. As he boarded the plane using an aisle chair, his knee hit nearly every armrest on the way back to his seat. He recalled that each time he hit his knee that the jolt sent pain radiating to his injured hip.

Earlier this month, another PVA member from Washington state attended PVA's Advocacy Legislation Seminar in Washington, DC. On his return trip, his power wheelchair was damaged. Specifically, the controller arm was broken and his backup camera was missing. It took three hours at baggage claim for personnel to find someone who knew how to file the damage report. The third-party contractor handling the repair acted quickly once the claim was filed and the first adjuster came to see the damage within a couple of days. However, it has now been well over a week and he is still waiting for the parts needed to fix the damage. In the meantime, when he takes his hand off of the wheelchair's joy stick, it swings out of position.

Another PVA member, the national director from PVA's Texas Chapter, will no longer travel by air. She first traveled post-injury to an adaptive sporting event. On the trip from San Antonio to Aspen, her left shoulder was injured on one of the transfers to the aisle chair due to airline assistants incorrectly strapping her to it. During the return trip, on one of the transfers from the aisle chair to the airline seat, she received a large abrasion on the bottom side of her thigh. On her second and last airline trip, she arrived at her destination to find that her 450-pound power wheelchair did not work. She and her broken chair had to be pushed so that she could leave the airport. Until she can drive her wheelchair onto a plane and lock it into place and be safe, she and her husband, who serves as her caregiver, will not use airline transportation and instead drive wherever they need to travel.

These anecdotal reports were validated by the results of a survey conducted by multiple disability organizations, led by PVA, following the 35th anniversary of the ACAA.¹ Over 1,200 individuals responded to the survey, which covered a wide variety of accommodations for passengers with disabilities.

Many respondents reported that even though they traveled by air they were very concerned about encountering physical barriers. The top reason to avoid air travel was concerns about wheelchair damage. Respondents also reported they were fearful that they would not be safely transferred from their wheelchair to the aisle chair and into the passenger seat and vice versa.

When an airline damages, loses, or delays a passenger's wheelchair, it is a significant and serious problem that endangers their health and limits their mobility and independence. In the worst cases, it can mean the end of the trip as the individual is forced to stay in a hotel bed while they wait for the repair of their wheelchair. It can also mean weeks or months of having to use their own damaged wheelchair or an ill-fitting loaned wheelchair. Following her personal wheelchair being severely damaged on a flight, disability advocate Engracia Figueroa was forced to use an ill-fitting wheelchair that resulted in medical complications that led to her untimely death in October 2021, three months after her trip.

Nearly 70 percent of survey respondents who travel with a wheelchair or scooter reported having it damaged by the carrier. Furthermore, almost 56 percent said that their wheelchair or scooter has been delayed. Seventeen percent reported having their wheelchair or scooter lost.

The 2018 FAA Reauthorization required the U.S. Department of Transportation (DOT) to implement within 60 days of passage a requirement for large domestic air carriers to submit monthly reports on the number of wheelchairs and scooters they enplane and the number subsequently mishandled (lost, damaged, or delayed). Between 2019 and 2022, over 32,000 wheelchairs and scooters were mishandled by airlines. Each one of these situations represents a person whose life was disrupted or impeded until their device was repaired, located, or replaced.

Over half of survey respondents needed to board and deplane using an aisle chair. Many reported that aisle chairs are difficult or unsafe to use. In fact, 16 percent of respondents reported being dropped and 23 percent reported being injured in the boarding and deplaning process. One passenger said, "the attendants rarely know how to transfer or to strap me in."

Not being able to use the restroom during a flight ranked high on the list of reasons survey respondents avoided air travel. In fact, lack of lavatory access, even on a cross country flight, was reason enough for nearly 60 percent of respondents to avoid air travel unless absolutely necessary. The 2018 FAA Reauthorization Act required the U.S. Government Accountability Office (GAO) to study lavatory access on aircraft, including access for passengers with disabilities. GAO found that although

¹Paralyzed Veterans of America, The ACAA Survey: Overview of Survey Results Regarding the Air Travel Experience of Passengers with Disabilities, <https://pva.org/wp-content/uploads/2022/09/2022-ACAA-Survey-Results-FINAL.pdf>.

accessible lavatories are available, “carriers do not often choose to acquire them.”² In 2019, of the top eight domestic air carriers, only 4.5 percent of their single-aisle aircraft had accessible lavatories. Four of these carriers had no accessible lavatories in their fleets.

After years of delay, nearly 40 years after the ACAA became law, DOT appears to be in the final stages of publishing a rule requiring larger single-aisle aircraft to have an accessible lavatory. Finally, passengers with mobility impairments and those who need the assistance of a caregiver would be able to enter a lavatory using an onboard wheelchair with an assistant and close the door. Nearly seven years ago, advocates and the airlines agreed to a rather lengthy timeline, at the urging of the carriers, that would require aircraft ordered 18 years or delivered 20 years after the date of the final rule to have an accessible lavatory. Since air carriers have been on notice for over six years that this requirement was coming, we believe that as a matter of equity DOT should shorten the implementation timeline by the number of years this rule has been delayed. Unfortunately, even in a best-case scenario, it will still be decades until the requirement is fully implemented.

In the last year, we have continued to hear reports of insufficient staffing to perform lifts of passengers during the boarding and deplaning process, misplaced wheelchairs that result in injury, broken wheelchairs, humiliation due to the lack of bathroom access, and even threats to contact law enforcement when passengers refused to deplane before their wheelchair was returned to them. An August 2022 New York Times article, “Embarrassing, Uncomfortable and Risky: What Flying Is Like for Passengers Who Use Wheelchairs,”³ documented the difficulties PVA’s President experiences when he travels by air.

There are very few options for passengers who do not receive proper disability-related assistance. Passengers often share their frustration on social media and may file a complaint with the airline and/or DOT. The Department can issue cease and desist orders and levy civil penalties for ACAA violations; however, the largest financial penalty in recent years was in 2016 for \$2 million.⁴ That fine, much of which was credited to the carrier, was an anomaly.

In 2019, the most recent year for which statistics are available, passengers filed nearly 42,500 disability-related complaints directly with over 185 foreign and domestic airlines, which was an increase of nearly 15 percent over 2018. That same year, passengers filed approximately 900 disability-related complaints directly with DOT. In 2021, passengers filed nearly 1,400 DOT complaints. The number of DOT complaints filed in 2022 has not yet been released.

Despite a significant focus in the last FAA Reauthorization on improving the safety and dignity of passengers with disabilities, the needle has barely moved. In fact, the percentage of wheelchairs and scooters mishandled in 2022 was the same percent as those mishandled in 2019, the first full year for which airlines were required to report such numbers.⁵ The safety of passengers with disabilities is at stake and Congress must act to bring their air travel experience into the 21st century.

The problem with commercial air travel is that aircraft do not have proper accessibility features to accommodate passengers with disabilities. Passengers will continue to be injured and wheelchairs delayed, damaged, or lost until travelers can travel onto the plane using their personal wheelchair and transfer to a passenger seat or stay safely seated in their devices. Commercial air travel has been given a pass for far too long under the guise that requiring access will require the loss of too much revenue without any regard for the price wheelchair users must pay with their bodies during air travel. People with disabilities will not be able to effectively compete for jobs, vacation with their families, or seek needed medical care until safe and dignified air travel is guaranteed for all passengers with disabilities.

We strongly believe that the Air Carrier Access Amendments Act (ACAAA) (S. 545) must be included in the next FAA Reauthorization Act to improve the air travel experience of passengers with disabilities. This critically important legislation, which is currently supported by 30 veterans, disability, and consumer organizations, would provide safe and dignified air travel for passengers with disabilities by requir-

²U.S. Gov’t Accountability Off., GAO–20–258, Aviation Consumer Protection, Few U.S. Aircraft Have Lavatories Designed to Accommodate Passengers with Reduced Mobility 14 (2020), <https://www.gao.gov/products/gao-20-258>.

³Amanda Morris, *Embarrassing, Uncomfortable and Risky: What Flying Is Like for Passengers Who Use Wheelchairs*, N.Y. Times, Aug. 8, 2022, <https://pva.org/wp-content/uploads/2022/08/ NYT-Embarrassing-Uncomfortable-and-Risky-08.08.2022.pdf>.

⁴U.S. Department of Transportation, United Airlines, Inc. Order 2016–1–3, <https://www.transportation.gov/airconsumer/eo-2016-1-3>.

⁵Press Release, U.S. Department of Transportation, Air Travel Consumer Report: December 2022, Full Year 2022 Numbers, Mar. 16, 2023, <https://content.govdelivery.com/accounts/USDOT/bulletins/342450>.

ing airlines to operate aircraft that meet accessibility standards and improving enforcement of the law.

Accessibility standards for larger aircraft used in commercial air travel are needed to provide a safe and dignified air travel experience for wheelchair users. The ACAA would require the DOT Secretary through direct consultation with the U.S. Access Board to formulate standards to address effective boarding and deplaning, visually accessible announcements, in-flight entertainment, seating accommodations, lavatories, and stowage options for assistive devices. Five years after the standards are finalized, airlines would need to operate aircraft that comply with them.

Standards related to boarding and deplaning would require “ensuring that there is a route accessible for individuals to board and deplane the aircraft from their personal assistive devices, including wheelchairs.” We believe this provision would allow a wheelchair user to board in their own wheelchair and roll to a designated passenger seat, most likely at the front of the aircraft, and transfer to the seat. On a majority of larger aircraft, the passenger boarding door is already wide enough to allow a wheelchair to enter the cabin. The chosen layout of the cabin hinders movement. Requiring a proper path of travel would allow wheelchair users to avoid using an aisle chair for boarding and deplaning. The standards would also include in-cabin wheelchair restraints, if deemed technologically feasible.

The 2018 FAA Reauthorization Act required the U.S. Access Board to conduct a study of the feasibility of in-cabin wheelchair restraint systems. The Access Board carried out that requirement through the National Academy of Sciences’ Transportation Research Board (TRB).⁶

The TRB study was unable to “identify any issues . . . that seem likely to present design and engineering challenges so formidable that they call into question the technical feasibility of an in-cabin wheelchair securement system and the value of exploring the concept further.” The study acknowledged that further assessment was needed, “particularly to understand how secured personal wheelchairs are likely to perform relative to FAA’s security criteria in restraining and protecting occupants during a survivable airplane crash or emergency landing,” and called on DOT and FAA to undertake research on these issues. It also called on the Access Board to assess the demand from people with disabilities to fly while seated in their wheelchairs to inform the number of aircraft that would need to be modified to provide meaningful access, assuming remaining feasibility questions are satisfied.

We call on Congress to include language in the next FAA Reauthorization directing appropriate agencies and administrations on completion of the next milestones, including the economic and financial feasibility of airlines implementing in-cabin wheelchair restraint systems, and providing funding necessary to accomplish them. We would also support inclusion of tax credits or other incentives to facilitate expedited adoption by air carriers.

In terms of wheelchair stowage, the standards would require “adequate in-cabin stowage of assistive devices.” We believe that this would allow more types of manual wheelchairs to be stowed in the cabin for those who wish to fly while seated in a passenger seat. The standards would further require the option for “proper stowage of assistive devices in the cargo and ensure that cargo doors and the cargo holds allow such devices to be enplaned and stowed upright.” This change is needed to ensure that when wheelchairs are stowed in cargo they can be done so in a way that is safe for airline workers and protects the wheelchair from damage.

Although the 2018 FAA Reauthorization Act allowed DOT to assess triple the amount of the allowable fine for wheelchair damage or injury to a passenger with a disability, the Department has yet to assess any fines under this provision. The previously cited complaint data shows that the lack of fines levied is not due to a decrease in wheelchair damage or passenger complaints. The ACAA would strengthen enforcement of the law by requiring DOT to levy civil penalties for mishandled wheelchairs, physical harm to a passenger with a disability, lack of proper aisle chair assistance, improperly denied boarding for a passenger with a disability, inappropriately denied access for a service animal, and gross negligence.

The ACAA would also require the DOT Secretary to refer complaints to the Department of Justice (DOJ) when there is reasonable cause to believe that violations of the law are a pattern or practice or if it “raises an issue of general public importance.” Referral of cases to DOJ will put commercial air travel in the same position as other providers of mass transportation. It would also recognize that the ACAA

⁶Transportation Research Board, Technical Feasibility of a Wheelchair Securement Concept for Airline Travel: A Preliminary Assessment, <https://www.access-board.gov/files/research/trb-final-report-sept2021.pdf>.

is not a customer service standard but a civil right. The Attorney General would then be able to pursue a civil action on behalf of a passenger.

The legislation would also formally establish a private right of action to institute additional remedies, without removing DOT's role in the administrative process. Prior to the 2001 Supreme Court case, *Alexander v. Sandoval*,⁷ the Fifth, Eighth, and Ninth Federal Circuit Courts recognized a private right of action under the ACAA. In *Tallarico v. Trans World Airlines, Inc.*,⁸ a minor with cerebral palsy was not permitted to fly unaccompanied. The plaintiff alleged the airline violated the ACAA by denying her the right to fly because of her physical conditions. The court supported the jury's award of emotional distress damages, in the amount of \$80,000, but did not analyze whether punitive damages could be recovered.⁹ In *Tunison v. Cont'l Airlines Corp.*,¹⁰ the deaf and blind plaintiff was not allowed to fly alone. The court found that the airline violated the ACAA, but awarded no damages. After *Sandoval*, the Second, Fifth, Ninth, Tenth, Eleventh, and D.C. Circuit Courts have subsequently ruled that there is no private right of action under the ACAA.¹¹ Federal preemption further hinders access to potential remedies by limiting applicability of state law.

Restoring a private right of action would allow more remedies for passengers who suffer ACAA violations. It would also allow for injunctive relief to foster policy changes that would allow passengers and airlines to partner together to make changes that would benefit all people with disabilities. In calling for Congress to pass the ACAA, an editorial from the Las Vegas Sun noted the support major airlines received from taxpayers during the COVID pandemic and said, "If the American people are expected to help bail out the airline industry, the airline industry should do everything in its power to serve all Americans."¹²

We believe that increased aircraft accessibility, and improved enforcement options will lead to safer travel experiences for passengers with disabilities. PVA members and others with disabilities have waited long enough for safe access to air travel. We know how to improve the experience of passengers with disabilities. We simply need to do it.

Until wheelchair users are able to board and deplane aircraft using their personal wheelchairs and have the option to access an aircraft wheelchair space or have their wheelchair safely stowed either in the cabin or cargo, air carriers must improve training and provide job aid materials for workers. In February 2022, PVA submitted a formal request for rulemaking to DOT about the assistance provided to passengers who use aisle chairs, information airlines are required to collect related to incidents in boarding and deplaning, and how airlines assist passengers when a wheelchair or scooter is mishandled. PVA called on the Department to require air carriers to have specific personnel who are highly trained in transfer techniques and the use of boarding and deplaning devices. The training provided to these assistants must be "hands on" and assistants must receive an annual certification of their skills, including their ability to follow directions from passengers about how to effectively and safely assist them. Furthermore, the assistants must be given properly maintained equipment that meets standards that address not only the needs of the airline, but also the needs of the passenger and the assistants.

In addition, DOT must require airlines to provide ramp personnel with the proper equipment to safely enplane and deplane assistive devices. The Department must also establish a timeline for airlines to replace or repair a wheelchair or other assistive device or provide compensation for a device's damage, as well as requiring air carriers to provide adequate interim accommodations. DOT must also clarify that the ACAA requires air carriers to return all wheelchairs and other assistive devices in the condition in which they were surrendered by the passenger.

DOT has indicated that a proposed rule will be published later this year. We ask Congress to include a provision in the FAA Reauthorization requiring the Department to complete this rulemaking within one year of the Reauthorization's enact-

⁷ 532 U.S. 275.

⁸ 881 F.2d 566 (8th Cir. 1989).

⁹ *Id.* at 571, 572.

¹⁰ 162 F.3d 1187 (D.C. Cir. 1998).

¹¹ *Lopez v. Jet Blue Airways*, 662 F.3d 593 (2d Cir. 2011); *Stokes v. Southwest Airlines*, 887 F.3d 199 (5th Cir. 2018); *Segalman v. Southwest Airlines Company*, 895 F.3d 1219 (9th Cir. 2018); *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263 (10th Cir. 2004); *Fox v. Am. Airlines, Inc.*, No. CIV.A. 02-2069 RMU, 2003 WL 21854800 (D.D.C. Aug. 5, 2003), *aff'd*, 389 F.3d 1291 (D.C. Cir. 2004), and *aff'd*, 389 F.3d 1291 (D.C. Cir. 2004); and *Love v. Delta Airlines*, 310 F.3d 1347 (11th Cir. 2002).

¹² Editorial, *Support the Spirit of the ADA While Protecting Businesses from Abuse*, Las Vegas Sun, Mar. 10, 2023, <https://lasvegassun.com/news/2023/mar/10/support-the-spirit-of-the-ada-while-protecting-bus/>.

ment. We also believe that the next FAA Reauthorization should require DOT to provide greater analysis and aggregation of the wheelchair and scooter data received from airlines, including separating incidents related to manual wheelchairs, power wheelchairs, and scooters, to look for trends, as well as develop solutions to address areas of specific concern focused on attacking the root cause of mishandled assistive devices.

Passengers with disabilities also need improved access to appropriate seating accommodations. The ACAA requires airlines to accommodate passengers with disabilities only in the class of service purchased. Thus, a passenger who purchases an economy ticket is not required to be accommodated in premium economy even if seating in that section would better accommodate the passenger.

The next FAA Reauthorization should require airlines to provide a passenger with a disability and at least one companion with a needed seating accommodation, even if in another class of service, as long as no more than one passenger will be displaced in that class of service. We believe that passengers with disabilities should not be required to pay higher ticket prices simply because they wish to limit their time on an aisle chair and the bruises and abrasions they may receive being transported to their seat further back in the plane. Air carriers must also clearly alert passengers with disabilities about the availability of seating accommodation options.

Furthermore, airlines should be required to accommodate wheelchair users on another aircraft, including that of another airline, if the passenger's wheelchair will not fit on the aircraft designated for the passenger's flight. Wheelchair users should not be forced to pay a higher ticket price if the only aircraft type that will accommodate their assistive device is used on a more expensive flight. They should also not be required to fly on an airline that is more expensive solely because that airline uses an aircraft that will accommodate the passenger's wheelchair. Passengers with disabilities should be able to benefit from competition and low fares like other Americans.

Finally, we support reauthorization of the ACAA Advisory Committee, which was first authorized in the 2018 FAA Reauthorization. The Committee, which included airline and airport representatives; wheelchair manufacturers; and veterans, disability, and service animal organizations reviewed DOT's draft of the Passengers with Disabilities Bill of Rights and considered recommendations related to ticketing practices and seating accommodations, stowage of assistive devices, and assistance at airports and on aircraft and related training. Although the Committee's final report consisted primarily of recommendations concerning the need for further study of the issues or adoption of best practices, we believe the Committee should continue and hope it will be a greater force for change in the future.

Addressing air travel problems is not only the right thing to do, it is also a smart business decision. Over 75 percent of respondents from the earlier referenced survey said that if the air travel experience of passengers with disabilities improved they would fly at least a few times a year. Fifteen percent said they would fly monthly.

PVA appreciates the opportunity to express our views. I would be happy to answer any questions.

Senator DUCKWORTH. Thank you. I now recognize Mr. Shane.

**STATEMENT OF JEFFREY N. SHANE,
FORMER UNDER SECRETARY FOR POLICY,
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. SHANE. [Technical problems]—Chair Cantwell, Ranking Member Cruz, and other members of the Committee, I really thank you for the invitation to be here this morning. I have a longer statement that I hope can be inserted in the record, but I will try to sum it up quickly now.

Let me say at the outset that I am here representing nobody but myself. My primary credential, if any, is a long career in Government, 25 years spread over 40, most of which was at the Department of Transportation, and most of which was also in one way or another, all about economic regulation.

For more than 10 years, I had broad responsibility, among other things, for DOT's oversight of commercial aviation. Most importantly, its relations with consumers. So, it is a special privilege to

be able to share with you my personal perspective as a former regulator on one of the most difficult and fraught periods in the history of commercial flight.

The image of commercial aviation has been broadly damaged over the past few months by what most of us think is a seriously disappointing performance. Not all carriers have performed badly, but we all know that one bad apple spoils the barrel, and in this case, it was more than one.

The poster child for the industry's recent inadequacy, of course, is the weeklong meltdown of Southwest during one of the busiest travel periods of the year. Some 2 million Southwest customers had their holiday plans dashed by the meltdown or were at least seriously inconvenienced. It was a monstrous failure.

Without any attempt to minimize the devastating consequences of that week for so many, however, it is useful to pause for a moment and think about that 2 million passenger number. The failure of one airline to perform during 1 week affected 2 million passengers. It reminds us how important air travel is to our lives today.

Prior to the pandemic, there were nearly a billion enplanements within the United States every year. Those numbers are directly attributable to what Ranking Member Cruz referred to earlier, to one of the most profoundly important pieces of legislation Congress has ever enacted, the Airline Deregulation Act of 1978.

It democratized aviation. Now, I know this is probably not the right time to get misty eyed about the benefits of airline deregulation. Still, as we think about the industry today and what might be done to prevent future meltdowns, or to diminish the number of passenger complaints about various airline policies and practices, it is important to recall that Congress predicated the Airline Deregulation Act on a single overarching idea, that however important they may be to the national economy, airlines are businesses not public utilities.

Congress intended that henceforth Government would treat them as businesses and give them the widest scope for innovation and competition. And that is why the legislation explicitly prohibited any further regulation of airline rates, routes, or services, the areas where they wanted that innovation and competition to take place.

Economists consistently tell us, as we have just heard, that consumers have benefited enormously. Now, of course, the wisdom of that legislation has been called into question. I am not entirely sure, but I think this may be the first time in the 45 years since the law was signed that we are seeing serious proposals to roll back at least some of its elements.

To the proponents of rollback, I would respectfully urge caution. If my experience during all the years I toiled in this field taught me anything, it can be summed up with a few simple points.

First, in responding to any episode that damaged the interests of consumers, it is important to ask whether a proposed rule or law is likely to make any actual difference in the future conduct of airlines, or whether the costs of the incident itself, both monetary and reputational, would likely achieve exactly the same result without Government intervention.

I have read that the Southwest meltdown will subtract something north of \$800 million from the carrier's bottom line. That near \$1 billion hit sounds to me like a pretty powerful incentive to prevent any repeats, and I am sure it is job one right now at Southwest C-suite. You can be sure that other airlines are carefully studying the incident.

Second, to use a shopworn metaphor, sunlight is the best disinfectant. Customers obviously should be fully aware of every detail of any transaction with an airline, and thanks to the rules crafted by DOT over many years, that information is easily available to them now. If it is not, enforcement action is called for.

Transparency is essential, and it also engenders more robust competition among airlines. Finally, in a dynamic, rapidly evolving industry like air transportation, prescribing a one-size-fits-all solution to any perceived problem in airline conduct has the unfortunate consequence of homogenizing the business, making it look more like a commodity and thereby sapping much of its competitive energy and its scope for innovation. I will stop there and I look forward to your questions.

[The prepared statement of Mr. Shane follows:]

PREPARED STATEMENT OF JEFFREY N. SHANE ¹

Madam Chair, Ranking Member Cruz, and other member of the Subcommittee:
I appreciate very much having the honor and privilege of speaking to you this morning at this important hearing. Thank you for the invitation.

Introduction

Let me say at the outset that I am here representing nobody but myself. My primary credential, if any, is a long career in public service—25 years spread over 40—most of which was at the Department of Transportation, and most of which was also, in one way or another, all about economic regulation. It was even the subject I enjoyed most in law school, although I attended law school before the word “deregulation” had even been coined.

I began my career in Washington as a government trial attorney, representing the public interest in hearings at some long-gone regulatory agencies—the Federal Power Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board. I even did a case at the Federal Maritime Commission, which still exists, but I have no memory of what that case was about.

In any event, I claim to know something about economic regulation—what works and what doesn't. It was that experience that turned me into an unapologetic believer in the benefits of a free and competitive marketplace.

Much later, I had the good fortune to be appointed, with the approval of this Committee and the full Senate, to some senior policy positions at DOT. These were not aviation-specific positions—they were about all modes of transportation. I soon discovered, however, as I suspect members of this Committee have discovered, that aviation policy is never far from the top of the list. Because it is an industry that everyone knows so well, airlines are always in the spotlight.

Thus, for more than 10 years, either as DOT's Assistant Secretary for Policy or later as Under Secretary for Policy, I had broad responsibility, subject of course to the leadership of the Secretary of Transportation, for DOT's economic regulation of the airline industry. It was far and away my most enjoyable professional experience, both because the issues were so important to so many, and because of the extraordinary colleagues I was lucky enough to work with throughout that time. Some are still there. I miss them all.

Importance of the Airline Deregulation Act

The reason why so many of our citizens know aviation so well, of course, is that Congress democratized it in 1978. I'm talking, of course, about the Airline Deregula-

¹Jeffrey N. Shane served as Under Secretary for Policy at the Department of Transportation from 2003 to 2008 and Assistant Secretary for Policy and International Affairs from 1989 to 1993.

tion Act. That legislation, initially championed by Senator Ted Kennedy, was nothing less than a miracle of public policy. Increasingly forgotten is that the airlines were adamantly opposed to the legislation. They had become very comfortable in the familiar cocoon provided by the CAB and they pulled out all the stops to keep the bill from being passed. The public, for most of whom air travel was still a rare and expensive experience, wasn't particularly interested. There was no groundswell of public support for the bill because nobody really understood what its impact would be. Well organized opposition and weak, diffuse support is usually a prescription for failure in the legislative process. Yet somehow, remarkably, the law was passed, President Carter signed it, and aviation would never again be the same.

Airline deregulation not only benefited Americans; it was actually one of America's most profoundly important gifts to the world, although not always welcomed in the first instance. In the 1980s I spent four years at the Department of State serving as the chief U.S. aviation negotiator, working with other governments on the bilateral agreements that define international landing rights for U.S. and foreign airlines. Most of the foreign carriers back then were creatures of government—either government-owned or acting as though they were. We encountered resistance everywhere, an entrenched protectionism that had impeded the growth of international air travel for decades. Through an initiative launched during the Carter Administration in parallel with domestic deregulation, we slowly sold our trading partners, one by one, on the benefits of an open market. U.S. airlines were as opposed to that initiative as they were to domestic deregulation, but administration after administration kept it going. It became easier over time because we could demonstrate quantitatively how much faster liberalized international markets grew than regulated markets.

In 1992, the United States announced an Open Skies policy and signed the first Open Skies agreement with The Netherlands. America today has about 125 Open Skies agreements—in other words, with most of our trading partners—and the model has been replicated even in air travel markets that don't touch the U.S. It is a bipartisan success story of the first magnitude.

Central to the genius of the Airline Deregulation Act are a couple of overarching principles. One, of course, is that airlines are businesses. Congress intended that henceforth government would *treat* them as businesses and give them the widest scope for innovation and competition. That is why the legislation prohibited any regulation of airline rates, routes, or services—the areas where they wanted that innovation and competition to take place.

Second, because airlines for the most part are so conspicuously in interstate commerce, any future oversight and regulation—most obviously safety regulation—was reserved to the Federal government alone. A single, nationally consistent set of rules, Congress knew, was essential to safe, efficient, and economical operations.

Notwithstanding their emancipation from traditional regulation, airlines are still subject to a lot of government oversight. Obviously we never deregulated the safety of airlines, which is why commercial flight continues to be the safest form of travel. DOT also has authority under 49 U.S.C. §41712 to prevent unfair and deceptive practices and unfair methods of competition. A lot of regulations have been promulgated under that rubric in the interest of consumers, most importantly ensuring the transparency of airline offerings and thus ensuring that airline customers know what they are buying. DOT has a mandate in the Air Carrier Access Act to prevent discrimination against passengers with disabilities. And I would also argue that the Department's authority to review the managerial and financial wherewithal of airlines—conducted in parallel with the FAA's review of airline operational fitness—is another way the Department protects the interests of consumers.

Has deregulation gone too far?

Recent developments in the industry have triggered a conversation, however, about whether deregulation has gone too far, and whether it is time for government to get back into the game of disciplining the way airlines do business.

I don't want to overstate this: I don't believe anyone is talking about repealing the Airline Deregulation Act and resurrecting the Civil Aeronautics Board. Nevertheless, I have seen a number of proposals that certainly appear to channel the spirit of the CAB, and that would require DOT to reconstruct at least some of the CAB's long-forgotten regulatory jurisprudence.

If my experience over all the years I toiled in this field taught me anything, it is this: the government must exercise extreme caution in promulgating rules designed to alter the conduct of private business. Allow me to illustrate what I mean by reference to some of the current targets of concern.

Ancillary fees

What we call “ancillary fees” in aviation are an example of what economists call “unbundling.” Unbundling was actually invented by regulators based on the simple and unarguable principle that people shouldn’t be required to pay for what they don’t want—like a black rotary-dial telephone when all you wanted was a phone line.

In an effort to provide basic air transportation at the most affordable prices, low-cost and ultra-low-cost carriers have delinked the baggage part of the transaction from the travel part. I hope nobody is thinking about requiring ULCs and ULCCs to desist from unbundling—charging all passengers the same thing whether they check a bag or not. If they did, the bizarre result would be to require passengers traveling with nothing more than a carry-on to subsidize the passengers who check bags free of charge. That would be the very antithesis of transparency in pricing, and arguably even an “unfair and deceptive practice.”

Passengers complain that the baggage fees are unreasonable. Even if airlines are not required to abandon ancillary baggage fees, therefore, some suggest that DOT should play price regulator and try to figure out what a reasonable baggage fee is.

First, lest there be any doubt, that would be an explicit renunciation of the Airline Deregulation Act’s central prohibition against the regulation of airline rates and services. Congress can certainly do that if it wants to, but why would it want to? If it’s okay to prescribe what an airline charges for putting a suitcase in the belly of an airplane, why not prescribe what it costs to buy a pastry and coffee in the terminal? What distinguishes the purchase of space in the baggage hold from any other transaction in our private sector economy? It just isn’t normally the government’s job to prescribe prices charged by private companies to their customers, and the fact that the target is an airline doesn’t create an exception to that principle.

And, by the way, how would DOT actually go about deciding what a reasonable bag fee is? Would it have to hire a cadre of administrative law judges and conduct formal proceedings pursuant to the Administrative Procedure Act? Would DOT require the disclosure of confidential cost information in order to ascertain the “real” cost of checking a bag? Would there be a right of appeal if the airline disagrees with the Department’s definition of “reasonableness” or with the fees DOT orders the airline to charge? If so, to the Secretary? I would submit that DOT has more important things to do.

Concentration

The late Michael Levine was a supremely talented lawyer and economist, and is widely credited with being one of the intellectual fathers of airline deregulation. He was also a very good friend. Speaking about the early days of deregulation, he once said that the founders thought that, once the regulatory wraps were removed, a whole galaxy of new airlines would appear and light up the firmament. “What we actually got,” Mike said, “was a meteor shower.” He was referring to the large number of startup airlines that came rushing into the newly opened marketplace just because they were allowed to. Most quickly flamed out, some because they didn’t know what they were doing, and others simply because the market couldn’t deliver enough business to support that many airlines profitably. That chapter carries an important lesson, I think, for anyone who thinks good antitrust policy should be something akin to “the more the merrier.”

The 1980s saw a spate of airline mergers, all approved by DOT because the statutory authority to review domestic airline mergers wouldn’t migrate to the Department of Justice until 1989. By the time the first Bush administration took office in that year, there were widespread concerns about whether the market for air travel had simply become too concentrated. Samuel Skinner, the newly appointed Secretary of Transportation, took the complaints seriously and let it be known that if the concerns were borne out by empirical evidence, he would seek authority to take appropriate action in the interest of consumers.

I was the Assistant Secretary for Policy at this time, and a detailed study was conducted by my office—led by my superb deputy, Patrick Murphy. When it was finished, it filled nine peer reviewed volumes.

What we found, in a nutshell, was that, while there were indeed fewer airlines serving the domestic U.S. market, the actual choices available to travelers in actual city pair markets had actually increased, and price competition in the market continued to be robust. In the end, we saw no need for any tinkering with the Airline Deregulation Act. I testified at a number of congressional hearings on airline competition during that administration, and thanks to the unbiased and objective quality of that study, I emerged mostly unscathed.

There have been more mergers since then. One important result is a financially healthier airline industry—putting aside for the moment the devastating impact of

the pandemic. It is fair to ask whether that improved financial health has come at the expense of consumer welfare. I am not a professional economist and I'm in no position to offer a first-hand answer to that important question. According to all that I've read, however, airfares continue to fall and consumer choice continues to increase. There are few barriers to new entry, as the launch of Breeze Air and Avelo at the height of the COVID pandemic should make clear. The deregulated aviation market appears to be working well.

Caution, therefore, should be the order of the day. What do the numbers actually tell us? You don't make competition policy based simply on the number of airlines in the market, or on the aggregate market share enjoyed by the "big three" or "big four"; instead, you carefully examine the quality of the choices available to actual passengers in actual city pairs and you look objectively at actual pricing trends.

Transparency

One of DOT's greatest successes in its continuing work on behalf of consumers is its transparency requirements for airlines and their agents. Customers should know everything about the transaction they are about to enter into—the identity of the airline on every segment of a journey, the actual prices to be paid, which services are covered by those prices and which are not, and so forth. DOT's required reporting of airlines' on-time performance, market by market, has been another great boon to travelers.

I have seen proposals for going even further, however, and I find them concerning. Like the firms in every sector of our economy, airlines seek to compete not only on price and ubiquity, but also through product differentiation. They know there is a tendency to treat air travel as a commodity, but they really don't think it is, and they don't want their customers to think so either. If you spend a few hundred million dollars upgrading the interior of your airplanes, or your lounges, or cabin connectivity, or the check-in process, or even your food and beverage service, you want potential customers to know about those improvements. You want those improvements to attract *more* customers.

Not long ago, if you booked a flight using one of the major online distribution systems you found only the most basic information there: a list of available flights, their departure times, and their costs and fees. Those displays merely reinforced the impression that you were purchasing a fungible commodity. A few years ago there was a major dispute between the airlines and the major global distribution systems over the alleged failure of the GDSs to upgrade their technology in order to provide the richer content the airlines wanted. Make no mistake: this was an argument about whether the GDSs perceived deficiencies were actually preventing the airlines from competing in the way they wanted to, merely reinforcing the commodity narrative, and squandering much of the value of airline investments in product quality.

The GDSs are clearly upping their game in response to their customers' requirements, and those customers include the airlines themselves. But quality varies. Given the importance to airlines today of rich, user-friendly content, suggestions that airlines should be required to sell their services through *any* available platform should be viewed with the greatest skepticism. Airlines do not need any external motivation to distribute information about their services in the most effective way, but the assessment of what's most effective should be theirs alone.

Delays and cancellations

The European Union promulgated a regulation years ago called Regulation 261. I have said in many fora that Regulation 261 is quintessentially a bad regulation. It prescribes payments airlines must make to their customers automatically whenever there's a delay. The payments are graduated according to the length of the delay. It is a quintessentially bad regulation because it has absolutely no effect on the conduct of airlines. The simple test of a good regulation is whether it can be expected to improve consumer welfare by making something happen that wouldn't happen if you didn't have the regulation. Regulation 261 clearly fails that test since airlines already have the greatest possible incentive to operate on time. The costs of delay—particularly for a networked carrier where an entire day's schedule can be destroyed by a single late flight—are already immense. Requiring payments to passengers is nothing more than piling on. Yes, they provide a nice consolation prize to the inconvenienced passenger, but that's not the avowed purpose of the regulation. The purpose is to reduce the frequency of delays, and it can't add more incentive than airlines already have.

We are now seeing proposals to adopt Regulation 261 lookalikes in the U.S. What would they do? Consider the week-long Southwest meltdown over the holidays. Reportedly, that catastrophe, which seriously inconvenienced a couple of million passengers, will cost Southwest something north of \$800 million dollars. If you're look-

ing for a way to encourage Southwest to plan more effectively in order to avoid similar catastrophes in the future, subtracting \$800 million from the bottom line would seem to qualify. Does it contribute anything to the public interest to add some automatic payment that Southwest would pay to each affected traveler, thereby tripling the financial cost? First, its only contribution would be a small windfall to passengers—not the change in behavior that the payment scheme was intended to encourage. Second, Southwest would have to find a way to recoup that additional cost, and the only way to do it will be through higher fares.

It's axiomatic that predicating a regulatory remedy on what was clearly a worst-case scenario is never a good idea. It's an even worse idea to impose costs on airlines when those additional costs can't be expected to engender any change in behavior that hasn't already been encouraged by the grave financial consequences of that behavior. Once again, there needs to be careful consideration of the actual costs vs. the actual benefits of such a rule.

Finally, I know some have considered whether it's unfair for airlines to put an expiration date—typically one year—on a voucher provided to a passenger who has cancelled a nonrefundable ticket. Some airlines—Southwest for example—do not impose expiration dates. Should the government prohibit *all* carriers from establishing expiration dates? It would seem passing strange for the government, avowedly interested in increasing competition in the market, to promulgate a rule that takes away Southwest's competitive advantage

Conclusion

Thanks to—I'll say it again—the *miracle* of deregulation, America today enjoys a highly competitive, rapidly evolving, technologically sophisticated airline industry. A defining feature of the business today is its continuing quest for innovation, for new ways of attracting customers, for distinguishing competitors from each other, and even for crafting new business models. After decades of struggle, the industry has found a way to maintain its financial health, thereby ensuring continued investment in consumer-facing improvements.

Please don't misunderstand. There is clearly scope for beneficial regulation in circumstances where market forces can't be expected to resolve an issue. The Air Carrier Access Act has made things better for disabled passengers, for example, but we can and should do more. My point is only that it would be a serious error of policy to adopt legislation and/or regulations that freeze the industry in its tracks, homogenize its means of distribution, prescribe what it can charge for some services and what it can't, and needlessly sap much of the competitive energy that should govern airline customer relations. If we are singling out airlines for a level of regulatory micromanagement that we wouldn't conceive of visiting on other businesses, we need to be clear about the public policy rationale for that different treatment.

Thank you again for the invitation to present these thoughts. I look forward to your comments and questions.

Senator DUCKWORTH. Thank you. I now recognize myself for the first round of questions. I know today's hearing is on consumer issues, so I want to start by talking about consumer safety. Senator Baldwin and I introduced the Emergency Vacating of the Aircraft Cabin Act, the EVAC Act, to require the FAA to establish evacuation standards that take real life conditions like the presence of carry-on bags, children, seniors, and passengers with disabilities into account.

Ms. Nelson, if I could just have a quick yes or no to the following three questions. I will give you time to elaborate afterwards. First, have you ever been on a flight where there were no carry-on bags?

Ms. NELSON. No.

Senator DUCKWORTH. Have you ever been on a flight, or what percentage of flights that you worked did not have children under the age of 18, seniors over the age of 60, or persons with disabilities?

Ms. NELSON. 0 percent.

Senator DUCKWORTH. Do you think FAA simulation testing is effective?

Ms. NELSON. No.

Senator DUCKWORTH. Thank you. Now, can you briefly explain why it is so important for the FAA to conduct simulation tests with real life conditions? And I just want to start by saying that the FAA's current way of doing it is to take a fuselage, put 60 people on it, nobody over the age of 60, nobody under the age of 18, no carry-on bags, and no disabilities, and they say they can evacuate. That that simulates a real condition. So, can you speak to why it is important to actually simulate real life conditions?

Ms. NELSON. Yes. Thank you so much for the question. So, the evacuation standards are not—first of all, do not take into account the current conditions in the cabin, the full aircraft, the seats that are closer together, the iPads and tablets that are out everywhere with cords.

The growing accessibility, frankly, to everyone who is on the plane. And if we don't take into consideration the actual conditions in the cabin today, we are going to have a test in real life aviation where people will lose their lives. We do not want to test this for the first time in an actual event.

So, we need to take into consideration there are different issues that can be brought into the simulation of whether or not an aircraft can be evacuated in that amount of time. There has been concern in the past about utilizing children and elderly people and people with disabilities in the evacuation test themselves, but those can be entered into the simulation process and at least considered.

We should also be considering fumes in the cabin and any other obstructed objects, and the issue of carry-on bags. None of that is considered in the evacuation certification process right now, and that is why your bill is so critically important to determine what the actual conditions are today in the cabin and how we can safely evacuate people in an emergency.

Senator DUCKWORTH. Thank you. We certainly test the safety of automobiles with crash test dummies to simulate babies in car seats and people with disabilities, so I am certain that you can introduce human analogous dummies into the process. Thank you.

Ms. NELSON. Agreed.

Senator DUCKWORTH. Last year my friend former Congressman Jim Langbehn was attempting to lead a House Armed Services Committee Congressional Delegation when Lufthansa refused to allow him to board because its employees at the gate were confused about wheelchair, about whether his wheelchair battery was allowed on the flight. It did not matter that the United States Navy had already confirmed with the airline before the trip that his wheelchair specifications were permissible.

And confusion isn't just limited to batteries. It can also be about something as simple as what size wheelchairs can fit on which kind of plane due to varying cargo capacity. This is incredibly frustrating and frankly unnecessary.

It was my friend and hero, the late Judy Heumann, who brought this issue to my attention. I am writing a provision for FAA reauthorization inspired by Judy that would require carriers to provide passengers with disabilities basic transparency and information.

Ms. Ansley, if airlines were required to post basic information on their websites and apps like the size of their cargo holds, where both passengers and gate agents could easily reference it, would

that help minimize confusion and make travel more predictable for passengers with mobility aides?

Ms. ANSLEY. Thank you for the question, Chair Duckworth. It certainly would help to provide customers with more information about the experience that they are going to have during flight.

Judy Heumann was a great friend to all of us, and I have had the privilege of advocating with her because she had so many issues traveling the world by using her wheelchair.

And having the opportunity to know not only how—what aircraft her device would fit on, fit on safely, but also, quite frankly, working toward the goal of being able to just simply fly from your wheelchair would be a great opportunity to solve those issues.

Senator DUCKWORTH. Thank you. Is the disability community satisfied with the current level of accessibility at our Nation's airports? Do you think more needs to be done in terms of elevators, ramps, accessible restrooms, that kind of thing?

Ms. ANSLEY. Yes. More does need to be done in the airport context to improve accessibility. We hear a lot about charging stations at gates not being accessible to people who use wheelchairs.

Announcements that folks can't hear, counters that are not correct heights, the accessible restrooms that everybody seems to like to go on with their luggage, that require people with wheelchairs to wait until they are available.

There is still more that can be done, and we hope that airports will be even more proactive in increasing access.

Senator DUCKWORTH. Thank you. I now recognize the Ranking Member Cruz for his questions.

Senator CRUZ. Thank you, Madam Chair. Thank you to each of the witnesses. Mr. Shane, let me start with you. Thank you for being here today. Some witnesses and some Congressional Democrats have said that the era of airline deregulation is over, that it failed, and that the Federal Government should reregulate it.

I have heard suggestions for the Government to micro-manage flight schedules, how much someone should pay to transport an extra bag, and everything else in between. These ideas come, of course, in spite of the market decrease in the price of airfare and a dramatic increase in the number of Americans who have been able to fly since the Airline Deregulation Act was enacted in 1978.

In your judgment, what should we be doing to further the miracle of deregulation, which is the term you used in your testimony?

Mr. SHANE. As I said, I think that transparency is the most important regulatory response to an awful lot of the problems that we have been talking about. If passengers are unaware of what is available to them, of course, then they are going to be disadvantaged and competition will not work nearly as effectively as it should.

Any of the issues that people are complaining today about are the subject to some extent of airline competition. So, I understand Southwest, for example, does have indefinite credits when a refund is given.

Other airlines put an expiration date on. Well, the airlines that put expiration dates on will notice that they are losing traffic to Southwest because of that important difference, and they will respond. That is how competition works.

So, I think the Department of Transportation's emphasis on making as much transparency as possible available to passengers has been a very important—a very important benefit. Airlines have become, if I can just finish with one thought, incredible competitors, notwithstanding what we have heard this morning.

They, like all competitors, want to compete with each other on the basis of product differentiation. It is very difficult in the airline business to actually tell passengers what makes you different from your competitor.

That is why some of the suggestions that airlines be required, for example, to market through all platforms are so antithetical to the very concept of deregulation. You are forcing airlines to transact with companies they may or may not choose to transact with because they can't show their consumers the rich content that they would like to.

If you are investing hundreds of millions of dollars in your interiors, in your connectivity, in the speed with which people can check in, all of these amenities, passengers need to know about that. That is what makes competition work and that is what encourages airlines to keep upping their game.

So, the idea, as I said, of creating a one size fits all solution to any of these problems is really antithetical to the benefits that consumers have enjoyed thus far through deregulation. I would seriously caution against doing that. We just don't want to go back there.

Senator CRUZ. Yes, Mr. Shane, I will say in elected politics, it can sometimes be good politics to pick things that are unpopular and declare yourself the enemy of them.

And so, you know, I still recall sitting on the floor of the House not too long ago and listening to the President's State of the Union address, where he talked more about airline baggage fees than he did about how we are going to defeat communist China. And I get people are annoyed at fees.

I am annoyed at fees. People are annoyed at small seats. I don't like how seats have gotten smaller. And it is pretty good politics to say we are going to give—ensure that every passenger has a bigger seat. We are going to ensure that every passenger doesn't have to pay any fees.

We are going to ensure that every passenger gets a free neck rub and foot rub with every flight. Is there any downside to politicians giving away free stuff? It can be good politics to say, let's mandate, here is all the things the airlines must do for every passenger. But is there a downside when Government steps in and says, here is what you must do on every flight?

Mr. SHANE. Yes, Senator Cruz, I think there is a downside. Unfortunately, the downside isn't immediately apparent. The downside comes later as the industry becomes less competitive, as prices begin to go up, as airlines necessarily recoup the cost of providing the services that have been mandated by Government in the way they have been mandated. The real objection to a lot of the responses I have seen to concerns about the way airlines perform is that—you can't be an airline manager if you are in Government. I mean, you just don't know enough.

Senator CRUZ. And just because time is expiring, Ms. Ansley, I want to ask you a question as well. Thank you for your testimony and a very important testimony. What actions should Congress take to make clear to the Department of Transportation that they should take the law and Congressional intent seriously to protect passengers with disabilities, and to get them to enforce the laws that are on the books?

Ms. ANSLEY. Thank you for that question. We support efforts that would require the Department of Transportation to use the civil penalties it has in its disclosure. It doesn't—it does not use those opportunities sufficiently, in our opinion.

And we think that in the Air Carrier Access Amendment Act, there are a list of areas where we feel like we shouldn't be talking about whether or not we should have a civil penalty if there is a violation, if you harm someone, if you, you know, destroyed their wheelchair.

I would hope that we would all agree those are a time when we should have a penalty that is put into place. And quite frankly, that those cases would be referred over to the Department of Justice, just like we have in all other forms of transportation because of the Americans with Disabilities Act.

Senator CRUZ. Thank you.

Senator DUCKWORTH. I recognize Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Madam Chair. And I want to thank Senator Klobuchar for allowing me to ask questions. I appreciate all the folks who testify today. I was watching you online before I got here, and I appreciate all your testimony.

I was not going to talk about deregulation, but what the hell, we might as well touch on it a little bit. I think one of the problems here is we talk about deregulation from a standpoint of where people live and lots of people live. And it works pretty damn well if you have got a big population base.

But if you don't have a big population base, I will give you an example. And I agree with most of what you said, Mr. Shane, but here is one of the problems. Southwest Airlines takes credits forever. One of the other airlines that served me does not. I got to drive 5 hours to get to a Southwest flight. I got to drive 5 hours, OK. That is not really something that works, OK.

So, what I am saying is this is I believe in free market and capitalism. I am going to tell you when it costs me three times as much to fly from Montana to

Washington, D.C., as it does from Dulles to Europe, there is something nuts about that unless those engines don't work as well on Montana Air. You know, maybe they use more fuel. I don't know. I have never figured that out.

But I would just tell you that it works really well if you live in a hub and you are in a population center. But if you are not, you are paying through the nose. You are paying through the nose and you have less service today than you had before 1978. And I say that from a Great Falls, Montana, perspective.

And that is not to say that deregulation was bad. It just doesn't work as well as everybody think it does in rural areas. And that is where I get to you, Mr. Moyers. I want to ask you a little bit about, when airlines pull service, do they tell you why?

Mr. MOYERS. Thank you for the question. I have had negotiations with airlines that have wanted to start service and then they have actually failed and not come into the market. And it is always been that business decision for them. The metrics don't work. The cost per seat mile.

They give an explanation like that. Recently where we have lost service now—we have not had them pull out of the market. They have just downsized. So, the frequency where we used to have four daily flights to Seattle, we are in the same situation as you where it is a 3-hour drive otherwise.

That reduction in frequency, the conversations we have is it is a resource allocation. Not enough aircraft, not enough pilots to fly the aircraft. And so that is a finite commodity. They are not going to fly those higher risk markets, perhaps.

Senator TESTER. So, when I fly out to come back here, which I do every week, four legs a week, the planes are full. They are full. But out of the blue, every once in a while, it happened a couple of years ago, they just pull a flight.

They just pull it, no longer exists. So then instead of flying through Minneapolis—they restored the flight finally, but instead of flying through Minneapolis to D.C., which, by the way, takes 2 hours off the flight—I have to flight South before heading East.

Do they offer any options, when they pull a flight that, by the way, is pretty darn well used, do they ever offer you any options to get it back?

Mr. MOYERS. The conversations we have with our incumbent that is offering service right now to restore service, to regain frequency, it is going to take a negotiation that is likely to be some sort of incentive to cover the cost for the risk for them to return to the market.

Senator TESTER. OK. In your testimony, you argued for larger EAS subsidies and other economic incentives to help keep air service at smaller airports. It is critically important, as you well know, from an economic development standpoint.

We talked about the number of passengers in the Southwest situation. If you don't have good airfare, you have both arms tied behind your back, if you don't have good air service. Have you talked with other airlines about these subsidies and how much it would take?

Mr. MOYERS. It is a great question. When we meet with airlines, we discuss that cost to be in the market. What fees can we waive to attract them in?

From being in the terminal, those cost to lease space, to do the ground handling, all of those things are—we try to negotiate to get that incentive to the airline that will startup the service. Right now, we have a scarcity grant in place for revenue guarantees to the Bay Area.

I mentioned earlier in my testimony Microsoft, a high-tech company that has a headquarter in San Francisco, one of the reasons they came to the area was we had connectivity and we were trying

to get additional service to the Bay Area. That was important to them.

We are sitting on right now in about a \$1.1 million fund and have been since 2018 because we can't attract an airline to provide that service.

Senator TESTER. OK. One last question, if I might, Madam Chair, for Ms. Ansley. When a veteran's mobility aide gets damaged, number one, how long does it take to get repaired, and what does that veteran do in the meantime?

Ms. ANSLEY. So, the question—thank you for the question. The answer is it depends. The—I have one veteran who attended our women veterans retreat last fall. The power assist wheels on her wheelchair were destroyed, so she—they gave her just plain wheels so she has got to push them.

For 2 months it was with the airlines contractor that was supposed to be getting it fixed before they called her and said, "we don't even have a contract with the company that sells these so there is nothing we can do."

At that point, we got the airline involved because we raised it up and they said we will even pay the VA if they will do it because it was so delayed. I have another veteran who was out here for our fly in just a few weeks ago when our President testified before the Veteran's committee.

His controller was broken on his wheelchair. He said that it has been a couple of weeks now. They have evaluated it, but he doesn't have the part. So, every time he takes his hand off the joystick, it swings out of place.

So, he has to constantly move it back into place. He doesn't know when he is going to get the parts. So, wheelchair damage can take a long time to fix depending on where you got to get the parts from. Sometimes the VA steps in if they can, even though it is not technically their responsibility.

Senator TESTER. And it is fair to say these are mobility aides. Without these aides, they can't be mobile, so they can't get around. They can't do much.

Ms. ANSLEY. That is 100 percent correct, sir.

Senator TESTER. Thank you.

Senator DUCKWORTH. They are my legs. My wheelchair are my legs. Imagine if a regular passenger had their legs broken on a flight and had to wait weeks or months.

And in fact, my power assist chair was just broken on Saturday, and I am sitting in a 12-year-old chair right now. Chair recognizes Senator Schmitt for his questions.

**STATEMENT OF HON. ERIC SCHMITT,
U.S. SENATOR FROM MISSOURI**

Senator SCHMITT. Thank you all for being here today. It has been mentioned, I know, by a number of other Senators, but we all fly a lot, so these issues are so near and dear, not just to us, but obviously the millions that fly and our constituents. And that is even more magnified, a lot of these concerns, in a lot of the rural airports.

In places like, you know, Cape Girardeau and Fort Leonard Wood in Joplin, Kirksville in Missouri, and all across the country.

We have seen a number of instances of near collisions and cancellations that I think draw a lot of concern. And I still find it remarkable, remarkable that Pete Buttigieg has refused to show up to this committee ever, for anything, given everything that is going on.

So, and I have already highlighted this Administration's like obsession with woke policies and mitigating climate change and increasing equity, which has nothing to do with the FAA's mission. The FAA's mission is safety and affordability and efficient travel for the people that we represent.

And again, it is just sort of a downward spiral of this Administration. And, you know, yesterday we talked about just not even caring about places like East Palestine. So that is not the focus of my questions for you. I just think it is—we are here to talk about safety, and one thing that I—and the impact that that some of these proposed regulations could have on rural airports in our communities.

I did want to ask you, Mr. Shane, a question. Workforce issues—I mean, no matter what industry we are talking about there, workforce issues. You know, it seems to me that these challenges can be particularly acute when you are talking about an industry like the airline industry, where you need good, qualified people.

When we talk about safety, you need people who know what they are doing and can provide that expertise. And getting more young people interested is one thing as a, you know, a good paying career. See if they choose.

What is it that you see that could be done differently than the way that we are doing? It seems that a lot of these tracks to get people into these particular trades or into this kind or into this kind of work can be long. It can be—and that is important, I think, to gain the expertise.

But what is it that can be done that we are not talking about right now as, you know, our system—our education and workforce training system continues to evolve. What can we do differently to prepare, you know, the next group of mechanics and people who can work on these, you know, sophisticated aircraft to keep people safe?

Mr. SHANE. Thank you for the question, Senator. You are seeing a lot of spontaneous developments within the airline industry itself. Academies are being set up to train mechanics, to train flight attendants and pilots in greater numbers in order to—in order to respond to the shortfalls that have resulted as a result of the decimation of traffic during the pandemic.

The airline industry was hit as never before, and this caused a huge disruption in the flow of workers. So, there is that element within the industry itself. I think there are Government programs that encourage young people to come into the industry, internships and that sort of thing.

I am not entirely familiar with all of those. When you look at pilots in particular, and this has become a critical problem for the industry—and by the way, a critical problem for smaller communities because this shortfall in pilots is hitting the smaller carriers harder than the larger ones. In fact, the larger ones are furloughing pilots from the smaller ones more and more, which is really—it has affected the Essential Air Services program. It has

probably now made it much more difficult for DOT to keep the subsidized service going in the way that they want to, in the way that they must.

One of the, I hate to say it, but one of the real problems, and I say this with enormous respect for the families of the Colgan victims, the 1,500-hour rule for training pilots has really become an impediment to replenishing the pilot work force.

And I am not a pilot and I don't speak firsthand on this issue, but I know an awful lot of people who do, who really do claim that expertise. And I have heard consistently that the 1,500-hour rule doesn't have any relevance to the actual performance of a pilot. It had nothing to do with the crash of the Colgan Airline.

And I mean, those pilots had more than 1,500 hours each. So, it was irrelevant to the cause of that crash. But it has just become—I mean, it is a law and so nobody can do anything about it unless the law is changed. But it really is an impediment that I think should be reexamined, not because—it had no impact on safety—of reexamining it, if you have sensible approaches to the training of pilots. The 1,500-hour rule, I think, simply departs from that.

Senator SCHMITT. Let me just have a very quick followup, which is, in your—in these partnerships that you are seeing in the airline industry, what is it that you think is most effective? Are these private? Like academies that are being created or could be created in the airline industry itself? Or is it partnerships with community colleges? What is—just, in your opinion, what has been the most effective that you have seen?

Mr. SHANE. I think when the airline companies themselves create their own academies, and invite people in, and assist them in getting through the educational process, which otherwise is very, very expensive, there is a loyalty there. There is a steady flow, there is a solid job ahead. It provides an awful lot of comfort to the candidates themselves and those who make it.

Some wash out, of course, but those who make it are likely to be loyal and long-term employees for the industry. So, I happen to favor that approach. But there are also third-party academies all over the country that have been there for years and they work as well. The issue, of course, is what does it take for a pilot in particular to actually qualify today? And it has become very expensive and, in my judgment, unnecessarily so.

Senator SCHMITT. Thank you. Thank you, Madam Chair.

Senator DUCKWORTH. Thank you. Mr. Shane, I could not disagree with you more on the 1,500-hour rule. And to quote Captain Sully Sullenberger, it would be like saying that we don't have enough medical doctors, so let's just cut down a number of years of medical school from 4 to 2 and just say, we are just going to use our simulators and you are never going to touch a patient. That is not the safe way to move forward. I would like to go ahead recognize Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. All right. Thank you, Madam Chair. I am excited about this hearing. I know many of you so it is good to see you. I will note that when Senator Tester was talking about the

Minneapolis Saint Paul Airport, I agree with him on the cost of these tickets.

But I will say he had a great time because it was just voted for the second year in a row as the best airport in North America. Just for the record, to my colleagues. OK, so, Dr. Moss, quickly. We usually have more time in the Antitrust subcommittee. You commented recently about the proposed merger of JetBlue and Spirit and how it could hurt both customers and airline workers.

As you know, there has been—DOJ had recent action to sue to block the transaction. Do you want to just briefly comment about your concerns about this transaction for consumers and costs?

Dr. MOSS. Thank you, Senator Klobuchar. Very good question. We do think at the American Antitrust Institute that the merger of JetBlue and Spirit is anti-competitive. It will eliminate head-to-head competition on a number of routes, dozens of routes. It will also eliminate an important low-cost carrier, making it easier for remaining carriers in those route level markets to coordinate instead of competing hard with one another.

And then finally reduces choice, eliminates choice for those price sensitive customers who might want the bundled fare fee model that they get with a low-cost carrier. Really no compelling efficiencies or benefits coming out of that merger.

And we already know from previous studies and experience that airlines rarely deliver on those connectivity promises.

Senator KLOBUCHAR. Yes, I care—you know, we are home to, or we are a Delta hub. We are home to Sun Country Airlines. We are very proud of that airline and is one of the key competitors in the smaller market.

OK, I think I will turn to you, Mr. McGee, very briefly. The bill that we have to require airlines to seat families together. I am sure Ms. Nelson is aware of this issue as well. I know you mentioned this. Do you think airlines are doing enough to keep families together? And this is a bill a number of us have introduced.

Mr. MCGEE. Thank you very much, Senator. We have seen in recent weeks, I think, due to the actions by the DOT and Secretary Buttigieg to raise the awareness of this and even the President, that some airlines in the U.S. have seem to have stepped up. We are saying that while we want to applaud them for that, it is not nearly enough.

This needs to be documented through legislation and through regulation. What we have found time and again is that the airlines contracts of carriage, they are written in sand, making them change literally overnight. And so, promises that are made by the airlines are not really very valuable long term.

Senator KLOBUCHAR. OK. Thank you. Mr. Moyers, I was talking about airports. We, of course, have concern about the meltdown that happened over Christmas with the FAA.

We just passed out of this committee a bill that Senator Moran and I have on improving the NOTAM system and getting the stakeholders together, as Representative Stover of Minnesota has been carrying it for quite a while in the House, and so we are excited it is moving through.

But of course, it is just a beginning. One of the things that we do know is that there are still issues for people who work in the airports when it comes to, or on the planes, frustrated passengers.

So, do you want to talk a little bit about what could be done to improve those interactions?

Mr. MOYERS. Thank you for the question. And if I understand correctly, the interaction between airport staff and——

Senator KLOBUCHAR. Frustrated customers. Yes.

Mr. MOYERS. We field a lot of phone calls on behalf of airlines as the airport operator. And kind of the analogy for me is that I run a mall and I have got a bunch of different shops in there, but they are calling the mall to complain about the x, y, z department store. So, we, we field those calls on a regular basis. It is a challenge for us because we are not empowered to make decisions on behalf of those passengers.

Senator KLOBUCHAR. Right. And I think—I mean, clearly the best way to do this is to upgrade our air traffic control system. We are also going to have weather issues, no one knows that better than Minnesotans right now, this winter.

But I do think that would be the key to all of this. I guess. Ms. Nelson, just you have dealt your—flight attendants deal with this all the time. Just any ideas that you have along these lines.

Ms. NELSON. Yes. One of the biggest issues is that staffing has been cut to minimums on the planes and at the gates. It is much harder when we have fewer airline employees to be able to address passengers' issues and resolve their problems.

And it's much harder to stop that aggravation from getting on the plane, which then can lead to a violent event on the plane as well.

So, we have serious concerns about this. There has been cost cutting everywhere, increasing staff, and awareness. And interaction between the airlines and the airports is very important.

Senator KLOBUCHAR. My last thing, just back to you, Mr. Moyers. Small airports, we have a lot of them. I think every member of this committee, looking over there at Mr. Welch and Senator Welch with Vermont, and Senator Vance, Ohio, we all care about these smaller airports. Could you talk about the biggest obstacle in attracting new air service at a small airport? Any ideas on that? And quickly.

Mr. MOYERS. Yes, thank you. It is a great question. We try to recruit and attract new air service on a regular basis. We have folks on retainer that that is their focus—air service development.

The challenge comes down to it is a business decision. I can't compel someone enough to start service in a new market with what I have to offer as the airport alone, without any assistance, whether it is SCADC program or otherwise. Those airline incentives that those businesses are looking for, we can waive fees, but once—I can't waive something that doesn't exist either or where there is only so much that we can give in that.

And so that is the biggest challenge for us, is we are not going to beat them with the stick. How big of a carrot can we use to attract them? And the resources that a small airport has when I have got to make infrastructure improvement decisions versus an air service, those are the challenges.

Senator KLOBUCHAR. Well, thank you, all of you. Thanks.
 Senator DUCKWORTH. Thank you. Senator Vance.

**STATEMENT OF HON. J. D. VANCE,
 U.S. SENATOR FROM OHIO**

Senator VANCE. Thank you, Madam Chair, and thanks for all the witnesses for being here. I want to, before I get into my questions, just sort of, you know, kick off by noticing something about our country, which is that, you know, it is extremely hard to be a parent and extremely hard to have families.

I actually fear that we become an explicitly anti-family country in a lot of ways. And you see this in multiple different phases. You see this in, you know, the woman who is an hour from giving birth and chooses an out-of-network anesthesiologist and is then is punished by this by getting \$15,000 of unexpected bills. And when I think about this as a father, after the baby comes, there is maybe no more miserable experience than flying with young children in this country.

And I say that not to blame any of you or any of the groups that you represent, but to highlight just how difficult we have made it for young families to survive and to thrive in this country.

And I wanted to sort of set that up by asking Ms. Nelson a few questions about a policy change that has been advocated to, in my view, make it more miserable to fly with young infants, which would basically make it impossible for lap infants, for parents to bring their babies and toddlers on the plane with them sitting in their laps.

That strikes me as another thing that is going to make life unwelcomed on airplanes for children. And I want to just start by asking, you know, we—I know this very personally. I have had very many babies, some screaming, some not screaming, on many flights in my life with my kids, all of whom are under the age of six.

For decades, parents have been flying with babies on their laps. They have been doing it in safety. Why are we proposing this change that would make it impossible for parents to fly with babies and toddlers on their laps now?

Ms. NELSON. Thank you for the question. This is actually more than a 30-year priority for our union ever since the Sioux City crash of 1989, when one infant was killed and the other three were injured. And the flight attendants were giving them instructions about how to prepare for—to keep their child safe.

And in our manuals was an instruction to wrap them in a blanket and hold them on the ground. Well, there is no way to—even the most loving mother and father cannot hang on to an infant in that situation. So, we have been proposing this ever since that time, that just like in our cars, we need to have a safe seat for the infants to sit.

What I would add to that, though, to that has changed over that time until now is that it used to be—when I started flying, it used to be that the aircraft was half full and there were plenty of seats, and people would bring their car seats, and they didn't pay for the ticket, but we would be able to find a seat for them, and it was the

safest place for the infant to be. On the FAA website if you are looking for that instruction that is there.

Our concern is that by not selling those tickets, what the airlines are conveying to the families is that it is OK to bring your infant on board.

And my concern is that as safety professionals on the plane, understanding that that is not safe for the infant, it is not safe in these severe turbulence incidents where the children actually become projectiles, that we are not giving very clear instructions to parents about how to keep their children safe.

And so, I look at that from both perspectives, both in terms of protecting our smallest passengers, but also for flight attendants who are charged with the safety, health, and security of everyone on board, it is very concerning when we are giving instructions that are not as safe. I would only add that we don't have any temperature standards on board the aircraft.

And so, in a hot cabin, we actually had an infant that passed out, was on his mother's lap. That may have contributed to it as well.

And as parents are leaving the hospital, they are having to check out with the fire department or whoever about installment of those car seats.

It is so enforced from the moment that you leave the hospital but it is not enforced on our planes, and we are not giving that instruction to the families. And there is no place to go anymore because the planes are full.

Senator VANCE. So, I appreciate that response, Ms. Nelson. And the one thing I would encourage your organization to do is maybe to take out how to—look, I don't think this is the right rule, but if you guys are going to advocate for this rule, maybe to fit it in with some other changes that would make things easier on parents as you are advocating for that particular approach.

Because here is the thing. I mean, the difference, of course, between an automobile leaving the hospital and an airplane, there are two obvious ones that I can think of, right. One is that, look, if I take my kids from Cincinnati to visit their grandparents in San Diego, that is 5 hours.

I mean, try to keep a toddler or a baby in a car seat for 5 hours. That is torture for everybody, including the baby and certainly the passengers around the baby. But the second thing, of course, is that air traffic accidents are thankfully, thank God, so much less frequent and less common than car accidents are.

So, what I worry here is that in the name of safety improvements, and I don't doubt that there are marginal safety improvements, we are actually proposing a change that would make things much, much more miserable for parents, for very little marginal improvement in safety. And I want to just one final comment here and then I will shut up.

One thing that I really worry about, and I think both Democrats and Republicans should worry about, is we have some real demographic problems in our country. American families aren't having enough children.

I think there is evidence that some of the things that we are doing to parents is driving down the number of children that American families are having. In particular, there is evidence that the

car seat rules that we have imposed, which of course I want kids to drive in car seats, have driven down the number of babies born in this country by over 100,000.

So, as we think about how to make kids safer, I think we should do it in a way that is accommodating to American families, and I encourage your organization to do that.

Ms. NELSON. Thank you. I appreciate that. I just want to clarify one point, and that is that the child would be required to stay in the seat for the critical phases of flight. So, this is not keeping babies in a seat for 5 hours.

Senator VANCE. Thank God.

Ms. NELSON. All right. Thank you.

Senator DUCKWORTH. Thank you. And I would have to say, if we really wanted to support families in this country, we would have universal childcare, we would have paid family leave, and we would certainly have universal pre-K.

However, we could probably talk about working together, Senator Vance. Talk to the airlines about maybe having—selling a seat at half price so that you could actually—family would actually afford to have a separate seat with the car seat for their children.

Senator VANCE. Certainly, would be open to that.

Senator DUCKWORTH. Thank you. Senator Welch.

**STATEMENT OF HON. PETER WELCH,
U.S. SENATOR FROM VERMONT**

Senator WELCH. Thank you very much, Madam Chair. I do agree with you. First of all, I fly a lot like all of us do. Burlington Airport is great, and I don't know how the flight attendants, the personnel there manage to keep smiling when all of us passengers are anxious and driving them crazy.

But they do. It is really a tribute to the folks that are on the front lines and the baggage handlers. You know, when it is really cold, they are outside hauling the bags and then they have to come inside to get the gate checks.

And it is cold, it is warm, it is cold. So, I just want to start out by expressing gratitude to the folks at the Burlington International Airport that work for the airlines, and the baggage handlers, and all those TSA folks that put up with anxious travelers.

Ms. NELSON. On behalf of all of my colleagues, thank you so much.

Senator WELCH. You guys are amazing. There are issues, though, that we saw with Southwest where there are corporate decisions that are driven by shareholder value. The airlines probably do their best to train.

They nickel and dime a lot of times on staffing and on pay, and then the floor falls out from underneath and the passengers are left without any help. And I can't imagine what the pressure is on the front-line folks in a situation like what happened with Southwest.

So, it really does suggest that there has to be active consumer protection and we have to rely on the Government more than we rely on the individual airlines to, at the bottom line, do the right thing.

It is why I think Senator Markey's cash refund bill really makes a lot of sense. Why shouldn't it be the decision of the passenger as

opposed to the convenience of the airline to determine whether they want cash back?

You know, and a lot of folks, when they fly, it is not like us. We fly all the time, but they are like going to a funeral. They are going to a wedding. They are going for a long-postponed trip to see their brothers and sisters.

So maybe I will just ask, Dr. Moss. Any reason why there can't be cash refunds as a matter of policy at the discretion of the passenger as opposed to the convenience of the airline?

Dr. MOSS. Thank you, Senator Welch. That is a great question. I see no reason why that policy should not be proposed. I would point out that what we have been talking about at this hearing today really breaks down into issues that fall solidly in the consumer protection bucket, safety, the well-being of passengers, issues that fall solidly in the competition bucket, which is competition on price and quality and innovation in the airline industry.

Senator WELCH. And that goes, of course, to the merger question.

Dr. MOSS. Of course. And then we have issues that fall at the intersection of consumer protection and competition.

And those would be things like, well, if you have more competition, then you have more pressure on airlines to not engage in drip pricing when consumers get online to purchase their fares. So, I think that is a really good framework to think about this in and frame legislative proposals and reforms.

Senator WELCH. Great. Let me ask Ms. Nelson. You know, one of the reasons the cash refunds I think are good, there is a lot of anxiety for a passenger when their plan is thwarted.

And it is not the fault of the front-line people, but the more security—this is my view, and I am asking you your reaction, that family has, who it is a lot of money to buy an airline ticket, especially if it is for a family.

The more security that family has that they will get their money back, they may be disappointed that they can't go to that event, but do you think that would alleviate some of the pressure on the front-line folks dealing with, you know, really upset customers?

Ms. NELSON. So, it is always better when we have better customer service and people's problems are getting resolved. That is way better for the people on the front lines. But I do want to make clear that there is the ability for a passenger to choose to have a refundable ticket. And so, we are talking about the nonrefundable tickets.

Senator WELCH. At an expense.

Ms. NELSON. At an expense, that is right. And so, we are talking about the nonrefundable tickets that are—that have been put into that segment, tight segmentation of pricing that has also been talked about.

Senator WELCH. And you know, I want to go to that. That nonrefundable ticket, you know, they have computers, they have algorithms. They game it. They know, you know, they have got people with eye shades figuring all this out.

I have never understood why they really need that nonrefundable ticket, other than it is a way they can extract more money. Because they have the capacity with the computer programs to anticipate what sales they have to do, by and large, to get their full

airplane. I don't know if you are the person to answer that, but maybe Dr. Moss is.

Dr. MOSS. The answer is yes. So, the nonrefundable tickets are a pure exercise of market power. Because the airlines have market power and the ability to control how consumers behave in the airline system, they can absolutely impose those types of restrictions on them.

We saw the disappearance of the nonrefundable ticket during the pandemic. That is when demand fell off. When consumers were in the driver's seat and not the airlines.

Senator WELCH. And I am at the end of my time, but I just want to thank the witnesses for talking on behalf of maintaining a service in our small airports. Thank you. I yield back. Thank you, Madam Chair.

Senator DUCKWORTH. Thank you. I recognize Chairwoman Cantwell.

The CHAIR. Thank you, Chair Duckworth, for doing this hearing. It is such an important list of witnesses. Thank you all for being here. Mr. Moyer, back to the situation of rural communities and our essential air services.

The Community Air Service Program that you mentioned in your testimony, and I think you mentioned you think we should fully fund that, and obviously essential programs. But is the issue coming down to pilots? Is the issue that airlines—if you have a pilot capacity and you can fly from Seattle to Hawaii, you probably make a little bit more money on that flight than Seattle to Wenatchee.

And so, what do we do, do you think, because I don't think—so, one SCADC focused on the market, and then one focused on essential service. What is the best way for us to get at this underlying problem?

Mr. MOYERS. I can't disagree with you about a revenue on a flight to Hawaii versus to Wenatchee. And that is the challenge.

Those business decisions are being made that marginalize the small market. It is hard for me to compete for service in Wenatchee versus a service from some other destination where there is a greater yield or return on their investment and a startup service as well for—to bring new service in, that airline is going to incur some costs of bringing ground handling equipment, ground crew, the ticket agents, all of those expenses.

They are looking to the airports, how can you help us with that startup? And so, there is some questions there as far as infrastructure and equipment that I can't answer fully right now. That is a big challenge for us in competition in other markets.

From a rural standpoint, I think everyone has agreed that everyone deserves accessibility. I don't think there is a question there. It is, how do we get to it? The SCADC programs are in place right now with I think the last announcement was a \$15 million.

Is that enough to go as far as it needs to for enough communities to benefit from it, if an applicant is going to ask now for a couple of million dollars, whereas before it was \$700 or \$800—or \$800,000. Those dollars aren't going to go as far and fewer markets will benefit.

The CHAIR. Well, I guarantee you we did the CHIPS and Science bill with our colleagues, Senator Wicker, with the notion that we were going to spread out innovation.

And when you talk about the innovation that is happening in Wenatchee, which is amazing, people didn't, probably didn't get all the digestion of your comments about being in the diamond manufacturing business now. But it used to be an aluminum smelter there and now you are manufacturing diamonds.

And the community decided they wanted to do that. And as you said, the community told them that you would have air service. And I am pretty sure you probably told Microsoft the same thing.

So, the question is, we are going to hamper economic growth and development in other parts of the country—we are going to hamper innovation, because innovation can happen in other places, but it has to have an airport.

And I just think we are going to have to figure out, working together, how to bridge this gap somehow. So, do you think it is back to Essential Air Service then?

Mr. MOYERS. I don't know that it is Essential Air Service. I think there are markets where that does make sense. But from the standpoint of Wenatchee, I couldn't say that I need essential air service. I don't think—we wouldn't fit that criteria. There may be places where that is viable. So, to just scrap that program, I couldn't sit here today and tell you that that would be my suggestion.

The CHAIR. OK. Ms. Nelson, thank you for being here. You mentioned in your testimony about chaotic scheduling by airlines that strain the system. I know a lot of people, I hear from our colleagues.

We are definitely fliers so we hear lots of different things about people who capture a market by saying they are going to leave every half an hour and then they don't leave every half an hour and then they get so congested and backed up. But have they captured the market?

Yes, they just haven't delivered the service. Do you agree that DOT should be carefully examining whether airlines are publishing unrealistic schedules and leaving workers and consumers in a bind? This was the DOT unfair and deceptive practices.

Ms. NELSON. Yes, I agree with that wholeheartedly. And it was because of pressure from lawmakers and from DOT that the airlines rolled back that unrealistic service this last summer.

So there needs to continue to be a real transparency on that and oversight on that to make sure that we are not overpromising, because the people on the front lines are left to hold the bag.

And we also are not getting home to our loved ones. We also don't have the infrastructure at the airlines. In some cases, they haven't purchased the new scheduling programs that allow them to respond immediately, and they don't have the staff behind the scenes to be able to pick up the phone.

So, when the operation falls apart like that, many times the people on the front lines are left on hold for five, 6 hours to try to get through to a scheduler in order to get rescheduled. So, it takes the proper investment in infrastructure for the airlines, takes the prop-

er staffing, both in terms of the frontlines and the backend to support that frontline crew.

And it can't be, as Senator Welch said, just driven to share price, because that is what we end up with when that is the only objective of the airline.

The CHAIR. Mr. McGee, your testimony was clear, so I am pretty sure you think that passengers deserve refunds in a timely fashion. But do you think we should also up the oversight by DOT on this so that you actually are forcing the airlines to comply with this?

Mr. MCGEE. Yes. Thank you, Senator.

The CHAIR. Do we have enough infrastructure to oversee that?

Mr. MCGEE. No, it is clear we don't. We are in constant touch with the DOT and they expressed in 2020 when they received a record number of complaints from consumers on refunds, a total of some 29,000, that their staff was overwhelmed just processing it.

And understand that is not acting on the refunds, that is just processing it. The bottom line is that when you look at the refund problem, there are multiple layers to it. One is the fact that we do have an existing DOT rule that says you are entitled to a cash refund if your flight is canceled for any reason, whether it is the airline's fault or not.

It is clear that U.S. airlines and some foreign airlines have blatantly violated that rule, and there has not been enough enforcement on that. But an additional problem, sitting right behind me is my colleague, Matt Stoller.

He had a flight canceled last summer. He was entitled to a cash refund, he and his wife, and he forwarded me a text from Delta Airlines that said, we are sorry your flight was canceled. You are entitled to a credit. That is unacceptable. In our view, that should absolutely not have happened.

We live by the fact that about 87 percent of Americans fly less than once every 18 months. How are they supposed to know these rules? Who knows—now, Matt was lucky enough to have an aviation geek on speed dial, so he was able to text me and I said, "WHOA", in all caps, "do not accept that credit." And I gave him the rule. He went to Delta and they said, fine. But that is an unfair and deceptive practice.

And then, of course, we have the problem with the credits then expiring. And, you know, Southwest and others have gotten credit for not letting them expire. All U.S. airlines should be mandated. But, yes, we need more enforcement here.

The CHAIR. It would be one thing if you then could get them on the phone and talk about it—and they may not even have the details of the case. So, then they would just tell you it is expired in the news.

And then you say, no, no, no, I got this because my flight was canceled. You gave me this. I should have it. Then you try to get somebody on the phone who can—you spend a lot of time getting that—

Mr. MCGEE. Right. And don't forget that Frontier Airlines just shut down its call center. You cannot even call that airline. Let's hope that is a trend that doesn't continue.

The CHAIR. Thank you, Mr. McGee. Thank you, Madam Chair.

Senator DUCKWORTH. Thank you, Chairman Cantwell. Now via remote, Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Madam Chair. And thank you, Mr. McGee, for your testimony today. I just want to continue on this subject because it is the reason why I am fighting to pass my Cash Refunds for Flight Cancellations Act. You know, I have several Senators on board, and our intent is to get it added to the FAA reauthorization.

So, a little past 2 years, airline consumer complaints on refunds have skyrocketed. Last year saw a 1,000 percent increase in refund related complaints compared to 2019. In other words, there were ten times more refund complaints from consumers compared to before the pandemic.

Clearly, there is an issue here. Mr. McGee, can you briefly explain for the Committee how airlines make consumers jump through hoops to get their refunds for canceled and delayed flights?

Mr. MCGEE. Absolutely. And thank you, Senator, and thank you for the legislation which we at American Economic Liberties Project heartily endorse. You are right, you do have to jump through hoops. As I said, 87 percent of Americans fly less than once every 18 months. So, the fact is, they are not aware of these rules.

For example, in the European Union, you can't walk more than ten yards without seeing a sign explaining what all of your rights are. And those are rights that are mandated by the union. They are not embedded in airline contracts of carriage that I would argue 99 percent of Americans never even heard of these contracts that are so binding. So, on the issue of refunds, as I was saying, there are multiple layers here.

As you know, there are airlines that have just blatantly said we are not paying refunds. Then you had the situation during COVID where there were lockdowns and we were being told by local, State, Federal authorities, at certain times by President Trump, by the CDC, and medical authorities, you should not fly.

Foreign governments are saying Americans are not welcome there. And yet the rule, as written, says that if the flight is not canceled, the passenger is not entitled to a refund. Now, that was absurd. You had Americans that were immunocompromised that could not fly.

But if you and I were both flying from Washington to Chicago and you were on a 10 a.m. flight on United and I was on a noon flight on United, and your flight was canceled, and mine wasn't, you were entitled to a refund at the height of COVID, and I was not. So that is absurd.

So, we also, of course, appreciate the word cash in your legislation. Cash for refunds. As I said, airlines are very, very quick to offer credits and vouchers and even sometimes mileage in place of cash.

The DOT rule is clear, you are entitled to cash, but what is not clear is airlines every single day do not make that apparent to consumers.

Senator MARKEY. So, thank you. So, Mr. McGee, you are so right. Number one, consumers don't know they are entitled to the refunds. Number two, airline slow walk consumers who request the refunds.

And three, airlines will offer flight credits or other accommodations in place of cash. And I have been beating this drum on this issue for years. In March 2020, right at the start of the COVID crisis, I demanded the airlines provide consumers refunds for canceled flights due to the pandemic.

In a May 2021, I pushed the airlines to commit that travelers flight credits wouldn't expire. In December 2021, I once again demanded airlines provide refunds to their passengers as the Omicron variant disrupted—and in front of this very committee, I repeatedly asked airline executives to provide cash refunds to consumers.

Each time they have refused to make those commitments. These companies are failing to do the right thing, and it is time for Congress to act. Mr. McGee, do you agree that Congress should pass legislation to ensure air travel consumers receive the refunds that they are entitled to?

Mr. MCGEE. No question, Senator. American Economic Liberties Project heartily endorses it.

Senator MARKEY. And that is why I am fighting to pass my "Cash Refunds for Flight Cancellations Act," which will ensure consumers receive cash refunds instead of credits. And even before the pandemic, the airlines were tipping consumers upside down with unfair and exorbitant fees.

While the airlines now have grabbed more than \$110 billion in ancillary fees, including \$5.8 billion just for bags on domestic flights. Mr. McGee, should Congress pass legislation to protect consumers from these continuously rising fees?

Mr. MCGEE. No question. The junk fee problem—really, the airline industry is the poster child for all that is wrong with junk fees.

Whether we are talking about transparency of fees and the airlines have had a problem with this since the dawn of the internet, both with mandatory charges, taxes, and fees that passengers have no choice about. And with the, "ancillary fees," which are much better described as junk fees.

We also have a problem not just with transparency, but with the validity of fees. I testified in the House a few years ago alongside five airline executives and Chair DeFazio asked each of those airlines, what is your back-end cost on canceling a ticket?

And not one of the executives at those five airlines was able to provide a cost. And yet they charge \$450, \$500, \$300. This is absurd. So, there are fees—

Senator MARKEY. So, we have to end these junk fees, including a ban on parents having to pay any kind of fee to have their children sitting next to them.

So, we just had to ban all of this, which is why my Fare Fees Act would prohibit airlines from charging those fees for bags preceding the cancellation and the change fees that are not reasonable and proportional to the cost of the services that are provided. And right now, it is just out of control.

They are just tipping people. Upside down at the counter and shaking money out of consumers' pockets. So, thank you, Mr. McGee. And thank you, Madam Chair.

Mr. MCGEE. Thank you, Senator.

Senator DUCKWORTH. Senator Baldwin.

**STATEMENT OF HON. TAMMY BALDWIN,
U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. Thank you, Madam Chair. Ms. Ansley, thank you so much for being before the Committee today on this incredibly important issue and for your tireless advocacy on behalf of our veterans in Wisconsin and across the country.

Despite the original Air Carrier Access Act passing over 35 years ago, airline passengers with disabilities continue to face significant barriers. All too often, travelers with disabilities encounter these significant barriers, such as damaged assistive devices and wheelchairs, delayed assistance, unclear communications, and a lack of on-board accommodations.

As you stated in your testimony, the Air Carrier Access Amendments Act, which is supported by dozens of veterans, disability, and consumer organizations, would help to address these persistent challenges.

As this committee considers reauthorization of the FAA, can you provide some further background and detail about the need to include that particular legislation, the Amendments Act, and how it would improve the lives of the millions of passengers with disabilities every year?

Ms. ANSLEY. Thank you for that question, Senator. The Air Carrier Access Amendments Act is desperately needed to provide both standards of accessibility for aircraft, but also to improve enforcement of the law.

In terms of improved accessibility standards, I think we only have to look at the law and its regulations to see that in basically almost four decades since it's been passed, there has been no innovation, there has been no improvements and no increases in accessibility, not one.

Second, if we—having participated in efforts to try to get lavatories that are accessible on single aisle aircraft, which I participated in a negotiated rulemaking in 2016 on that particular issue, we have seen that without standards we get the catch 22 of well if standards are coming, we don't want to do anything because then we might not comply with what the standards are.

So, let's just put out the standards. Let's say we have standards for people with disabilities that really mirror—you know, we talk sometimes about not wanting to put on airlines things that we don't put on other industries.

This is a situation where airlines are completely exempt from something that other industries all have to comply with, including Amtrak, Greyhound. There has been—Department of Justice has brought cases against ride sharing companies. Not airlines.

Senator BALDWIN. You know, you are talking about enforcement. And you noted in the 2018 FAA Reauthorization Act, Congress tripled the fine amounts that could be assessed for wheelchair damage or injury to passengers with disabilities. But despite this, we

have not seen the department assess any fines allowed under that provision.

Despite there being over 1,000 reported cases and incidences of damaged or mishandled wheelchairs and scooters in December of last year alone. So, as you know, the Air Carrier Access Amendments Act would require the Department to assess civil penalties for Air Carrier Access Act violations.

Do you believe the enforcement provision in my bill will lead to an improvement for passengers with disabilities, and particularly our veterans?

Ms. ANSLEY. Yes, we definitely believe that stronger enforcement is needed. Many times, we can't even convince our members to file complaints because they have filed so many complaints that had been found to be valid and yet nothing changes.

So, we need to have certain situations where we say, you know what, this merits filing a civil penalty. And then for those cases to be sent to the Department of Justice. This is not a customer service piece of—in the law.

This is a civil right that people with disabilities are disabled veterans who fought for our country, Senator Duckworth, to be able to travel without fear that they are going to arrive at their destination and have their legs broken, missing, mishandled to—that they themselves are going to have been injured simply because they tried to fly to get to their job, health care, everything else that we have all talked about here today, it is a unique circumstance that no other passenger has to deal with.

Senator BALDWIN. Thank you for your powerful testimony.

Senator DUCKWORTH. Senator Hickenlooper.

**STATEMENT OF HON. JOHN HICKENLOOPER,
U.S. SENATOR FROM COLORADO**

Senator HICKENLOOPER. Thank you, Madam Chair. I thank all of you for being here and for your service. I want to start with Ms. Nelson. Severe weather and severe turbulence from unexpected and severe weather has caused serious injury to passengers and crew. Obviously, we have seen it in news stories.

NOAA collects and processes environmental data to provide state-of-the-art weather predictions. A lot of people think this is going to continue to expand due to the climate changes, is creating exaggerations of wind shear and other causes of disturbance—of turbulence.

Airlines uses data to avoid some sudden episodes of extreme turbulence. How would Federal investments to improve weather predictions help keep flight attendants and passengers safe?

Ms. NELSON. If we had better information about the potential weather patterns and whether or not turbulence is coming, we would have a better ability to protect ourselves.

So, on the aircraft, when we are flying, actually before we take off, when we have the briefing with the flight deck, we do talk about weather throughout the entire flight and what the forecast is, and determine whether or not it's safe to get up right away if we need to stay down for another 30 minutes, whatever it is.

If we have better technology to be able to detect weather patterns and weather events, and to be able to detect turbulence such

as clear air turbulence that is unseen. You have no warning for that. Then we have a better ability to protect ourselves.

So, when we are out in the cabin with the 300-pound beverage cart and clear air turbulence hits, we are not only flying to the ceiling, so is the beverage cart, and it is likely coming down on us. I was out of work, actually for a couple of months with a similar injury, only moderate turbulence though.

But predicting what the weather patterns are will give us a better ability to have that seatbelt sign on, to be able to protect ourselves, to be able to stow items away so that they are not projectiles in the cabin. And it is critical for the safety of everyone on board. And you are right, these events have become more and more frequent with the advancement of the climate crisis.

Senator HICKENLOOPER. Right. And I fully expect to see—I am beginning to see more keep the seatbelts fastened, making sure that keep—we exercise more caution going forward. Mr. Moyers, and we talked a little bit about the importance to rural communities of air service. How does the lack of that air service hurt the economic development in rural communities?

Mr. MOYERS. Senator, great question. Thank you for it. It limits our ability to attract new industries to the area. As was stated earlier today that we—business relocated to the Wenatchee area because of our air connectivity.

That was one of their factors. As we have seen that service diminish over time, that that is a challenge for their people to move back and forth from their headquarters.

The comments that I receive from folks that are business owners and operators, is it is adding more time for their travel to be able to get to and from that, if they can't connect out of their home or where their business is located, driving that extra 3 hours to get on a plane in one direction, and other three to come back.

Sometimes that means that they are adding a day on either end of their operation to just so it is less efficient.

Senator HICKENLOOPER. Right. And add a burden. We have in Colorado, we have Grand Junction, Durango, even Pueblo have restrictions. They have had to cut back on some of their air service.

And in one case, it was after a company had expanded and, you know, taken off the space, hired a bunch of people, and all of a sudden, they lost their connection. It is a challenge.

Mr. MOYERS. It absolutely is. When we applied for our and received our most recent SCADC Grant back in 2018, we had 90 different businesses and folks that contributed local match to the money we received from the DOT. Those are businesses that were expecting service to be there. That was 2018. We still haven't realized the benefit of that.

Senator HICKENLOOPER. It is very frustrating. Mr. McGee—and there has been a bunch of discussion already about the transparency and the issues around junk fees. How would you look at upfront price transparency as an enhanced air experience for all passengers?

Mr. MCGEE. Thank you, Senator. It is a fantastic question. The bottom line is there has been a lot of talk about pricing today.

And, you know, there are these statements that have been made that pricing, for example, has gone down in the deregulated era.

Are we accounting for the fact that a full, fair ticket 20 years ago included so many services that have now been broken out? We do not have a good tracking of that.

The DOT tracks some fees, but not all fees. What the industry calls ancillary fees and what we call junk fees. So, we don't even have a sense of the cost of a ticket really in large measure.

So, as I said earlier, there are transparency issues with fees in every booking method imaginable, whether through the airline, through a third party, through Expedia, online, offline. And it is a gotcha situation.

This is, you know, this is what leads to sticker shock. So, you go in and you look, and a family of four looks and says, OK, well, \$250 each, it is going to be \$1,000. And with some carriers, it can actually be more, twice as much for the fees than for the actual base fare.

The irony here is that the ultra-low-cost carriers who love their fees, they love fees for even carry-on baggage, for boarding passes, for things that blow the minds of people that haven't flown in a while and they suddenly find out if they pay for a boarding pass.

The irony is, to an extent, I will give the low-cost carriers like Spirit a little credit, they are better on their websites, of telling people this and warning them. It is the largest carriers, in fact, that have the most problems.

I, in fact, have a copy here from United Airlines website. This is called the Baggage Fee Calculator. Now, this is absurd. This is one of the largest airlines in the country. And you can go on right now and find out what they charge you to check a bag. You then have to put in your origin, your destination, your date of travel.

Why? Why can't I know what the costs are ahead of time? It is like saying you have to sign to buy a new car, and then later they will tell you what the deluxe stereo will cost. It is absurd. So, there are so many inherent problems on this fee issue with transparency, with the validity.

But of all the fees, I have to say the absolute worst is fees for families with children to sit together. On behalf of another organization, we did a Freedom of Information Act request, and I spent 3 days reading complaints to the DOT, and it included children that were as young as four, three, two, and in two cases, 1-year olds that were assigned seats apart from their family. Children with autism, with other issues.

And I think—we have talked a lot about families hidden fees, but we are not talking about the origin of it. Why is this a—?

Senator HICKENLOOPER. Yes—you are going beyond the question. So, I appreciate that. I think the key is transparency.

Mr. MCGEE. No, question that is a big problem.

Senator HICKENLOOPER. I don't mind fees, I just think people—all businesses, but airlines, especially in this context, should be transparent about the fees. Anyway, I yield back to the Chair.

Mr. MCGEE. Thank you.

Senator DUCKWORTH. Thank you. Thank you to all of our witnesses for your participation today. The hearing record will remain open for 4 weeks until April 20, 2023. Any Senators that would like to submit questions for the record should do so 2 weeks from now, by April 6, 2023.

We ask that all witness responses be returned to the Committee by April 20, 2023, and I do apologize for having to gavel out and run, but they called a vote 30 minutes ago and I am trying to make it.

So, thank you all for being here. This was a very, very good and productive discussion today. That concludes today's hearing.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
SARA NELSON

Seat Size & Evacuation Standards. A 2016 evacuation of an American Airlines flight left one person seriously injured and 20 people with minor injuries. The National Transportation Safety Board reported that passengers didn't follow flight attendant instructions. The evacuation took nearly two and a half minutes—nearly twice as long as it is supposed to. Meanwhile, passenger seats continue to shrink: since the 1990s, seat pitch has decreased from 32 inches to 28 inches and seat width from 19 inches to as little as 16 inches. Shrinking seat sizes cause health risks, passenger discomfort, and create potential evacuation hazards. The 2018 FAA reauthorization law required the Federal Aviation Administration to set minimum passenger seat width and pitch within one year of enactment. Almost four years later, FAA still has not fulfilled this mandate.

Question 1. Do you agree that establishing minimum-seat size standards are important to promoting passenger safety and accessibility? Why is this the case?

Answer. Yes. However, additional research by the Federal Aviation Administration (FAA) is needed before defining those minimum dimensions to ensure passengers can safely evacuate the aircraft in 90 seconds, avoid injuries during an accident, and does not create a stressful environment and tension amongst passengers due to the lack of space available per person. Additionally the FAA indicated in a 2018 letter to *Flyer Rights the FAA*¹ stated that seat pitch is unlikely to go below 27 inches. That is absolutely the wrong direction on this issue and as experts in the aircraft cabin we know this is the wrong direction for safety and security. We need to make sure that these decisions are based on a *proven* ability to evacuate the plane in enough time.

The Association of Flight Attendants (AFA) participated in the Emergency Evacuation Standards Aviation Rulemaking Committee (ARC), that was chartered to assist the FAA in carrying out the requirements of the FAA Reauthorization Act of 2018, Public Law 115–254, § 337 to review aircraft evacuation certification with regard to emergency evacuation system designs and crew evacuation procedures. The ARC issued a report in September 2020 and one of the findings is that “the lack of data on the effects of seat pitch and width on evacuations inhibits FAA’s ability to adequately assess risk due to seat dimensions and ensure passenger and crew safety to the extent possible in emergency evacuations.”²

AFA also provided written comments in November 2022 to the FAA Federal docket (FAA–2022–1001) about the seat size and pitch rulemaking. First, regarding safety evacuations as it relates to minimum-seat size standards, we noted that in 2021 when the Civil Aviation Medical Institute (CAMI) measured³ three seat pitches (28-inch, 32-inch, and 34-inch) which represent the range in the economy section on U.S. airlines and two seat widths (16-inch and 18-inch) on single aisle aircraft they found that some passengers may not be able to safely exit. We recommended to the FAA that further evacuation research needs to include a representative range of weights, heights, ages, mobility, baggage, and mobile devices, or a correction factor must be applied to research findings that are based on a more limited range of those factors and environmental factors before applying the findings to real-world flights.

Second, we urged the FAA to consider the safest brace position, which is defined as the lowest risk of head, neck, and leg injuries. This means passengers need to be able to bend their upper body forward and grasp their lower. Therefore, seat

¹ <https://files.constantcontact.com/7a85813b001/d1d4f4f1-9864-46a2-a056-69180fe2f2ed.pdf>

² <https://www.oig.dot.gov/sites/default/files/FAA%20Oversight%20of%20Aircraft%20Evacuations%20Final%20Report%20-%202009-16-20.pdf>

³ https://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2020s/media/Effects_of_Airplane_Cabin_Interiors_on_Egress_I.pdf

pitch minima must enable passengers who are tall, heavy, or both to assume a safe brace position.

Finally, another safety factor is the negative impact that too-tight seating can have on passenger behavior. Anecdotally, passengers who feel crowded by a small seat pitch may recline their seat back to compensate, or they may inadvertently bump the seat in front of them as they move in and out of the seat, all of which risks crowding and irritating the passengers seated around them. This is problematic because of the negative impact that disruptive passengers can have both on flight safety and on the personal safety of passengers and crewmembers. Economy seating layouts need to ensure an appropriate minimum space per person to avoid unwanted and negative interactions.

Question 2. How can FAA's evacuation standards better take into account real-life conditions including the presence of children, adults over 60, and passengers with mobility issues, and passengers with vision and hearing limitations?

Answer. The first time we have to conduct an emergency evacuation should not be tested out on a real flight with panicked passengers in a life threatening situation. This is why simulated testing that accurately captures what we see on the planes every day is critical to apply when determining whether we can evacuate the plane safely in 90 seconds.

Further, the U.S. Department of Transportation Inspector General (DOT IG) found in 2020 that the FAA's process for updating its evacuation standards lacks data collection and analysis on current risks. This is why AFA supports Senator Duckworth's legislation, the Emergency Vacating Aircraft Cabin (EVAC) Act, to require the FAA to promulgate a rulemaking on aircraft evacuation standards that would take into account various real-life considerations like you mention, to determine if a safe and timely evacuation can occur.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO
SARA NELSON

Improving the Overall Flying Experience

Question. As Congress looks to improve the overall air transportation experience for consumers, what are the most important considerations to be aware of and how should Congress balance airline success, airport operability, competition, and consumer protections?

Answer. A healthy U.S. airline industry, which supports thousands of airports and carries millions of passengers safely to their destinations every year depends on a strong and diverse aviation workforce. Flight Attendants, pilots, air traffic controllers, TSA agents, mechanics, baggage handlers, gate agents, food caterers, airport concessions, and many other critical positions that are part of the aviation industry workforce ecosystem thrive when we have labor contracts in place that protect, workplace rights, and we are sufficiently staffed to carry out our duties safely and efficiently. Often it is workers on the frontlines who are the greatest advocates for consumer protections and the tools to address the needs of passengers—diversity on the frontlines creates empathy and understanding for the broad range of passengers issues. But union protections are critical to empower workers to speak up and press for solutions. AFA would encourage Congress to ensure strong labor priorities are included in the upcoming FAA Reauthorization bill which will improve the overall air transportation experience for consumers as well. Here are some of our recommendations:

1. Improve cabin air quality on board the airplane
2. Regulate cabin temperature
3. Require a secure seat for every passenger
4. Add Naloxone nasal spray to required equipment on the plane
5. Ban violent passengers from flying on any airline
6. Increase staffing on the planes and at the gates
7. Analyze aircraft emergency evacuation standards to update for today's reality
8. Maintain and enhance protections against fatigue
9. Update and properly resource EAS

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO
TRENT MOYERS

Interline Agreements. Georgia represents both the world's busiest airport and a major U.S. airline, with Hartsfield-Jackson International Airport and Delta calling the state home. Recently, a series of high profile air travel disruptions, such as the Southwest and NOTAM outages, highlighted the need for alternative transportation options for travelers faced with extended flight delays or widespread cancellations. Considering the vast amount of air travel that comes through Georgia, and in order to prevent travelers from feeling stranded without recourse, I believe that it is important for consumers to have multiple transportation options available when faced with delays and cancellations. Agreements between airlines and other modes of transportation, such as rental car companies, taxi services, and passenger rail are one potential avenue to providing consumers reliable alternatives when faced with air travel disruptions.

Question. Can you speak to the existence and/or prevalence of alternative transportation agreements between airlines and other transportation providers like rental car companies, taxi services, and passenger rail? If they exist, can you speak to the structure of such agreements?

Answer. In Wenatchee, if a flight is cancelled, the airline attempts to assist passengers by re-booking them on the next available flight, contacting shuttle service providers to assist with passenger travel, and/or providing information regarding car rental companies. I am not aware of any formal agreements to offer such services. Pangborn Memorial Airport is not a participant in any such agreement.

Question. What potential barriers exist to the establishment of alternative transportation agreements between airlines and ground transportation companies? What role could an airport play in facilitating such an agreement?

Answer. Potential barriers include issues that cause unforeseen ground transportation issues such as vehicular breakdowns, traffic accidents, and road closures due to weather. In Washington state, wildland fires and avalanche control are regular occurrences that can hinder cross-state travel and underscore the need for reliable air service. Due to the time and distance required to connect our community to a hub airport, for Pangborn Memorial Airport increased air service would likely play a more useful role for travelers than alternative agreements that rely on ground transportation.

An airport's role in facilitating an agreement between airlines and ground transportation companies is challenging, particularly at a small airport like Pangborn Memorial which have limited staffing and inadequate space to accommodate shuttle buses at small terminals. The role an airport could play is to not unreasonably restrict or impede an airline willing to execute an agreement with ground transportation companies.

Improving the Overall Flying Experience

Question. As Congress looks to improve the overall air transportation experience for consumers, what are the most important considerations to be aware of and how should Congress balance airline success, airport operability, competition, and consumer protections?

Answer. To improve the air transportation experience, Congress should help restore air service accessibility in small communities nationwide to pre-pandemic levels. Additional funding and greater flexibility within the USDOT Small Community Air Service Development Program (SCASDP) will help restore air service where communities have lost flights since the outbreak of the COVID-19 pandemic. Rural airports face acute challenges to provide enough funding to invest in their infrastructure. Restoring the Federal share of AIP funding for non-hub primary airports to 95 percent, as the Vision 100—Century of Aviation Reauthorization Act of 2003 did, would provide much-needed additional resources to small, rural airports.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO
WILLIAM MCGEE

Improving Fee Transparency. For many air travel consumers, there exists a discrepancy between what they believe to be paying for a ticket and what they end up paying, when accounting for factors such as luggage and who they are travelling with. These discrepancies are often not apparent when a consumer is purchasing a ticket and do not become known until the consumer is at the airport. The Department of Transportation is proposing a rule to improve fee transparency by requiring

fees to be disclosed as passenger-specific or itinerary-specific line items when the consumer is purchasing their ticket.

Question. How do you believe the Department of Transportation should approach instituting a fee transparency rule to account for the interests of consumers and airlines?

Answer. American Economic Liberties Project strongly endorses the “Forbidding Airlines from Imposing Ridiculous (FAIR) Fees Act,” which would prohibit airlines from charging unreasonable fees: www.markey.senate.gov/news/press-releases/in-wake-of-holiday-travel-chaos-senators-markey-blumenthal-reps-cohen-garcia-khanna-reintroduce-legislation-to-ground-airlines-skyrocketing-fees

We believe there are multiple problems with airline fees, which President Biden aptly referred to as “junk fees” in his recent State of the Union address:

- some fees are egregious, including the indefensible practice of charging families with children under 13 to sit together inflight
- many fees are not at all proportionate to the airlines’ costs in providing such services
- all fees lack the transparency that consumers require in order to properly budget their travel itineraries without “gotcha” costs being added later, contributing to tremendous sticker shock for the actual bottom line price of an airline ticket

When it comes to transparency, AELP believes that there should be full disclosure of ALL airline fares, taxes, surcharges, and fees so that consumers receive all this information PRIOR to booking. This includes both mandatory charges and “optional” junk fees. And such disclosures should be made via ALL booking channels—both online and offline—whether the ticket is sold directly via the airline or through an accredited third-party ticket seller.

Question. What do you believe the Department of Transportation oversight mechanism should look like to ensure airlines are following any potential fee transparency rule?

Answer. For many years and across multiple Administrations, the USDOT has failed to adequately identify and address airline fee issues. The first problem is that DOT does not even track all the airline industry’s ancillary revenue from junk fees; currently DOT reports on two fee categories—baggage and ticket changes—but some U.S. airlines charge 40 or more separate fees. Additionally, the DOT’s consumer protection staff is overwhelmed and can barely process all the consumer complaints about fees and other airline issues, let alone respond to them. For this reason, American Economic Liberties Project was pleased to learn earlier this month that DOT announced it was hiring additional attorneys to assist with this work.

Also, for many years the DOT has had a poor track on enforcement of violations. Regulations are only effective if airlines adhere to them and violations are enforced with penalties. Congress should ensure that the DOT enforces the rules it imposes on the airline industry.

Improving the Overall Flying Experience

Question. As Congress looks to improve the overall air transportation experience for consumers, what are the most important considerations to be aware of and how should Congress balance airline success, airport operability, competition, and consumer protections?

Answer. The air transportation experience has reached new lows in recent years, and the lack of competition is at the heart of these problems. This competition problem is due to rampant consolidation spurred by decades of mergers, acquisitions, and bankruptcies, so much so that we are facing unprecedented concerns. There are now fewer scheduled passenger airlines than at any time since the industry began in the 1910s; there’s an oligopoly at the top with just four major carriers—American, Delta, Southwest, and United—controlling 80 percent of the market; and we just endured 14 years (2007–2021) without a single new-entrant scheduled passenger airline in the US, the longest such draught in history. American Economic Liberties Project believes restoring the rights of passengers and providing more competition are the two key initiatives. This will benefit not only passengers, but the entire ecosystem of commercial aviation, including airports, labor, and the cities and regions served by the airlines. AELP has drafted model legislation to eliminate airline Federal preemption, so that for the first time in 45 years consumers will have the same rights with airlines that they do with virtually every other corporation in every other industry. State courts, state attorneys general, and state legislatures should have the same enforcement authority with airlines as they do with all other industries. We are hopeful this legislation will be introduced in the coming weeks. Here

is that model legislation, along with a Quick Take explanation: <https://www.economicliberties.us/press-release/economic-liberties-releases-model-legislation-to-eliminate-airlines-liability-shield/> In addition to eliminating preemption and the FAIR Fees Act detailed above, there are other key pieces of legislation that AELP strongly endorses, including:

- The “Airline Passengers’ Bill of Rights,” which among other provisions includes compensating passengers for flight delays and cancellations, mandating minimum seat size standards, and providing compensation for involuntary denied boarding: www.markey.senate.gov/news/press-releases/senators-markey-blumenthal-lead-in-introducing-legislation-to-bolster-airline-passenger-protections#:~:text=Among%20a%20host%20of%20key,%241%2C350%20to%20passengers%20denied%20boarding
- The “Families Fly Together Act,” to ensure that passengers do not have to pay fees to ensure children under 13 are seated with their families: www.markey.senate.gov/news/press-releases/as-president-targets-junk-fees-and-airlines-fail-flyers-senator-markey-introduces-families-fly-together-act-so-parents-dont-pay-to-sit-with-their-children
- The “Cash Refunds for Flight Cancellations Act,” which would force airlines to pay cash refunds when they cancel flights: <https://raskin.house.gov/2023/2/raskin-markey-blumenthal-and-cohen-reintroduce-cash-refunds-for-flight-cancellations-act-to-protect-rights-of-airline-passengers>
- The “Seat Egress in Air Travel (SEAT) Act” addressing the comfort, value, health, and safety concerns due to tight airline seats and the need for the FAA to establish minimum standards: <https://cohen.house.gov/media-center/press-releases/congressman-cohen-leads-joint-public-comment-letter-seat-act>

We also believe that rather than lurching from crisis to crisis, it is time to have a national discussion about this vital industry, something that hasn’t occurred since deregulation took effect in 1978 (despite several taxpayer bailouts in the interim). It is time to re-examine how best to regulate the airline industry, and all stakeholders—including consumers, airports, workers, labor unions, ticket sellers, cities, and regions—should be a part of that conversation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
HEATHER ANSLEY

Accessibility. Commercial aviation is the least accessible transportation mode for passengers with disabilities. According to the Department of Transportation, 25.5 million Americans age 5 and older have self-reported disabilities that limit their ability to travel outside of their homes. This means many Americans are cut off from career opportunities and visiting their families because flying is either not easy or not possible.

Question 1. Do you believe there is a need to establish a new Center of Excellence at the FAA dedicated to making air travel more accessible?

Answer. PVA believes that a new Center of Excellence at the FAA focused on accessible air travel could help facilitate improvements in air travel for passengers with disabilities. Establishment of such a center, however, must not be used as an opportunity to delay action on the development of access standards as laid out in the Air Carrier Access Amendments Act (S. 545). Disability access standards in air travel have already been delayed for far too long. A Center of Excellence would need to complement, not replace, that effort.

Question 2. Given the studies conducted and actions taken since the 2018 FAA reauthorization, what further research efforts are needed to ensure airlines can better accommodate passengers with mobility challenges in the next five years?

Answer. In response to Section 432 of the 2018 FAA Reauthorization Act, the U.S. Access Board worked with the Transportation Research Board (TRB) on a study to determine the feasibility of in-cabin wheelchair restraint systems. In September 2021, TRB released a report titled, “Technical Feasibility of a Wheelchair Securement Concept for Airline Travel.” The TRB study was unable to “identify any issues . . . that seem likely to present design and engineering challenges so formidable that they call into question the technical feasibility of an in-cabin wheelchair securement system and the value of exploring the concept further.” The study acknowledged that further assessment was needed, however, “particularly to understand how secured personal wheelchairs are likely to perform relative to FAA’s security criteria in restraining and protecting occupants during a survivable airplane crash or emergency landing,” and called on the Department of Transportation and FAA

to undertake research on these issues. The TRB also called on the U.S. Access Board to assess demand from people with disabilities to fly while seated in their wheelchairs to inform the number of aircraft that would need to be modified to provide meaningful access, assuming remaining feasibility questions are satisfied.

We believe that the 2023 FAA Reauthorization Act should require the Department and FAA to follow through on the next steps as identified in the TRB report. If the remaining issues are addressed in a way that does not call into question the technical feasibility of the concept, the 2023 FAA Reauthorization Act should also require the Department to promulgate regulations implementing requirements for in-cabin wheelchair securement.

The 2023 FAA Reauthorization should also require the Department of Transportation to move forward with a study recommended by the Air Carrier Access Act Advisory Committee on the design of aisle chairs and the use of lift devices to improve the transfer process for wheelchair users. Specifically, the Committee recommended “a study on the design of aisle chairs and the use of lift devices such as the Eagle Lift to improve the process of aisle transfers for passengers who use wheelchairs and, in that process, consider how these devices may impact the safety of individuals who provide physical assistance.” Aisle chairs are designed to meet the needs of the aircraft aisle and not the individuals who must use them. These devices are extremely narrow, often in disrepair, cannot be independently propelled, and have little or no padding. According to the Committee, the purpose of such a study would be “to gather important data that could improve the transfer process for passengers who use wheelchairs.” It could also lead to the development of aisle chair specifications.

Question 3. Accessibility is more than just a consumer issue for passengers in wheelchairs. An injury from an improper transfer or a damaged wheelchair can endanger the passenger’s life, health, and independence. Can you describe the critical importance of designing aircraft to allow for passengers to roll aboard in their wheelchair?

Answer. Airlines must be required to operate aircraft that meet the needs of passengers with disabilities, particularly wheelchair users, because of the inherent safety risks of disability-access barriers. During the preboarding process, wheelchair users have to travel to the bottom of the jetway in their own customized wheelchair. It is on this sloped area that they must transfer from their personal wheelchair into an aisle chair, which is a small, narrow wheelchair. This device has no means of self-propulsion. Some individuals are able to perform the transfer independently, others need the assistance of air carrier personnel. Air carriers use several different types of aisle chairs to assist passengers with mobility impairments during the boarding process. Often these aisle chairs are poorly designed and in disrepair. In some cases, the aisle chair can cause harm because it does not have proper padding, which can lead to skin abrasions, bruises, or sores.

The assistance from personnel in trying to coordinate the transfer and the slope of the jetway can make this a precarious procedure. In our experience, air carrier personnel and contractors are not properly trained on how to physically lift/transfer a person from a wheelchair to an aisle chair. They are also too often unfamiliar with the securement straps. Once securing the passenger, assistants must traverse the aisle chair backwards into the plane, down the narrow aisle, and then transfer the passenger from the aisle chair into the passenger seat.

Upon entering the plane, accessibility diminishes rapidly. The aisle width of the plane is typically smaller than that of the individual being transported on the aisle chair. This means that passengers are bumped and scraped from row to row to get to their seat, wherever that might be on the aircraft. Despite requirements for disbursed removable armrests to facilitate transfers, aircraft consistently have fixed armrests in first and business classes of service, making the process more difficult.

Once preboarded, the rest of the passengers enter the plane. Those that are seated in a wheelchair user’s row, have to climb over them if the individual is seated in the middle or aisle seat. This causes further discomfort and aggravation to the wheelchair user and the other passengers. Upon getting to the destination, the deplaning process is similar to the boarding process. The wheelchair user is the last person off the plane no matter if it is their connector city or final destination. Sometimes, the aisle chair is delayed.

In addition to the difficulties that passengers with limited mobility face in boarding the plane, they must also worry about the stowage of their assistive device. Damage to a wheelchair can be a trip altering event as well as pose significant health concerns for the passenger who depends on it for mobility. Customized wheelchairs are not easily replaced if damaged.

Wheelchair users must be able to avoid this entire process by being able to fly while seated in their device. This would increase their safety by protecting them

from injuries in the boarding/deplaning process and ensure that their assistive device is not damaged. At the very least, wheelchair users should have access to a passenger seat or, if feasible, a wheelchair spot adjacent or next to a boarding door. This would allow the individual to avoid the aisle chair.

Buses had to be modified to safely and efficiently accommodate wheelchairs. Airplanes should be no different and Congress must require the Department of Transportation to develop accessibility standards, including the ability to board and, if feasible, fly from a customized wheelchair. Otherwise, the current safety risks and loss of dignity encountered by wheelchair users will never be fully addressed.

Until wheelchair users are able to safely board and deplane using their own wheelchairs, they should have access to first row/front of cabin seating at the price of an economy ticket. This would save their bodies from the injuries that occur when they have to be dragged through the plane to their section and decrease the amount of time they spend on an aisle chair. It would also likely mean more room and would save the wheelchair user from being climbed over by their fellow passengers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO
HEATHER ANSLEY

Improving the Flying Experience. I believe that it is important for consumers to feel safe and comfortable during their flying experience on an airplane. Part of that is ensuring all passengers can access a lavatory and that any and all equipment a passenger needs, like a wheelchair, is safe from the moment a passenger gets to the airport until the moment they reach their destination.

Question. In your testimony, you highlight that a majority of Paralyzed Veterans of America survey respondents avoid air travel unless absolutely necessary due to a lack of lavatory access. As the Department of Transportation works on rulemaking surrounding accessible lavatories, what are some considerations that would allow for a more efficient and robust implementation of any potential rule?

Answer. The Department of Transportation's proposed rule meets a pressing need to provide accessible lavatories on single-aisle aircraft, and the Department should publish a final rule as soon as possible. Given the severity of the need and the Department's delay in publishing it, PVA's comments on the proposed rule urged the Department to shorten the extended implementation timelines agreed to as part of the negotiated rulemaking held in 2016. Specifically, the Department should use its authority, to the extent possible, to subtract the six-year delay in promulgating the proposed rule from the deadlines for compliance, as doing so would be consistent with the understanding of the participants in the negotiated rulemaking. And the Department should reject any arguments to delay implementation based on cost or design because the costs of further delay outweigh any implementation costs.

Question. In your testimony, you also highlight issues related to staffing and training for airline workers that help wheelchair-bound passengers navigate on and off the airplane. What do you believe needs to be included in the training provided to these workers? What role do you envision Congress playing in the development and implementation of wheelchair assistance training by airlines?

Answer. In order to ensure a safe and dignified air travel experience for passengers with disabilities who use mobility devices, it is imperative that wheelchair attendants be fully trained and able to subsequently demonstrate to a superior on the job their ability to properly assist a passenger throughout the airport, as needed, and on and off the aircraft. This means the attendant has a proficient knowledge of how to safely use the aisle chair, including the use of all straps, brakes, and other safety features. The attendant must also be proficient in the use of techniques to assist in the transfer of passengers to and from their wheelchair, the aisle chair, and the aircraft's passenger seat, either by physically lifting the passenger or deploying a mechanical device for the lift/transfer. But most of all, wheelchair attendants must be able to effectively communicate and take instruction from the passenger. Disabled passengers know what their personal needs are and how to best assist them. Only when wheelchair attendants have completed all training, which must be hands on, and successfully demonstrated that training on the job to a superior should the attendant be considered ready to assist someone who must board or deplane using an aisle chair. Furthermore, attendants should be required to complete refresher training every six months and be recertified yearly on the job by a superior in order to remain qualified for providing aisle chair assistance. Attendants must also be trained on how to ensure that after each use the aisle chair is in proper working order, cleaned as needed, and stowed so as to be readily usable by the next passenger.

Congress should include language in the upcoming FAA Reauthorization directing the Department to move forward with its pending regulation, “Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs” (RIN 2105–AF14). In addition, Congress should require that the Department’s rule meet our suggested training requirements.

Improving the Overall Flying Experience.

Question. As Congress looks to improve the overall air transportation experience for consumers, what are the most important considerations to be aware of and how should Congress balance airline success, airport operability, competition, and consumer protections?

Answer. The most important consideration for Congress must be to ensure that passengers with disabilities, particularly wheelchair users, have safe and dignified access to air travel. The systemic discrimination in air travel against passengers with disabilities is evident in the lack of lavatory access; the number of lost, damaged, or delayed (mishandled) wheelchairs and scooters; and the injuries wheelchair users regularly receive in the boarding and deplaning process. No other group of passengers faces such treatment in commercial air travel. Many wheelchair users report being treated like a piece of luggage—an inanimate object—during the boarding and deplaning process.

Despite the focus in the 2018 FAA Reauthorization Act on improving air travel for passengers with disabilities, the percentage of wheelchair or scooters mishandled by large domestic airlines was exactly the same in 2022 as it was in 2019. Unless Congress takes decisive action by implementing a requirement for accessibility standards for aircraft and improving enforcement of the Air Carrier Access Act by including the Air Carrier Access Amendments Act (S. 545) in the upcoming FAA Reauthorization, the situation of passengers with disabilities will not improve.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TAMMY DUCKWORTH TO
JEFFREY N. SHANE

Topic: Market Failure for Passengers with Disabilities

Question. In your written testimony, you claimed that there is a role for regulation where there is a market failure. Specifically, you stated that “There is clearly scope for beneficial regulation in circumstances where market forces can’t be expected to resolve an issue. The Air Carrier Access Act has made things better for disabled passengers, for example, but we can and should do more.”

- Can you explain why the market has failed passengers with disabilities and why you feel it would be appropriate for the FAA to take additional measures to enhance accessibility?

Answer. Thank you for your question and the opportunity to elaborate further. The Air Carrier Access Act of 1986 (Pub. L. 99–435) and significant appropriations dedicated to improving access in the airport environment have been of great benefit to individuals with disabilities—including those using wheelchairs and other mobile devices. Thanks to the ACAA and rules issued by the Department of Transportation, even aircraft cabin interiors now accommodate disabled passengers more effectively than before, with moveable aisle armrests, accessible lavatories on wide-body aircraft, in-cabin wheelchair storage, and other features. Without minimizing the importance of these improvements, however, others can and should be pursued to realize more fully the goal of non-discrimination against passengers with disabilities.

Two significant barriers to air travel by people who use wheelchairs continue to compromise the quality of their experience. First there is currently no way a passenger can board an aircraft in a personal wheelchair and remain in that chair during the flight. Second, the loading and unloading of personal wheelchairs into cargo holds—particularly motorized chairs which are very heavy—too often result in damage that renders the chairs unusable until repaired. Moreover, without the proper equipment and training, airline baggage handlers are themselves often in danger of injuries due to the heavy weight and bulkiness of some chairs.

I am confident that no airline wants to deny passengers with disabilities the right to fly. As Congress understood in passing the ACAA, however, this is one area where the cost of “doing the right thing” simply can’t be recovered by market forces. Every airline in our deregulated and highly competitive air travel market knows that it would place itself at a significant economic disadvantage vis-à-vis competitors by making the significant investments required to mitigate these problems beyond what they have done to date. Accordingly, the airline industry, left to its own devices, cannot reasonably be expected to make further progress on its own. Because there is no effective, market-based incentive to improve the experience of disabled

passengers, Federal regulation is required to create standards that are applied and enforced across the board so that every competitor is placed in the same position and none can benefit by failing to do the right thing. Equally important, regulation would create a robust incentive for the development and manufacture of the equipment necessary to improve the experience of passengers who use wheelchairs and reduce the damage to chairs that so many travelers have experienced.

Despite the improvements in the airport and cabin realized to date thanks to Federal regulation and investment, virtually no Federal resources have been devoted to research and development into ways for a passenger to board an aircraft in their own wheelchair and, when properly secured, remain in that chair for the duration of the flight. Indeed, the only significant work on the technical side of this issue is currently being conducted by a non-profit organization, All Wheels Up, which relies entirely on charitable donations.

Section 432 of the FAA Authorization Act of 2018 (Pub. L. 115-254) required a study by the Architectural and Transportation Barriers Compliance Board ("Access Board") to determine the feasibility of in-cabin wheelchair restraints. The Access Board, in turn, commissioned a study to be done under the auspices of the Transportation Research Board, an arm of the National Academies of Science, Engineering and Medicine. That study was completed in 2021 and involved a wide range of experts from manufacturers, air carriers, consumer groups, engineering organizations, unions, and other relevant categories. The detailed 146-page report was thoroughly peer-reviewed. The committee that prepared the report summarized its findings as follows:

"After reviewing the available information. . . , the committee did not identify any issues in this preliminary assessment that seem likely to present design and engineering challenges so formidable that they call into question the technical feasibility of an in-cabin wheelchair securement system and the value of exploring the concept further. While the report's analyses and findings suggest that equipping enough airplanes with securement systems to provide meaningful levels of airline service would require substantial effort, the types of cabin modifications required to provide the needed space and structural support would likely be of moderate technical complexity for many individual airplanes. Further assessments, including efforts to fill the information gaps identified in this report, would appear to be warranted, particularly to understand how secured personal wheelchairs are likely to perform relative to FAA's safety criteria in restraining and protecting occupants during a survivable airplane crash or emergency landing. The committee believes that such follow-on assessments are warranted because the many feasibility issues that could indeed be assessed using the information at hand appear to be manageable from a technical perspective. . . by the committee, would enable more informed public policy decisions about the feasibility and desirability of in-cabin wheelchair securement systems."

On the basis of these conclusions, it is clearly time for Congress, in the reauthorizing legislation it must enact by later this year, to give the FAA explicit authority to accelerate follow-up research and development into viable wheelchair restraint systems, taking full advantage of work already done. If the results of this work demonstrate the feasibility of systems consistent with established airworthiness requirements, the FAA should be authorized to promulgate standards for the manufacture and installation of such systems as well as for the manufacture of the associated wheelchairs. The legislation should prescribe completion by a date certain. Assuming such systems can indeed be certified, the legislation should require the FAA to establish appropriate mandates for the installation of such systems in all new aircraft. If the retrofitting of existing aircraft is found to be technically and economically feasible, retrofitting should also be required on a phased basis. The end result would be a far more satisfactory travel experience than passengers with disabilities are having today and a fuller realization, at long last, of the goals of the Air Carrier Access Act.

Finally, with respect to the problems related to loading and unloading of conventional wheelchairs in cargo holds, mechanical lifts are available that should be deployed more widely. If even a small portion of the airport infrastructure funds recently appropriated were used for the purchase of such equipment, it could be made available to airline baggage handlers on a shared basis. With a modest amount of training, the use of such equipment would reduce or eliminate both damage to wheelchairs and injuries to airline workers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO
JEFFREY N. SHANE

Interline Agreements. Georgia represents both the world's busiest airport and a major U.S. airline, with Hartsfield-Jackson International Airport and Delta calling the state home. Recently, a series of high profile air travel disruptions, such as the Southwest and NOTAM outages, highlighted the need for alternative transportation options for travelers faced with extended flight delays or widespread cancellations. Considering the vast amount of air travel that comes through Georgia, and in order to prevent travelers from feeling stranded without recourse, I believe that it is important for consumers to have multiple transportation options available when faced with delays and cancellations. Agreements between airlines and other modes of transportation, such as rental car companies, taxi services, and passenger rail are one potential avenue to providing consumers reliable alternatives when faced with air travel disruptions.

Question. Can you speak to the existence and/or prevalence of alternative transportation agreements between airlines and other transportation providers like rental car companies, taxi services, and passenger rail? If they exist, can you speak to the structure of such agreements?

Answer. Thank you for the interesting question. Regrettably, I have no personal knowledge of such arrangements. I wonder, however, given the average distance of most domestic flights within the U.S., whether many passengers would opt for a bus or rental car, or even rail where it might be available. Where weather is the cause of the disruption, travel in any mode might not be advisable. And in a great many cases, arrival at a passenger's destination is likely to be sooner through a rebooking on the airline than through surface transportation, even after a night in a hotel. There are certainly relatively short-haul flights for which ground transportation might be a feasible option but, again, I am not aware of any existing arrangements in that regard.

The Southwest meltdown near the end of last year prompted a discussion of whether airlines should be required to provide seats for their passengers on *other airlines* in the event of a cancellation. While well-intentioned, this seems like a wholly impractical suggestion. One of the great successes of our deregulated market is that load factors on most carriers and on most flights are quite high. No longer do we waste fuel by flying half-empty airplanes, as was often the case prior to 1978. The consequence of this more efficient utilization of aircraft, however, is that even if there were a requirement that an airline with a cancellation find seats for affected passengers on another carrier, it probably wouldn't be able to do so.

The more important goal of public policy, I believe, is to establish a structure for the operation and consistent modernization of our air traffic control system that minimizes disruptions. There will always be unexpected reasons why a flight has to be canceled, but such cancellations should be few and far between.

Question. What potential barriers exist to the establishment of alternative transportation agreements between airlines and ground transportation companies? What role could an airport play in facilitating such an agreement?

Answer. I am not aware of any barriers to the establishment of such arrangements, although, as suggested in my answer to the previous question, I think passengers are not likely to treat ground transportation as an acceptable substitute except in the case of relatively short-haul flights. Where, for example, bus transportation is provided in lieu of air transportation, passengers would expect a refund of the difference between the air fare they paid and the cost of a bus ticket.

Airports clearly have an interest in not having their terminals filled with stranded passengers and therefore have an incentive to encourage the establishment of such arrangements where they might be viable. Their role would be limited to that of a broker and facilitator, however. The actual establishment of such arrangements, however, would require willing parties.

Improving Fee Transparency. For many air travel consumers, there exists a discrepancy between what they believe to be paying for a ticket and what they end up paying, when accounting for factors such as luggage and who they are travelling with. These discrepancies are often not apparent when a consumer is purchasing a ticket and do not become known until the consumer is at the airport. The Department of Transportation is proposing a rule to improve fee transparency by requiring fees to be disclosed as passenger-specific or itinerary-specific line items when the consumer is purchasing their ticket.

Question. How do you believe the Department of Transportation should approach instituting a fee transparency rule to account for the interests of consumers and airlines?

Answer. DOT has long required that airlines disclose all applicable fees prior to purchase. The following statement is from DOT's website

It is relatively easy to compare ticket prices using the Internet (through airline websites, online travel agencies, etc.). DOT requires airlines and travel agencies that display ticket prices to advertise the total price that a consumer must pay to purchase a ticket. Wherever an airfare is advertised, such as on a website, in an e-mail, or during the booking process, the fare price must include all applicable government taxes and fees, and any mandatory carrier-imposed surcharges.

DOT also requires that baggage fees, if any, be similarly disclosed. Its website explains this requirement as follows:

Airlines are required to provide information about their baggage fees through: (1) a clear link from the airline's homepage to a page or place on the airline's website that displays all of the airline's baggage fees and other optional service fees, and (2) a link on the first screen that appears with a fare quotation for a specific itinerary.

Despite the extraordinary level of transparency already required of airlines (to the best of my knowledge, no other provider of a product or service is required by the U.S. government to display an "all-in" price (including taxes), DOT has wrestled with further requirements over most of the past decade. A brief history of this effort illustrates how an agency can be whipsawed by the competing policies of successive administrations.

In 2014, during the Obama administration, the Department issued a Notice of Proposed Rulemaking entitled "Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues." 79 Fed. Reg. 29970 (May 23, 2014). Following its receipt of "significant comments," DOT later issued a Supplemental NPRM entitled "Transparency of Airline Ancillary Service Fees," published on the last full day of the Obama administration. 82 Fed. Reg. 7536 (Jan. 19, 2017).

At the end of that same year, during the Trump administration, DOT withdrew the Supplemental NPRM, noting correctly that existing requirements already provided consumers information regarding fees for ancillary services. 82 Fed. Reg. 58778 (Dec. 14, 2017). DOT also noted that the withdrawal was consistent with President Trump's Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs."

On January 20, 2021, immediately following his inauguration, President Biden issued Executive Order 13992, revoking Executive Order 13771, among others.

President Biden later issued Executive Order 14036, "Promoting Competition in the American Economy" (July 9, 2021), which apparently encouraged DOT to pick up where it had left off in its quest to make airline pricing even more transparent than it already was.

Accordingly, last October DOT issued yet another Notice of Proposed Rulemaking, once again entitled "Enhancing Transparency of Airline Ancillary Service Fees," 87 Fed. Reg. 63718 (Oct. 22, 2022). The comment period closed last December 19 and DOT is presumably deliberating now over next steps.

My own view is that the only current deficiency in the transparency of airline pricing relates to families traveling together, and only on some airlines. Too often, merely to ensure that they will sit next to their child—even if not in a premium seat—parents have to purchase seats in advance for a price that can be avoided by passengers having no such need. Parents should not have to pay more for the ability to sit next to their children unless they wish to sit with their children in premium seats that any passenger would be required to pay for. Recognizing that this has become the source of a great many customer complaints, some airlines have already begun to address the issue. The pending NPRM would require clearer disclosure of airline policies regarding family seating, which seems like an appropriate first step. I believe that all airlines need to address the issue quickly and satisfactorily or a more intrusive solution is likely to be imposed on them by DOT.

Improving the Overall Flying Experience

Question. As Congress looks to improve the overall air transportation experience for consumers, what are the most important considerations to be aware of and how should Congress balance airline success, airport operability, competition, and consumer protections?

Answer. Thanks for thoughtful question. In my view, Congress has already done the most important thing possible in the interest of air transportation consumers: it passed the Airline Deregulation Act of 1978. That legislation, nothing less than a miracle of public policy, revolutionized and democratized air travel. Most economists maintain that the benefits to consumers from the inter-airline competition en-

abled by the ADA have been enormous. We not only enjoy lower fares, but also a variety of airline models, from full-service airlines to ultra low-cost airlines.

As a direct result of the affordability engendered by that legislation, the vast majority of Americans have flown and have strong opinions about the airline industry. Members of Congress, who fly more than most, also have strong opinions. The temptation to tamper with the wholly private, market-based airline business through legislation and regulation can therefore be powerful.

Unless the issue is one that we can't reasonably expect to be solved by market forces, reinforced by DOT's long-standing transparency requirements, it is a temptation that should be resisted. It would be inappropriate for Congress to second-guess airline managers on most customer issues. We can trust competition to deliver optimal results.

There certainly *are* issues that we can't reasonably expect to be solved by market forces. The experience of disabled passengers, for example, notably those using wheelchairs, continues to fall short of the goals expressed in the Air Carrier Access Act (Pub. L. 99-435), and thus is one such issue. The difficulty smaller communities experience in attracting adequate scheduled air service, exacerbated since the pandemic by a serious shortage of pilots, is another. Ironically, Congress unnecessarily exacerbated the pilot shortage by enshrining a 1500-hours-of-flying requirement in law as a prerequisite to obtaining a commercial pilot's license, despite the widespread view of experts that there are better and far more efficient ways to train a pilot.

There is another way that Congress can and should enhance the experience of aviation users: separate the Air Traffic Organization from the rest of the FAA. First, the FAA would regulate our air traffic control system at arm's length, as opposed to treating it as a member of the family. Second, by being unshackled from the annual appropriations process, the ATO would be able to pursue further modernization in a far more efficient way, financing improvements through debt in the way other large, capital intensive, technology driven entities do, with lower costs in the bargain. If our national air space were managed more efficiently by an entity not hamstrung by government procurement and civil service rules and the always uncertain appropriations process, consumers would enjoy a far more satisfactory experience.

The bottom line is that, other than in a pandemic or some other catastrophe that suddenly dries up the air travel market (*e.g.*, 9/11), Congress need not worry about the success of airlines. Let them take care of themselves. The Bilateral Infrastructure Law provided a welcome infusion of funds to airports, and we are already seeing improvements in a number of cities. The Department of Justice has ample authority within the antitrust laws to ensure that the market remains highly competitive, and DOT has ample authority in Title 49 to protect other interests of consumers. Congress should take enormous satisfaction from the work it has already done. Efforts to do more—beyond addressing the issues I have mentioned (accessibility, service to small communities, FAA reform)—are not likely to end well.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED CRUZ TO
JEFFREY N. SHANE

Question. One major airline—United Airlines—has said that last year, over a four-month period, 40 percent of its flight delay minutes and 75 percent of its cancellations were due to the FAA's air traffic management. The FAA has been painfully slow to modernize its air traffic systems and improve efficiency in the airspace, as was evident with the recent NOTAM failure.

a. Do you believe consumers would be better off if the FAA were to spin off the Air Traffic Organization (ATO) into a private organization, where it can more quickly improve technology and services?

Answer. I appreciate the question. The benefits from spinning off the Air Traffic Organization—whether to a wholly private organization or even to a government corporation unshackled from the annual appropriations process—are probably incalculable. Those benefits would of course flow to consumers, but also to airlines, to air traffic controllers, and indeed to the government itself. It is simply impossible to find a coherent justification for the current structure, given its conspicuous deficiencies.

Of all of the networks America depends upon for its prosperity and economic growth—including water and sewer services, telecommunications, electricity, railroads, natural gas, broadband, home entertainment—only one, our air traffic control system, requires annual appropriations from Congress before money can be spent.

Imagine for a moment that the United States had set up its air traffic control system as a not-for-profit corporation at the outset. It has always been funded by user

fees, it has long enjoyed access to the bond market, and it has consistently managed upgrades in keeping with the pace of technology and pursuant to a disciplined capital budget. Specifically, it has financed upgrades through debt with no uncertainty as to the availability of funds, thereby ensuring the greatest possible value for money.

Now somebody comes along and proposes that, despite its success, we abolish that organization and place responsibility for air traffic management within the FAA. Our premier aviation safety regulator would now be dual-hatted as a provider of air traffic services as well. No borrowing authority, a newfound fealty to Federal procurement and civil service rules, and with funding based on a complicated assortment of taxes and fees, made available only to the extent authorized and appropriated by Congress regardless of how much money those taxes and fees have actually generated. Perhaps the strangest anomaly of all is that there would no longer be arm's-length FAA regulation of the air traffic organization's safety performance. It would now be "part of the family."

It seems pretty clear that a proposal to change the imaginary structure I've described to the structure we actually have would be rejected out of hand. It's not easy to understand, therefore, why we cling to that structure so slavishly.

The FAA rightly deserves credit as a global leader in the regulation of aviation safety. Indeed, its long history of assistance to foreign governments has undoubtedly contributed to the enhancement of flight safety everywhere. It is notable, therefore, how many of those other governments today have rejected the FAA's organizational structure and removed air traffic control from the purview of their aviation safety agencies. The Eno Center for Transportation wrote in 2017 that more than 60 countries have removed ATC responsibility from the agencies responsible for aviation safety, many placing it entirely outside of government. The results have been consistently positive.

It should also be noted that the FAA's current structure is inconsistent with the recommendations of the International Civil Aviation Organization, despite ICAO's long history of respecting the standards and protocols adopted by the FAA. Specifically, in its Safety Oversight Manual (Doc 9734), ICAO writes that "[c]lear distinction and separation of authority and responsibility between the state regulatory authority and the State operating agency should be maintained."

b. If the FAA is currently failing to enable aircraft to fly more efficient flight paths, thereby wasting time and fuel, the benefits of a more efficient ATO seem to include reducing greenhouse gas emissions from airplanes. What other benefits might one expect from a more efficient ATO?

Answer. Since the launch of the NextGen modernization program in 2004, the FAA has certainly made important progress in enabling aircraft to fly more efficient flight paths. The complaint by some observers that it is taking too long to "complete" NextGen falsely assumes that there is a clear end state that will represent completion. The NextGen initiative was launched in recognition of a need to accelerate the adoption of available technologies that promised both greater efficiency and even greater safety. It has achieved much of what was envisioned but is an ongoing process of improvement that should continue for as long as the technology of air traffic management continues to evolve. Management of the national air space today requires the Air Traffic Organization to address a host of challenges that weren't issues in 2004—integrating uncrewed vehicles into the system and accommodating frequent space launches with minimal disruption of scheduled air traffic.

That is not to say, however, that NextGen has been as efficiently managed as might have been possible in a more sensible structure. The Air Traffic Organization is a complex, capital-intensive, technology-driven enterprise that simply cannot be managed optimally by an agency that has to compete for funding with other elements of government, first within the Executive Branch and then through the Congressional appropriations process. That the FAA's budget for facilities and equipment today is at approximately the same level as it was in 2009 speaks volumes about why we don't yet have a state-of-the-art system.

It should be no surprise that improvements in the management of air traffic have taken too long to adopt, frustrating airlines and air travelers alike. A more efficient and nimble ATO—unshackled from the constraints of the appropriations process—would clearly be in a position to deploy future improvements on an accelerated timetable at lower costs than the FAA currently incurs. Those improvements would not be limited to the actual management of air traffic, but also to the ATO's internal systems themselves. The NOTAM system shutdown this past January was undoubtedly attributable, at least in part, to insufficient attention to maintenance and ensuring adequate capacity to operate smoothly during periods of peak traffic.

A more fit-for-purpose structure for air traffic management would clearly be more efficient at delivering improvements that currently remain in the pipeline for too

long, thereby enhancing the reliability of schedules, minimizing disruptions, engendering a less stressful experience for air travelers, and of course delivering an even safer system in the bargain.

Of equal or greater importance is the conflict-of-interest issue. Please understand that it is not my intention to criticize in any way the stalwarts who go to work every day and devote themselves to maintaining the safest aviation system in the world. Despite a structure that clearly compromises its ability to deliver progress in real time, the FAA is a great agency, characterized by a justly proud culture, and populated by a cadre of dedicated public servants who deserve our gratitude. I collaborated closely with the FAA for many years while in the Office of the Secretary of Transportation and was consistently impressed with the dedication and competence of the people I worked with. It was an honor to be their colleague.

Still, we have begun to see some fraying around the edges of the system. There were a number of worrisome near-catastrophes earlier this year that observers have attributed to complacency—either on the part of pilots or controllers. It is fair to assume that arm's length safety regulation of the Air Traffic Organization by the FAA—in a structure in which the two organizations are entirely separate from each other—would enhance further the quality of safety in our air transportation system. Separation would change the conversation. In my answer to the previous question I referred to the preponderance of countries that have separated air traffic management from safety regulation as well as ICAO's guidance in that regard. There are good reasons to be concerned about maintaining a system in which our aviation safety regulator is also a provider of air traffic services. The public interest would unquestionably be better served if the two functions were wholly separated in keeping with what has become an international norm.

