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No. 95—Part II

House of Representatives

NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

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

The Clerk read as follows:

H.R. 3479

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

TITLE I—NATIONAL AVIATION CAPACITY EXPANSION

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

Congress finds the following:

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

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

(3) The city of Chicago, Illinois, which owns and operates O’Hare, has been unable to pursue projects to increase the operating

capability of O’Hare runways and thereby reduce delays because the city of Chicago and the State of Illinois have been unable for more than 20 years to agree on a plan for runway reconfiguration and development. State law states that such projects at O’Hare require State approval.

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

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

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

(7) Future Governors of Illinois could stop the O’Hare capacity enhancement project by refusing to issue a certificate required for such project under the Illinois Aeronautics Act, or by refusing to submit airport improvement grant requests for the project, or by improperly administering the State implementation plan process under the Clean Air Act (42 U.S.C. 7401 et seq.) to prevent construction and operation of the project.

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

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

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

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

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

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

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

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

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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

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

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

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

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

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

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

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

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

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

(1) Approval by the Administrator of an airport layout plan that includes the runway redesign plan shall require the city of Chi-

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 104. CLEAN AIR ACT.

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

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

SEC. 105. MERRILL C. MEIGS FIELD.

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

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

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

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

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

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

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

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

(4) The Administrator shall not enforce the conditions listed in paragraph (1) if the State

of Illinois enacts a law on or after January 1, 2006, authorizing the closure of Meigs Field.

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

SEC. 106. APPLICATION WITH EXISTING LAW.

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

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

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

TITLE II—AIRPORT STREAMLINING APPROVAL PROCESS

SEC. 201. SHORT TITLE.

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

SEC. 202. FINDINGS.

Congress finds that—

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

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

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

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

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

SEC. 203. PROMOTION OF NEW RUNWAYS.

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

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

SEC. 204. AIRPORT PROJECT STREAMLINING.

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

"SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

"§ 47171. DOT as lead agency

"(a) AIRPORT PROJECT REVIEW PROCESS.—The Secretary of Transportation shall de-

velop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

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

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

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

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

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

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

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

"(g) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested

airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

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

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

"§ 47172. Categorical exclusions

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

"§ 47173. Access restrictions to ease construction

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

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

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

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

"§ 47174. Airport revenue to pay for mitigation

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

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

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

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

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

“§ 47175. Airport funding of FAA staff

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

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

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

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

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

“(3) shall remain available until expended.

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

“§ 47176. Authorization of appropriations

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

“§ 47177. Judicial review

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

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

“(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or the head of

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

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

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

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

“§ 47178. Definitions

“In this subchapter, the following definitions apply:

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

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

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

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

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

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

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

“47171. DOT as lead agency.

“47172. Categorical exclusions.

“47173. Access restrictions to ease construction.

“47174. Airport revenue to pay for mitigation.

“47175. Airport funding of FAA staff.

“47176. Authorization of appropriations.

“47177. Judicial review.

“47178. Definitions.”

SEC. 205. GOVERNOR'S CERTIFICATE.

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

(1) in paragraph (1)—

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

(B) by striking subparagraph (B); and

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

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

(3) by striking paragraph (4); and

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

SEC. 206. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

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

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

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

(3) by adding at the end the following:

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

SEC. 207. LIMITATIONS.

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

(1) any practice of seeking public comment; and

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

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

Mr. JACKSON of Illinois. Mr. Speaker, I seek the time in true opposition to the bill.

The SPEAKER pro tempore. The Chair would inquire if the gentleman from Illinois (Mr. LIPINSKI) is opposed to the motion.

Mr. LIPINSKI. No, Mr. Speaker, I am not.

The SPEAKER pro tempore. Under clause 1(c) of rule XV, the Chair recognizes the gentleman from Illinois (Mr. JACKSON) to control the time in opposition to the motion.

The Chair recognizes the gentleman from Illinois (Mr. KIRK).

Mr. KIRK. Mr. Speaker, out of deference to my friend and colleague, the gentleman from Illinois (Mr. LIPINSKI), I would like him to control 10 minutes of the time available to me during the debate.

The SPEAKER pro tempore. Without objection, the gentleman from Illinois (Mr. LIPINSKI) will control 10 minutes of the time allotted to the gentleman from Illinois (Mr. KIRK) for this debate.

There was no objection.

Mr. KIRK. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I am a proud cosponsor of this legislation. I want to thank the gentleman from Illinois (Mr. LIPINSKI) for authoring it and Speaker HASTERT for calling it to the floor.

O'Hare is our Nation's busiest airport. More passengers use O'Hare International Airport than New York's LaGuardia, Washington's Reagan, and Boston's Logan Airports combined. O'Hare is an engine of economic growth, affecting jobs and income for thousands of Illinois families. Experts say when O'Hare gets a cold, other airports get pneumonia. Delays at O'Hare leave travelers stranded around the world. Today, scheduled departures at O'Hare have only a two-thirds chance

of actually leaving on time. Without modernization, air travelers will continue to be delayed and Chicago's economy will stall.

This legislation does not impose a Washington solution. Illinois is one of only two States that requires the Governor's approval for runway modification. We have that approval. This legislation ratifies a historic agreement between Chicago's Democratic mayor and the Republican Governor of Illinois. It represents a local agreement made by elected officials who showed leadership.

Enactment of this legislation unlocks over \$6 billion in economic development, overwhelmingly paid for from private, not public, funds. The new airport will use parallel runways that are safer than the intersecting runways we use today. The new plan will help reduce airport noise over Arlington Heights, Mount Prospect and Palatine. To the leaders of the O'Hare Noise Compatibility Commission, Mayor Arlene Mulder and Mayor Rita Mullins, our plan opens the way for more work on enhanced noise control programs, soundproofing for schools, and research into super quiet Stage IV aircraft, issues for which they have fought for years.

Our plan upholds environmental safeguards and improves the quality of life for people in northern Illinois by reducing noise and making the airport more efficient. This legislation represents cooperation and collaboration between Republicans and Democrats, both in Illinois and in Washington. Tonight, half of the Congress will say "yes" to O'Hare and provide a strong impetus for the Senate to make this project a reality before Congress adjourns.

I urge adoption of this legislation, and I compliment the gentleman from Illinois (Mr. LIPINSKI), my partner on this effort.

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

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

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

Mr. JACKSON of Illinois. Mr. Speaker, I rise in opposition to H.R. 3479. Votes on the suspension calendar are supposed to be, by definition, non-controversial. But to argue that H.R. 3479 is noncontroversial is like arguing that the elimination of estate taxes, gun control legislation, a patients' bill of rights, and prescription drug benefits for seniors should all be put on the suspension calendar. H.R. 3479 is the most controversial of bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation where our two U.S. Senators are divided over it, in all House and Senate committees, in the full Senate, and if a full debate were held here on the House floor today, the Nation

would actually see just how controversial this bill is.

This bill has already been delayed in the Senate with one virtual filibuster. It will be subjected to every parliamentary and tactical maneuver possible to try to stop it when it comes before the Senate again. Hardly noncontroversial. To tear down and rebuild O'Hare will cost taxpayers three times as much money as it will cost to build a third south suburban airport, 15 to \$20 billion, not the \$6.6 billion that has been floated about during this debate, versus the 5 to \$7 billion to build a third airport. This bill, Mr. Speaker, is highly controversial. Tearing down and rebuilding O'Hare is estimated to take 15 to 20 years, assuming it proceeds on schedule, without lawsuits, which is not likely, while building a new south suburban airport would only take 5 years, it would expand thereafter as need arises and would be a more permanent solution to the capacity crisis. When the new O'Hare is completed, we will be in the same position we are today with regard to the air capacity crisis. How can that possibly not be seen as controversial?

This bill will increase environmental pollution. O'Hare already is the number one polluter in Illinois. Hardly non-controversial. The Chicago Tribune won a Pulitzer Prize for documenting the sleaze surrounding Chicago O'Hare and its vendor and service contracts, hardly an uncontroversial bill for Congress to be considering without full debate.

But, Mr. Speaker, most importantly, H.R. 3479 falls woefully short of providing an adequate, equitable solution to a profound problem. Although I oppose this bill for many reasons, I rise today to discuss an important element of this bill, its constitutionality. By the attempt to rebuild and expand O'Hare Airport, Congress is inappropriately violating the 10th amendment. Under the framework of federalism established by the Federal Constitution, Congress is without power to dictate to the States how the States delegate power, or limit the delegation of that power, to their political subdivisions. Unless and until Congress decides that the Federal Government should build airports, airports will continue to be built by States or their delegated agents, State political subdivisions or other agents of State power, as an exercise of State law and State power. Further compliance by the political subdivision of the oversight conditions imposed by the State legislature as a condition of delegating the State law authority to build airports is an essential element of that delegation of State power. If Congress strips away a key element of that State law delegation, it is highly unlikely that the political subdivision, the city of Chicago, would continue to have the power to build airports under State law. The political subdivision's attempts to build runways would likely be ultra vires, without authority, under State law.

Under the 10th amendment and the framework of federalism built into the Constitution, Congress cannot command the States to affirmatively undertake an activity. Nor can Congress intrude upon or dictate to the States the prerogatives of the States as to how to allocate and exercise their State power, either directly or by the State or by delegation of State authority to its political subdivisions.

It is increasingly clear, Mr. Speaker, that under *New York v. United States*, *Printz v. United States*, *Gregory v. Ashcroft*, and *Reno v. Condon* that this bill is without the authority of the Constitution of the United States, and our position is that we stand firmly on the side of our Founding Fathers when Congress seeks to impose upon the State of Illinois, ignoring the Illinois Aeronautics Act, this unconstitutional piece of legislation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under the framework of federalism established by the federal constitution, Congress is without power to dictate to the states how the

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

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

As states by the United States Supreme Court:

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

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

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

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

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

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

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

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

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

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

Commissioners of Highways, 653 F.2d at 297 Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11–102–1, 11–102–2 and 11–102–5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the

terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be *ultra vires* under state law as being without the required state legislative authority.

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

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

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

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

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

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

RONALD D. ROTUNDA, UNIVERSITY OF ILLINOIS COLLEGE OF LAW,

Champaign, IL, March 1, 2002.

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

Hon. JESSE L. JACKSON, JR.,

House of Representatives, Washington, DC.

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

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

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

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

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

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

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

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

Summary of Analysis

The following is a summary of my analysis:

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

2. The same constitutional flaws afflict the proposed Durbin-Lipinski legislation. Central to the Durbin-Lipinski legislation are two provisions [sections 3(a)(3) and 3(f)] that purport to empower or authorize Chicago (a political instrumentality of the State of Illinois, and thus a city that has no authority

or even legal existence independent of state law) to undertake actions for which Chicago has not received any delegation of authority from the State of Illinois and that, in fact, are directly prohibited by Illinois law when the conditions and limitations of the State delegation of authority have not been satisfied.

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

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

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

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

represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to conscript state instrumentalities as its agents.

7. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section provides that, if (for whatever reason) construction of the “runway design plan” is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall construct the “runway redesign plan” as a “Federal Project”. But, Section 3(f)(1) then provides that this “federal project” must obtain several agreements and undertakings from Chicago—agreements and undertakings that are controlled by state law, which limits Chicago’s authority to enter into such agreements or accept such undertakings. Chicago has no authority under the state law (which confers upon Chicago the state power to construct airports) to enter into agreements with any third party (be it the United States or a private party) to make alterations of an airport without the state permit required by state statute. Thus, Chicago has no authority under state law to enter into an agreement with the FAA Administrator to have the runway redesign plan constructed by the Federal government because Chicago has not received approval from the State of Illinois under the Illinois Aeronautics Act—a specific condition and prohibition of the delegation of state power (to build airports) to Chicago by the Illinois General Assembly. Just as Chicago (a creation and instrumentality of the State of Illinois) has no power or authority under state law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Sections 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both New York v. United States and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both New York v. United States and Printz do not allow).

8. The Durbin-Lipinski legislation is not a law of “general application”. There is a line of Supreme Court decisions which allow Congress to use the Commerce Power to impose obligations on the States when the obligations imposed on the States are part of laws which are “generally applicable” i.e., that impose obligations on the States and on private parties alike. See e.g., *Reno v. Condon*, 528 U.S. 141 (2000) (Federal rule protecting privacy of drivers’ records upheld because they do not apply solely to the State); *South Carolina v. Baker*, 485 U.S. 505 (1988); (state bond interest not immune from nondiscriminatory federal income tax); *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, upheld). But these cases have no application where, as here and in New York and Printz, the Congressional statute is not one of general applicaiton but a specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubly unconstitutional, because it does not apply to private parties or even to all States but only to one State (Illinois) and its relationship to one city (Chicago). The Durbin-Lipinski legislation proposes to use Chicago (an instrumentality of state power whose authority to

construct airports is an exercise of state power expressly limited and conditioned on the limits and prohibitions imposed on that delegation by the Illinois legislature) as a federal instrumentality to implement federal policy. Congress is commandeering a state instrumentality of a single State (Illinois) against the express statutory will of the Illinois Legislature, which has refused to confer on Chicago (an instrumentality of the State) the state law power and authority to build airports unless Chicago first obtains a permit from the State of Illinois. This is an unconstitutional use of the Commerce Power under the holdings New York and Printz and does not fall within the “general applicability” line of cases such as *Reno v. Condon*, *South Carolina v. Baker*, and *Garcia*.

ANALYSIS

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

A. The basic legal principles

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

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

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

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

The Illinois Aeronautics Act Expressly Limits Chicago’s Power to Build and Alter.

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

B. The federalism problem

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

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

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

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

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

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

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

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

New York v. United States

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

special legislation and regulates the State's regulation of interstate commerce dealing with O'Hare Airport.

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

The leading case, *New York v. United States*, held that the Commerce Clause does not authorize the Federal Government to conscript state governments as its agents. "Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents." The proposed Durbin-Lipinski legislation will do exactly what *New York* prohibits: it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

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

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

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

complied with the Illinois Aeronautics Act and other state rules.

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

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

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

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

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

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

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

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

to work in coal mines, whether a private company or a State owns the coal mine and employs the workers.

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

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

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

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

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

While there are those who have attacked the restrictions that *New York v. United States* have imposed on the Federal Government, it is worth remembering the line-up of the Court in *Maryland v. Wirtz* when the justices first considered this issue. That case rejected the applicability of the Tenth Amendment and held that it was constitutional for Congress to set the wages, hours, and working conditions of employees, including state employees in interstate commerce. However, Justice Douglas, who was joined by Justice Stewart, dissented. Douglas found the law to

be a "serious invasion of state sovereignty protected by the Tenth Amendment" and "not consistent with our constitutional federalism." He objected that Congress, using the broad commerce power, could "virtually draw up each State's budget to avoid 'disruptive effect[s]'" on interstate commerce. *New York v. United States* prevents this result.

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

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtained the information from a state DMV. The Court concluded: "The DPPA's provisions do not apply solely to States." Private parties also could not buy the information for certain prohibited purposes nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

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

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

CONCLUSION

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

There is no escape from the conclusion that the proposed federal law does not regu-

late the behavior of private parties in interstate commerce. It does not subject the State of Illinois to "generally applicable" legislation. Instead, Congress is regulating the state's regulation of interstate commerce. Congress may not conscript the instrumentalities of state government and state power as tools of federal power. The case law is clear that Congress does not have this power.

Sincerely,

RONALD D. ROTUNDA,

The Albert E. Jenner, Jr. Professor of Law.

CHICAGO IS NOT AN AGENCY OF THE FEDERAL GOVERNMENT

(By Ronald D. Rotunda)

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

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

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

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

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

work for the state. Cities are creatures of state law, and they have only the powers that the state chooses to give them.

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

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

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

A CONTROLLER'S VIEW

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

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

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

The problems that face O'Hare are some of the same problems facing Midway Airport. Midway boasts as being aviation's busiest square mile. Nowhere else are there more commercial airplanes landing and departing in such a condensed area. Unfortunately, Midway Airport is very condensed. Due to runway lengths, it can only handle the smallest commercial aircraft. The airport is severely landlocked with major streets, houses and businesses immediately surrounding the field. Even with the current

terminal expansion project in effect, an insufficient number of taxiways and the size of the runways, in my opinion limit any significant increase in traffic.

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

Another point of interest, which may have been overlooked, is corporate aircraft. The use of corporate aircraft is one of the fastest growing fields in aviation. There are very few, if any airports that can accommodate corporate aircraft in the south Chicagoland area. With the pending closure of Meigs Field in Chicago, the Peotone airport would fill the need for another corporate airport crucial to south Chicagoland businesses. Furthermore, suggestions that a third major airport being located in the immediate Chicagoland area, namely Gary, Indiana, would not alleviate the saturation problem Chicago is already facing.

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

JOHN W. TEERLING,
Lockport, IL, January 18, 1999.

Re A Third Chicago Airport.
Governor GEORGE RYAN,
State Capitol, Springfield, IL.

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

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

Another item to consider, which I feel is extremely important, is whether. I have frequently observed that there are two distinct weather patterns between O'Hare and Kankakee. Very often when one is receiving snow, fog or rain the other is not. These conditions affect the visibility and ceiling conditions determining whether the airports operate normally or not. Because of the difference in weather patterns when one airport, say O'Hare, is experiencing a hampered operation, an airport in Peotone, in all prob-

ability, could be having more normal operations. Airliners could then divert to the "other" Chicago Airport, saving time and money as well as causing less inconvenience to the public. (It's better to be in Peotone than in Detroit).

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

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

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

Sincerely,

JOHN W. TEERLING.

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

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

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

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

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

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

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

This development trend extended to the suburban area. While the six-county Chicago Area grew by 275,000, the north and north-west suburbs were the major beneficiaries. DuPage, Lake and Northwest Suburban Cook (around O'Hare) Counties contributed 194,000 jobs, or 71 percent of the net growth. With 500,000 jobs in Chicago's Central Business

District versus 450,000 in North Suburban Cook County and 150,000 in Northeast DuPage County, the economic center of the region has shifted from downtown to O'Hare.

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

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

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

THE PLANNING PROCESS: TWELVE YEARS OF FINDINGS

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

on many occasions by IDOT. The State's forecasts have been corroborated, independently, by a decade of observations. They are reinforced in the latest study for the Chicagoland Chamber of Commerce. It is agreed, by all key interest groups, that the Chicago region must increase its aviation capacity.

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

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

THE DEVELOPMENT ALTERNATIVES

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

As is clearly documented by a recent Chamber study, O'Hare's benefits are conferred, primarily, on the west, north and northwest suburbs. Virtually all of O'Hare's employees reside near it. In addition, it has garnered high concentrations of development. These concentrations, however, have led to congestion and increased land values.

High land prices have forced businesses and developers to plan future growth on the most environmentally-sensitive fringes of the region and in areas farther removed from the region's central core.

THE TWO SIDES OF THE COIN

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

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

Whether the region expands O'Hare or builds a supplemental airport, O'Hare's riches will remain and grow. It is currently enjoying a \$1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an \$300-million-publicly-funded new terminal. However, this \$1.8 billion investment will not increase capacity. The initial infrastructure investment of \$500 million (\$2.5 billion through 2010) to build the Third Chicago Airport, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs—in the right places—by 2020. Additional airport access jobs will benefit the entire region. In addition, it will reinforce the City of Chicago's role as the center of the region's growth.

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

THE ARGUMENT FOR SMART GROWTH WITH CHICAGO'S THIRD AIRPORT

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

Demand will more than double by 2020.

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

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

Dampened aviation growth.

Increased and non-competitive fares.

Lost jobs, conventions and other opportunities.

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

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

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

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

It will encroach on environmentally-sensitive areas.

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

It will buttress monopolistic behavior by major airlines.

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

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

It provides nearby, inexpensive land for development.

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

It allows three airport facilities to function at optimal capacity.

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

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

Resources are available to build the airport.

Federal Funds for airport development will increase by 50 percent.

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

Ultimately, the passenger pays through Passenger Facility Charges.

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

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

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

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

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

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

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

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

6. With 500,000 jobs in Chicago's CBD, versus 450,000 in North Suburban Cook and

150,000 in Northeast DuPage, the economic center of the region has shifted from Down-town to O'Hare.

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

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

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

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

SOUTH SUBURBAN AIRPORT: AVIATION DEMAND IN THE CHICAGO REGION

Background Assumptions for Demand Forecasts

Aviation demand is derived from a few basic factors:

The national/international growth in aviation.

The socio-economic dynamics and growth of the region.

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

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

The capacity of its airports.

The competitiveness of its fares.

National/International Aviation Growth

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

International enplanements and freight are growing even more rapidly.

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

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

Socio-Economics Create Demand

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

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

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

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

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

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

Location Drives Connecting Flights

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

The recent Booz-Allen study, prepared for the City, forecasts an international growth

that is higher than IDOT's; and claims that high ratios of connecting to O/D are not just desirable, but necessary.

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

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

Aviation Growth Parallels IDOT Forecasts

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

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

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

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

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

Capacity Constraints Jeopardize Economic and Aviation Growth

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

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

Domestic enplanements at O'Hare have declined this year.

Small cities have been dropped from service.

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

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

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

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

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

NIPC FINDINGS—NOVEMBER 1996

TALKING ABOUT THE REGION'S FUTURE

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

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

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

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

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

Yes, said strong majorities of participants in two public workshops conducted by NIPC in June and September of this year. The workshops were held as part of an effort to engage the region in a discussion of growth choices facing us. Participants representing

local governments, state and federal agencies, and civic and community organizations were asked to respond to possible future development patterns, their probable consequences, and the tools it would take to bring them about. The broad choice which framed the discussions was this: should anticipated future growth continue along the path of past trends or should efforts should be made to moderate the physical decentralization of the region?

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

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

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

What We Have Heard

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

The Forecast: A Growing Region

The preparation of forecasts of future population, households, and employment is one of NIPC's most important responsibilities. These are not simply forecasts of the numbers of people, households and jobs which will be in the region in a future year. People, households, and jobs imply houses, roads, sewers, and parks. The forecasts thus represent the Commission's best estimate of how activities and facilities will be distributed across the region: where new housing will be necessary and old housing may become vacant, where new or expanded streets and sewers will be required, and where streams and wetlands will come under

pressure from growing population. The forecasts thus have implicit in them a generalized land use plan for the region. It is critical that they be as realistic as possible in reflecting the trends and constraints of the market, the influences of public policy, and expectations of local governments.

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

On June 26, 1996, the Commission conducted the first of two regional workshops on alternative growth scenarios and their implications. The intent was to assess how much support there might be for different development patterns and how much acceptance of their probable costs. It was hoped that participants would set aside issues of feasibility for the time being and respond to the question of what is the most desirable future for the region. The workshop was attended by 127 people representing a broad spectrum of organizations and interests.

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

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

cline. The separation of affordable housing from low-income jobs would continue to increase.

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

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

The redevelopment scenario was designed to simulate the effect of efforts to moderate the worst unintended consequences of recent trends. Two important conclusions emerge from an examination of the scenario results: Given NIPC's overall forecasts, economic growth in northeastern Illinois need not be an either-or situation. Even with deliberate efforts to encourage reinvestment in the mature core communities, the balance of the region can sustain a relatively high level of growth.

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

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

Barry Hokanson, Director of Planning, Lake County: Lake County is expected to experience high growth under any one of the scenarios. While the county has programs to meet the demands on resources and services

generated by growth, the multiplicity of local governments makes the translation of regional projections into coordinated local planning difficult. There are strong voices in Lake County advocating constraint on new transportation capacity as a means of limiting growth and encouraging mature-area reinvestment.

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

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

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

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

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

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

The Suburban O'Hare Commission

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

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

compete in each other's Fortress Hub markets—creates serious economic, social, and environmental harm in broad areas of the metro Chicago region.

PREFACE

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

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

Virtually ignored by Congress and the Administration has been the concerted refusal of the major airlines—the so-called "Big Seven" (Northwest, United, American, Delta, US Air, Continental, and Trans World)—to compete with their fellow major airlines in each other's Fortress Hub cities. This study, prepared by the Suburban O'Hare Commission (SOC), focuses on the collective refusal of the Big Seven to compete with each other and examines the question as to whether this geographic allocation of Fortress Hub markets by the Big Seven violates federal antitrust laws. Does the Big Seven's refusal to compete in Metropolitan Chicago—their refusal to use the South Suburban Airport: "If you build it, we won't come."—violate federal anti-trust law?

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

THE FINDINGS OF THIS STUDY

The study's findings include:

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

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

oly title American consumer: billions of dollars per year in excess fares—hundreds of millions per year in metropolitan Chicago alone.

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

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

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

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

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

6. It Appears That Federal Taxpayer Funds May Have Been Used to Suppress Competition and Violate the Antitrust Laws in the Chicago Market. United and American (the dominant carriers at O'Hare)—along with other major airlines through the Air Trans-

port Association—have engaged in a concerted effort to defeat construction of a new South Suburban Airport, an airport that would provide significant capacity opportunities for major new competition to enter the Chicago market. United executives have stated their goal as "Kill Peotone".

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

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

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

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

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

In an attempt to expand their monopoly and prevent new competition from entering the Chicago market, United and American—along with their surrogate allies—have

sought to distract attention by suggesting a south suburban airport in metro Chicago as a "point-to-point" airport—not unlike Midway. United and American argue that O'Hare should be the only "hub-and-spoke" airport in metropolitan Chicago.

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

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

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

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

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

10. The Lifting of the Slot Limits at O'Hare Will Not Provide Sufficient Capacity to Allow Significant New Competition to

Enter the Chicago Area Market. Much of the debate over the recent passage of the federal reauthorization of the Federal Aviation Program involved the issue of lifting "slot restrictions" at LaGuardia and Kennedy airports in New York and O'Hare in Chicago. One of the principal asserted justifications for lifting the slots was to provide access to so-called "new entrant" carriers that would presumably provide competition for the dominant carriers at O'Hare and force prices down. Yet FAA's own capacity studies at O'Hare demonstrate that O'Hare is already beyond acceptable limits of capacity and can provide only marginal capacity access—if any.

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

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

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

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

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

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

O'Hare area communities will be subjected to more noise, more air pollution, and more safety hazards because—under the United, American, and Chicago proposal—all the international, all the transfer traffic, and the lion's share of the origin-destination traffic are jammed into an already over-stuffed O'Hare. Any new airport—even if built—will simply receive the origin-destina-

tion overflow (if any) from a vastly expanded O'Hare and Midway.

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

RECOMMENDATIONS

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

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

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

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

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

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

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

7. Our Governor and our two United States Senators, the Speaker of the House, and our Illinois Attorney General should be respectfully asked what specific actions they will take to (1) break up the Fortress Hub system—particularly Fortress O'Hare; (2) bring new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress

O'Hare overcharges; (4) prevent the Big Seven from continuing to refuse to use the new capacity provided to the South Suburban Airport; and (5) assemble the federal and state resources needed to rapidly build the South Suburban Airport.

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

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

INTRODUCTION—RELEVANT QUOTATIONS

Alfred Kahn, the "father" of airlines deregulation:

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

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

Gordon Bethune, Chairman and CEO, Continental Airlines:

"Continental chief says hub competition over,"

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

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

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

U.S. Senator Mike Dewine:

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

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

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

USA Today:

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

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

Business travelers have been especially hard hit at hubs.

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

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

New York Times:

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

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

The burden of high fares is even greater on small companies. John W. Galbraith, president of Twin Advertising, a small company based in Rochester that had \$2 million in billings last year, said he was thinking about dropping clients outside the city because the high cost of visiting them cancels out the profit he makes from having their business. "Basically, what the airlines have done to companies like ours is kept us from growing," he said. (New York Times January 11, 1998)

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

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

Relevant Provisions of The Sherman Act:

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

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign na-

tions, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. (Title 15 United States Code §2)

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

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

1. Focusing on the Elephant in the Corner.

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

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

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

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

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

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

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

There is overwhelming and incontrovertible evidence that, since "deregulation" in 1978, the market airlines have carved up major areas of the Nation into territories of geographic market dominance known as "Fortress Hubs". Under this Fortress Hub arrangement, one or two major airlines are

ceded geographic market dominance and other major airlines tacitly agree not to compete in that geographic market.

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

As stated by one congressional witness:

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

"There are two things the major airlines are doing to monopolize large segments of the country. First, they work hard to see that entry to their large markets remains closed or difficult. Second, if a discounter enters a few of their markets they use predatory pricing to drive the discounters out of business."

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

CITIES WHERE FORTRESS HUBS ARE LOCATED

City and Dominant Airline

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

3. Monopoly Fare Premiums at Fortress Hubs.

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

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

Subsequent studies by GAO since 1990 have confirmed the problem of higher fares at Fortress Hubs—higher than would exist in a competitive environment. See e.g., *Barriers to Entry Continue in Some Markets* (GAO/RCED-98-112; March 5, 1998); *Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets* (GAO/RCED-97-4, Oct. 18, 1996); *Domestic Aviation: Barriers to Entry Continue to Limit Benefits of Airline Deregulation* (GAO/

RCED-97-120, May, 13, 1997); *Airline Competition: Higher Fares and Less Competition Continue at Concentrated Airports* (GAO/RCED-93-141, July 15, 1993); *Airline Competition: Effects of Airline Market Concentration and Barriers to Entry on Airfares* (GAO/RCED-91-101, Apr. 26, 1991).

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

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

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

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

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

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

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

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

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

The Illinois Department of Transportation estimates this monopoly based fare penalty

at O'Hare alone exceeds several hundred million dollars per year. Nationally, the loss to the traveling public from these monopoly premiums at Fortress Hubs is likely to exceed several billion dollars annually.

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

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

Business travelers have been especially hard hit at hubs

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

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

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

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

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

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

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

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

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

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

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

to charge exorbitant rates—knowing that the small community spoke traveler is at their mercy.

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

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

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

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

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

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

"It is only after considerable experience with certain business relationships that courts classify them as per se violations of the Sherman Act. See generally *Van Cise, The Future of Per Se in Antitrust Law*, 50 *Va.L.Rev.* 1165 (1964). One of the classic examples of a per se violation of §1 is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. Such concerted action is usually termed a 'horizontal' restraint, in contradistinction to combinations of persons at different levels of the market structure, e.g., manufacturers and distributors, which are termed 'vertical' restraints. The Court has reiterated time and time again that '(h)orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition.' *White Motor Co. v. United States*, 372

U.S. 253, 263, 83 S. Ct. 696, 702, 9 L.Ed.2d 738 (1963). Such limitations are per se violations of the Sherman Act. See *Adlystton Pipe & Steel Co. v. United States*, 175 U.S. 211, 20 S.Ct. 44 L.Ed.136 (1889), aff'g 85 F. 271 (C.A.6 1898) (Taft, J.); *United States v. National Lead Co.*, 332 U.S. 319, 67 S.Ct. 1634, 91 L.Ed. 2077 (1947); *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 71 S.Ct. 971, 95 L.Ed. 1199 (1951); *Northern Pacific R. Co. v. United States*, supra; *Citizen Publishing Co. v. United States*, 394 U.S. 131, 89 S.Ct. 927, 22 L.Ed.2d 148 (1969); *United States v. Sealy, Inc.*, 388 U.S. 350, 87 S.Ct. 1847, 28 L.Ed.2d 1238 (1967); *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365, 390, 87 S.Ct. 1856, 1871, 18 L.Ed.2d 1249 (1967) (Stewart, J., concurring in part and dissenting in part); *Serta Associates, Inc. v. United States*, 393 U.S. 534, 89 S.Ct. 870, 21 L.Ed.2d 753 (1969), aff'g 296 F.Supp. 1121, 1128 (N.D.Del.1968)." (*United States v. Topco Associates, Inc.*, 405 U.S. at 607-608 (emphasis added))

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

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

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

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

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

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

Chicago area news media have characterized the major airlines' refusal to use a new

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

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

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

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

Section 1 of the Sherman Act provides:

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

Section 2 of the Sherman Act provides:

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

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

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

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

[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendant

resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. (Title 15 United States Code §15)

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

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

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

But the post-Noerr-Pennington case law makes clear that where a business arrangement—that otherwise violates the antitrust laws—has one component that involves the exercise of First Amendment speech, there is no immunity from antitrust enforcement under the “Noerr-Pennington” doctrine. See *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 505–506 (1988); *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423–426 (1990); *Sandy River Nursing Care v. Aetna Casualty*, 985 F.2d 1138, 1142–43 (1st Cir. 1993); *In re Brand Name Prescription Drugs Antitrust Litigation*, 186 F.3d 781, 788–789 (7th Cir. 1999).

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

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

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

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

problem there. Second, the State is not actively supervising and approving the anti-competitive conduct by United and American and Chicago.

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

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

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

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

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

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

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

13. Defining Essential Remedies—A New Regional Airport With Sufficient Capacity to

Support New Competitive Hub-And-Spoke Operations.

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

A. Lifting the Slot Limits Was an Unmitigated Disaster.

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

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

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

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

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

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

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

This relationship between maximum physical throughput and practical, delay-sensitive capacity is illustrated in a FAA chart copied from an FAA report on the subject,

Airfield and Airspace Capacity/Delay Policy Analysis, FAA-APO-81-14.

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

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

What is important to emphasize is that all FAA and Chicago—and most likely Booz-Allen and United and American—runs of the SIMMOD model for O'Hare show average annual delay at O'Hare is currently in excess of 10 minutes average annual delay—already above acceptable capacity limits without adding more flights. FAA and Chicago and United and American all know that a push 400-500 new flights per day into O'Hare is going to lead to: (1) massive increases in delays and (2) widespread cancellations. FAA (USDOT) A Study of the High Density Rule illustrates the massive delay increase that adding just a few flights at O'Hare beyond the slot limits will do to all passengers at O'Hare. This analysis shows that adding 400-500 flights per day will lead to disastrous delays for all passengers—more than doubling the delays for all passengers, not just those who are on the new additional flights.

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

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

There is another important point to emphasize about this throughput/delay relationship shown on the FAA charts. Where the airport is at the limits of acceptable delays—i.e., the practical capacity limit—very small shifts in either traffic demand or capacity can dramatically increase delays for all passengers. Thus a small increase in traffic demand beyond the practical capacity limit will generate huge increases in delays for all passengers. Similarly, a slight decrease in capacity—such as experienced this past year when regional jet pilots were refusing Land-And-Hold-Short for safety reasons—can dramatically increase delays with little or no increase in throughput. The point here is that O'Hare is already at the breaking point—brought there by the resistance of Chicago and the Fortress Hub airlines at O'Hare (United and American) to the building of a new regional airport. O'Hare

cannot handle 400-500 new flights per day and United and American know it. Their own SIMMOD analysis tells them that.

Why then do United and American announce a literally foolhardy plan to jam 400-500 flights into O'Hare—an announcement made the same day that United's and American's front organization (the Civic Committee) calls for a new runway at O'Hare? By deliberately creating chaos at O'Hare, United and American will then be able to say that delays are at crisis levels and we must immediately build a new runway at O'Hare. B. The "Point-To-Point" Shell Game: Building the South Suburban Airport as a "Point-To-Point" Airport Will Not Break the Hub-And-Spoke Monopoly of Fortress O'Hare.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

South Chicago and south suburban communities will continue to suffer serious economic decline because the South Suburban Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of United and American and the political pique of Chicago's mayor. Residents of South and South Suburban Chicago legitimately ask why United and American oppose the hundreds of thousands of jobs and billions in economic benefits that would accrue to this area if the new airport is built. Some attribute United and American's position to racial intent. More accurately, United and American are willing to ignore the severe economic harm their monopolistic position inflicts on an area with a significant African-American population if that harm is a necessary consequence of preserving and expanding their monopoly at Fortress O'Hare. In a world of pure economic rationality, monopoly power and the social and economic injustices incident to that monopoly power might be excused as central to the maximization of profit. However, in a world of law and justice—where political leaders must account for their failure to correct these abuses—such destructive monopoly power should not be tolerated.

RECOMMENDATIONS

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

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

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

The State Attorneys General should initiate civil damage actions to recover treble damages for the billions of dollars per year in excess monopoly profits in airfare overcharges that have been charged at the Big Seven's Fortress Hubs. The Illinois Attorney General should bring suit to recover treble

damages for the hundreds of millions of dollars in monopoly overcharges by American and United at Fortress O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

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

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

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

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

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

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

CONCLUSION

The monopoly abuses of the Fortress Hub system—and especially the abuses of Fortress O'Hare and the refusal of the Big Seven to compete in metropolitan Chicago—are a national disgrace. It's time to end it.

SUBURBAN O'HARE COMMISSION—EXECUTIVE SUMMARY

A study prepared by the Suburban O'Hare Commission concludes that the major airlines have committed per se violations of federal antitrust laws by refusing to compete with each other in Fortress Hub markets, such as in the metro Chicago region now dominated by "Fortress O'Hare".

The glaring example of these monopolistic practices are documented by the major airline's letter to former Illinois Gov. Jim Edgar which, in effect, said if the state builds a new airport in Chicago's southern suburbs, "we won't come."

That leaves United and American airlines, which control over 80 percent of the air traf-

fic at O'Hare in an unchallenged market position. It would be as if Ford Motor Company told General Motors, "If you agree not to sell cars in Chicago, we will agree not to compete with you in Los Angeles."

SOC's major findings include:

The de facto agreement among the "Big Seven" airlines—Northwest, United, American, Delta, US Air, Continental and Trans World—not to compete in each others hub market is the heart of the monopoly problem.

The resulting fortress hub monopolies are costing American air travelers billions of dollars annually in monopoly induced higher fares, especially the fares charged to time-sensitive business travelers and "spoke" passenger who must connect through the hub to get to their ultimate destinations.

The Big Seven's geographic market allocation violates the nation's antitrust laws, based on clear and repeated Supreme Court decisions which have roundly condemned arrangements to carve up geographic markets horizontally.

In Chicago, the clear violation of the antitrust law is demonstrated by the abandonment by major airlines of meaningful competition to United and American at O'Hare and the announcement that they would not use a South Suburban Airport if built.

The airlines can't defend their anti-competitive practices with the "Noerr-Pennington" doctrine, which asserts that petitioning the government to help the industry engage in antitrust actions is protected under Free Speech guarantees. Case law doesn't protect anti-competitive practices that have evolved independent of any government authorization, as in the present case.

Nor can the airlines or Chicago defend themselves by the "state action" doctrine, which allows states, as a matter of federalism, to consciously participate in monopoly practices. For this defense to succeed, Supreme Court decisions require that the state must clearly endorse and supervise the monopoly practices. Here there has been no such approval of the Fortress Hub monopoly abuses by the State of Illinois.

Chicago and its officials are not immune from antitrust law liability for helping the major airlines avoid competing with the United/American cartel at O'Hare.

Federal taxpayer funds may have been used to suppress competition and violate antitrust laws in the Chicago market.

The Clinton administration has not only looked the other way in not bringing antitrust enforcement action to break up the Fortress Hub system, but has affirmatively assisted Chicago and United and American in blocking significant new competition from entering the region by blocking development of a new regional airport in metro Chicago.

The lifting of slot limitations will not allow significant competition to enter the Chicago market. Instead—as predicted by Senator Fitzgerald and Congressman Hyde—the lifting of the slots will be accompanied by massive increase in delays and by United and American simply expanding their monopoly control at the airport.

Construction of a new runway for "delay reduction" is simply subterfuge to expand the size of United and American's Fortress Hub operation at O'Hare. Building a new runway at O'Hare will make the monopoly problem—and resultant air fare overcharges—even worse. Moreover, it will doom the economic viability of the New South Suburban Airport.

Recommendations

Based on these findings, SOC recommends: Investigations by the U.S. Attorney General and U.S. Attorney for Northern Illinois

into activities by the airlines, the city of Chicago, consultants and other third parties which have been used to protect and expand the Fortress Hub system nationally—and in particular to prevent new airport development in the metro Chicago region.

Civil action by the Attorney General and U.S. Attorney here to break up the Fortress Hub system and to compel the major airlines to stop their refusal to compete in metro Chicago.

Action by state attorneys general to recover treble damages for fliers who were charged billions of dollars in excess fares as a result of the Fortress Hub system.

A Government Accounting Office and Department of Justice audit of federal taxpayer funds to subsidies that abetted the antitrust violations, particularly efforts to kill the South Suburban Airport.

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

The withholding of U.S. Transportation Department of any more federal funds for expansion of the United and American duopoly at Fortress O'Hare.

An explanation and action by Illinois' highest elected officials as to what they will do to break up the Fortress O'Hare monopoly and provide for a new south suburban airport.

A clear statement by Republican and Democratic candidates for president to state their positions on Fortress Hubs, especially O'Hare and the role of the federal government in either breaking up Fortress O'Hare or building new capacity for new competition at the South Suburban Airport.

STUDY FINDS MAJOR AIRLINES AND CHICAGO VIOLATE FEDERAL ANTITRUST LAWS TO SUPPORT HIGH MONOPOLY FARES AND BLOCK NEW COMPETITION

BENSENVILLE, IL, May 21, 2000.—The nation's major airlines have committed serious violations of U.S. antitrust laws by refusing to compete with each other in "Fortress Hub" markets, including Chicago, a study by the Suburban O'Hare Commission concludes.

The study (entitled "If You Build It, We Won't Come: The Collective Refusal of the Major Airlines to Compete in the Chicago Air Travel Market") calls for an investigation by the Justice Department into the anti-competitive practices by the airlines, and also by the city of Chicago, its consultants and third party allies, which have been complicit in the antitrust violations. Based on the study, SOC officials also called for:

U.S. Attorney General Janet Reno to begin civil action to break up the hub monopolies.

State attorneys general to recover treble damages for fliers who have been billed billions of dollars in excessive fares made possible by the monopolistic practices. The U.S. Transportation Department to withhold any more federal funds for the expansion, and further strengthening, of the United and American airlines' cartel at O'Hare Airport in Chicago.

General Accounting Office and Department of Justice audits of funds that have been used to abet the antitrust violations, including the airlines' and Chicago Mayor Richard M. Daley's efforts to kill a proposed hub airport in Chicago's south suburbs.

Governor Ryan to hold to his firm commitment not to permit new runways at O'Hare since such runways would expand United's and American's Fortress Hub monopoly at O'Hare and would doom the economic jus-

tification for the new South Suburban Airport.

SOC is a government agency representing more than 1 million residents who live in communities surrounding O'Hare airport. The study alleges that the airlines, the city of Chicago, its consultants and allies have used millions of dollars of taxpayers' money to thwart a south suburban airport that would bring competition to the United and American airlines' cartel at O'Hare and to expand the Fortress Hub monopoly at O'Hare.

"The antitrust violations are as clear and as egregious as if Ford said to General Motors, 'We won't compete against you in Chicago, if you agree not to compete against us by selling cars in Los Angeles'" said John Geils, SOC chairman and mayor of Bensenville, which borders O'Hare Airport. "The major airlines even went so far as to write two governors of Illinois, in their infamous 'If you build it, we won't come' letters that they would not use a south suburban airport. This extraordinarily public flaunting of the nation's antitrust laws simply cannot be tolerated."

The heart of the antitrust violations, according to the study, is found in the de facto agreement among the big seven airlines—Northwest, United, American, Delta, US Air Continental and Trans World—to not significantly compete in each others' hub markets. The resulting domination by these airlines of their "own" airports (such as Delta in Atlanta, TWA in St. Louis and Northwest in the Twin Cities), forces fliers, especially time-sensitive business travelers, billions of dollars in unwarranted and additional fares, government studies have shown.

"Taxpayers should be concerned that millions of dollars of federal money, raised in part through taxes on every passenger using O'Hare, among other airports, have gone towards financing costly public relations and political lobbying campaigns to support this restraint of trade," said Craig Johnson, vice president of SOC and mayor of Elk Grove Village. "At every turn, the recommendation of expert panels to relieve the pressure on O'Hare and the national aviation system by building an airport in Chicago's south suburbs has been stymied by this campaign. It begins with two airlines' insatiable desire to dominate the Chicago market and is abetted by other major airlines interested in protecting their own turf. And it is carried out by a compliant Chicago mayor who is dependent on the political spoils of a monopolistic O'Hare airport and those who share in those spoils—contractors, political consultants, big public relations firms, concessionaires and their friends in corporate board rooms and the media."

Said Geils: "The antitrust movement 100 hundred years ago was aimed at breaking up precisely this sort of attack on the public and consumers. After a century, we don't need new laws. What we need are responsible public officials who won't look the other way, who will carry out the sworn duties of their office."

The hub-and-spoke airline market was made possible by aviation deregulation two decades ago, which gave commercial carriers the right to compete where, when and at what price they wanted. But instead of the robust competition that deregulation was intended to spawn, it led to increasing concentrations of power of separate airlines at separate "Fortress Hub" airports. While the industry will argue that this leads to economies of scales that are passed along to some air travelers in the form of price savings, government and independent studies show that large numbers of travelers—especially time-sensitive business travelers—are actually paying billions more.

The costs, said Geils, are paid in more than just higher fares. "They come in the form of more air pollution, more noise and more safety hazards that the airlines are willing to impose on O'Hare area communities—simply to protect and expand the Fortress O'Hare monopoly. We now live in a bizarre world where the desire to protect and profit from illegal overcharges trump the protection of public health, safety and quality of life."

[From The Sun Times, May 20, 2000]

GORE'S INTEREST HARDLY PUBLIC

(By Jesse Jackson, Jr.)

At a recent Democratic fund-raiser hosted by Mayor Daley, Al Gore, the vice president and presumptive Democratic nominee, said: "The Department of Transportation has said at the present time it's a bit premature to build a third airport . . . and I have agreed with that. What happens in the future depends on the best public interest. I know there is a strong public interest in making sure that the health of O'Hare remains very strong."

Let's look at Gore, O'Hare and the public interest.

First, is the "best public interest" served through local or national control of federal transportation policy? Gore came before the Congressional Black Caucus and said that "federalism" would be an important issue in the 2000 campaign. Since George W. Bush is openly a "states' righter," I assumed that the vice president was appealing to us for support by saying, as president, he would fight for federal policies that contributed to the public interest. Gore did that in the South Carolina flag issue, but in the case of Elian Gonzalez in Florida and a third airport in Chicago he, too, deferred to the locals.

Gore is right that the DOT has recommended against building a third airport now. However, Gore did not share the rationale for the DOT's recommendation. Did he draw his conclusion after a thoughtful series of dispassionate, hard-nosed government studies? Or were 2000 political considerations uppermost? President Clinton has told some Chicagoans privately that, "Jesse Jr. may be right about the airport, but this is an election year." However, at Daley's request, the Clinton-Gore administration in 1997 took Peotone off the nation's planning list, making it ineligible for federal funds. Thus, one is led to conclude that, in Chicago, local politics control federal aviation policy, rather than the public interest. O'Hare is the new patronage system in Chicago—which includes lucrative no-bid contracts, jobs and vendor access.

Is unbalanced growth in the public interest? Chicago eventually plans to spend at least \$15 billion to gold-plate O'Hare (and Midway) and build additional runways at O'Hare. For considerably less money—\$2.3 billion—one could build four runways and 140 gates and, more important, achieve balanced economic growth. A recent downtown business study said current plans will add \$10 billion to the economy around O'Hare and 110,000 new jobs. Such a plan will meet Chicago's transportation needs for the foreseeable future and "keep the health of O'Hare . . . very strong," as Gore desires. But such a policy will kill Peotone and its potential 236,000 new jobs, and will lead to increased class and caste segregation in the Chicago metropolitan area—a community already well known for such patterns. Was that understanding part of Gore's calculation of the "public interest" when he affirmed O'Hare and negated Peotone?

The top 11 businesses in the 2nd Congressional District, with nearly 600,000 residents, employ a mere 11,000 people—one job for

every 60 people. By contrast, more than 100,000 people go to work in Elk Grove Village, a city of 36,000 people—three jobs for every person. The effect of Gore's position on O'Hare will only add to this disparity. Apparently, Gore sees the option as either a "zero sum" game—if we build Peotone it will hurt O'Hare—or he is willing to accept the consequences of unbalanced growth that would make the southern part of Chicago and Cook County even poorer, blacker, more segregated and dependent on government and taxpayers. Is Gore claiming that such economic imbalance and racial segregation are in the public interest?

Are increased class and caste disparities in the political interests of Gore? Quite naturally, politicians representing areas of excess private jobs will want lower taxes and less government—the Republican agenda. My area, in desperation, will turn to the government as the lifeboat of last resort to keep it afloat at a subsistence level, even as crime soars, social needs rise, services fail and hardworking, middle-class taxpayers revolt against "welfare cheats and free-loaders." With nowhere else to go, these African Americans and poor people who vote will turn to Democrats to save them. Thus, it will perpetuate a Democratic image as the party of big government and undermine Gore's efforts to downsize and "reinvent" government.

Balanced economic growth better serves the entire region. In Gore's own political interests, he should look anew at O'Hare and Peotone and make another assessment of what is truly in the public interest.

MEMORANDUM—JULY 13, 2002

To: Senator Peter Fitzgerald, Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

From: Joe Karaganis.

Re: Impact of the Lipinski/Oberstar Bill on Illinois Law and Unchecked Condemnation Powers for Chicago to Condemn Land in Other Communities.

Sandy Murdock asked me to give you some background legal analysis of the impact of the language in the Lipinski/Oberstar bill (see § 3 of the bill) to create a federal law override (preemption) of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residential and business properties in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis Webster of the DuPage County Circuit Court entered a ruling declaring that Chicago had no authority under Illinois law to acquire property in other municipalities without complying first with § 47 of the Illinois Aeronautics Act, 620 ILCS 5/47 which requires any municipality to first obtain a "certificate of approval" from the Illinois Department of Transportation before making any alteration or extension of an airport.

Prior to her ruling, Chicago had proposed to acquire and demolish over 500 homes in Bensenville before seeking a certificate of approval. In testimony at the July 9, injunction hearing before Judge Webster, the lead IDOT official in charge of the IDOT approval process (James Bildilli) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all the homes and businesses proposed in Bensenville and Elk Grove (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which IDOT would hear evidence and consider whether the harm caused by the acquisition and demolition justified IDOT's ap-

proval of the project. Essentially IDOT, in reaching its decision on the certificate of approval, would hear and consider evidence of the harm caused by the acquisition and demolition and consider this harm as a basis of its decision—but only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire by condemnation or otherwise all of Bensenville, Wood Dale, Elk Grove Village (thousands of homes and businesses) and any other municipality—without any need for a prior certificate of approval from IDOT under § 47.

Thankfully, Judge Webster rejected Chicago and IDOT's claims and applied and enforced the plain language of the statute—prohibiting Chicago from acquiring and demolishing homes and businesses in another municipality without first obtaining a certificate of approval from IDOT.

It is important for you to understand that the preemption approach of the Lipinski Bill (as well as Durbin's) will not simply federally destroy key provisions of the Illinois Aeronautics Act (namely §§ 47, 48, and 38.01). The Lipinski legislation has the effect of destroying the entire framework that Illinois has created under the Illinois Constitution and Illinois Municipal Code for preventing abuses of the state law condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. Under the Illinois Constitution, Chicago has only that condemnation authority to condemn lands in other municipalities for airport purposes that is expressly delegated to Chicago by the laws of the State of Illinois. Article VII, Section 7 of the Illinois Constitution. Under long standing Illinois law ("Dillon's rule" followed in almost all of the 50 states) any powers delegated to a municipality by the General Assembly under this constitutional provision are narrowly construed against assertions of authority by the municipality.

2. The Illinois General Assembly has delegated to Chicago the authority to condemn lands in other municipalities for airport purposes in the Illinois Municipal Code (65 ILCS 5/11-102-4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code (65 ILCS 5/11-102-10) that this grant of authority to condemn must be in accordance with the requirements of the Illinois Aeronautics Act.

3. Acquisition of land by Chicago without complying with the Illinois Aeronautics Act is thus not only a violation of the Illinois Aeronautics Act, such failure constitutes an unlawful *ultra vires* action by Chicago in violation of the Illinois Constitution and the Illinois Municipal Code. Without compliance with the Illinois Aeronautics Act, Chicago has no authority under either Article VII, Section VII of the Illinois constitution and no authority under the Illinois Municipal Code to acquire land in other municipalities.

The Lipinski (and Durbin) legislation seeks to "preempt" and destroy the Illinois Aeronautics Act, but in doing so the Lipinski (and Durbin) legislation attempts to destroy and rewrite the framework created by the Illinois Constitution and the Illinois Municipal Code. Why not just abolish state constitutions and state statutory codes altogether and let Congress rewrite the state constitutions and state statutory codes of all 50 states?

Beyond the enormous legal implication of such action, the practical effect of the Lipinski (and Durbin) legislation is to do exactly what Judge Webster said Illinois law prohibits:

1. The Lipinski (and Durbin) legislation will "authorize" Chicago to condemn land in

other municipalities even though no such authorization exists for Chicago to do so under the Illinois Constitution or Illinois Municipal Code.

2. The Lipinski (and Durbin) legislation will "authorize" Chicago to engage in unfettered condemnation authority with the ability to acquire and destroy thousands of homes and businesses in many other municipalities—all in violation of the limits on Chicago's state constitutional and state Municipal Code authority imposed by the Illinois Constitution and Illinois General Assembly.

As Senator Fitzgerald has pointed out in his remarks in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago unfettered ability to condemn properties outside the City of Chicago. If applied in other states, it would "authorize" one municipality (whichever municipality Congress chose) to disregard the limits on that municipality's delegated powers created by that state's constitution and state statutory code) and to condemn land in any other municipality in that state—in total federal preemption of that state's constitution and municipal code.

As we have said before, such radical action is a blatant violation of the federalism/Tenth Amendment Structure of the federal Constitution. But even if Congress did have such power, should Congress be overriding state constitutions and municipal codes to give federal "authorization" to one municipality in a state to run roughshod over other municipalities in that state in violation of the state constitution and municipal statutory code?

Postscript: There is another aspect of the Lipinski preemption which may be of interest. The Lipinski bill proposes to preempt § 38.01 of the Illinois Aeronautics Act, 620 ILCS 5/38.01. This section requires Chicago to obtain IDOT approval for any grant of federal funding to be used on airport projects which the Illinois General Assembly has authorized Chicago to construct. This is an important financial oversight tool (created by the Illinois General Assembly as a condition of a grant of authority to build airports) which allows the State of Illinois to engage in financial oversight of airport actions by Chicago. Given the widespread abuses in contract awards that have been documented at O'Hare, the Lipinski (and Durbin) legislation will literally "open the chicken coop" to widespread potential for corruption.

July 24, 2001.

Hon. DON YOUNG,
Chairman, Transportation and Infrastructure
Committee,
Washington, DC.

DEAR CONGRESSMAN YOUNG: I am writing to you about the grave concerns I have with H.R. 2107, The End Gridlock at Our Nation's Critical Airports Act of 2001. I share the concerns of Congressmen Henry Hyde, Jerry Weller and Philip Crane, who have sent a virtually identical letter to you under separate cover. I agree that in H.R. 2107—the attempt to rebuild and expand O'Hare Airport—Congress is inappropriately violating the Tenth Amendment.

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

I believe attempts by Congress to strip the authority of Governor Ryan and the Illinois

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

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

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

As stated by the United States Supreme Court.

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

It is incontestable that the Constitution established a system of "dual sovereignty." *Printz v. United States*, 521 U.S. 898, 918 (1997) (emphasis added)

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

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

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

The Supreme Court in *Printz* went on to emphasize that this constitutional struc-

tural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Power and the "necessary and proper clause of the Constitution or b) that the federal law "preempted" state law under the Supremacy Clause. 521 U.S. at 923-924.

It is important to note that Congress can regulate—but not affirmatively command—the states when the state decides to engage in interstate commerce. See *Reno v. Condon*, 528 U.S. 141 (2000). Thus in *Reno*, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' license information. But *Reno* did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did *Reno* involve (as proposed here) an intrusion by the federal government into the delegation of state power by a state legislature—and the state legislature's express limits on that delegation of state power—to a state political subdivision.

H.R. 2107 would involve a federal law which would prohibit a state from restricting or limiting the delegated exercise of state power by a state's political subdivision. In this case, the proposed federal law would seek to bar the Illinois Legislature from deciding the allocation of the state's power to build an airport or runways—and especially the limits and conditions imposed by the State of Illinois on the delegation of that power to Chicago. The law is clear that Congress has no power to intrude upon or interfere with a state's decision as to how to allocate state power.

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

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personnel and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. *Commissioners of Highways*, 653 F.2d at 297

Chicago has acknowledged that Illinois has delegated its power to build and operate airports to its political subdivisions by express statutory delegation. 65 ILCS 5/11-102-1, 11-102-2 and 11-102-5. These state law delegations of the power to build airports and runways are subject to the Illinois Aeronautics Act requirements—including the requirement that the State approve any alterations

of the airport—by their express terms. Any attempt by Congress to remove a condition or limitation imposed by the Illinois Legislature on the terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislature to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O'Hare or Midway. The requirement that Chicago receive a state permit is an express condition of the grant of state authority and an attempt by Congress to remove that condition or limitation would mean that there was no continuing valid state delegation of authority to Chicago to build airports. Chicago's attempts to build new runways would be *ultra vires* under state law as being without the required state legislative authority.

Very truly yours,

JESSE L. JACKSON, JR.

Member of Congress.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON, JR. BEFORE THE U.S. SENATE COMMERCE COMMITTEE—THURSDAY, MARCH 21ST, 2002 WASHINGTON, DC

I want to commend and thank Members of the Committee on Commerce, Science and Transportation for this opportunity to again discuss the future of Chicago's airports. As you know, I sent a letter to each of you stating my opposition to this bill. Many Members responded favorably, and for that I thank them. Today, my position has not changed.

As you know, my commitment to resolving Chicago's aviation capacity crisis predates my days in Congress. I ran on this issue in my first campaign. I won on this issue. It remains my first priority. It was the subject of my first speech in Congress. And it was the topic of my first debate in Washington.

I am elated that this issue—my issue—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolving this regional and national crisis, I must say that HR 3479 as amended falls woefully short of providing an adequate, equitable solution.

Please know that I do not oppose fixing O'Hare's problems. But I have many, many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal precedence. And about constitutionality.

Clearly this bill sets dangerous precedence by stating that Congress—not the FAA, not Departments of Transportation, not aviation experts—but Congress shall plan and build airports. Further, it ignores the 10th Amendment to the U.S. Constitution. It guts and/or undermines state laws and environmental protections. And it sidesteps the checks-and-balances and the public hearing process.

My focus today is the same as it's always been. Finding the best fix. And that best fix is the construction of a third Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. For taxpayers and travelers, it's a no-brainer.

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

FEDERAL STUDY CONFIRMS AIRPORT DEAL
SHORTCHANGES PEOTONE

An analysis released today by the independent, non-partisan research arm of Congress confirmed what Peotone proponents have said all along: The Ryan-Daley airport

agreement puts O'Hare on the fast track and just pays lip service to Peotone.

An analysis released today by the Congressional Research Service concludes that the proposed National Aviation Capacity Expansion Act puts the two projects on separate and unequal tracks.

The CRS analysis states that the Federal Government "shall construct the runway redesign plan" at O'Hare but would merely "review" and give "consideration" to the Peotone Airport project.

In reaction to the release of today's report, Congressman Jackson reiterated his opposition to the measure. "This study unmasks the bare truth about the agreement between the Mayor and the Governor. For those claiming that the deal is good for the Third Airport, it's not. The masquerade ball is over," Jackson said.

"Peotone has been stuck in the paralysis of analysis for 15 years. We don't need any more reviews. We need a Third Airport," Jackson said. "Peotone can be built faster, cheaper, safer, and cleaner than expanding O'Hare, and presents a more secure and more permanent solution to Illinois' aviation crisis. This is shortsighted legislation and a bad deal for the public."

The CRS report states that the Lipinski-Durbin bill "specifically states that the (FAA) Administrator 'shall construct' the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport."

CRS concludes that the bill "provides for the Administrator's review of the Peotone Airport project (and) provides for the expansion of O'Hare. The provisions appear to operate independently of each other and are not drafted in parallel language, and provide different directions to the Administrator."

CONGRESSIONAL RESEARCH SERVICE
MEMORANDUM—FEBRUARY 6, 2002

To: Hon. Jesse L. Jackson, Jr., Attention: George Seymour
From: Douglas Reid Weimer, Legislative Attorney, American Law Division
Subject: Examination of Certain Provisions of H.R. 3479: National Aviation Capacity Expansion Act

BACKGROUND

This memorandum summarizes various telephone discussions between George Seymour and Rick Bryant of your staff, and Douglas Weimer of the American Law Division. Your staff has expressed interest in certain provisions of H.R. 3470, the proposed National Aviation Capacity Expansion Act ("bill"). These provisions are examined and analyzed in the following memorandum.

The bill contains various provisions relating to the expansion of aviation capacity in the Chicago area. Among the provisions contained in the bill are provisions relating to O'Hare International Airport ("O'Hare"), Meigs Field, a proposed new carrier airport located near Peotone, Illinois ("Peotone"), and other projects. Your office has expressed repeated concern that the news media and various commentators have reported that the bill would apparently implement the various projects in a similar manner and that similar legislative language is used to implement the various projects. The news articles that you have cited concerning the bill tend to report the various elements of the bill without distinguishing the bill language and the differences as to the means in which the various projects may be implemented.

ANALYSIS

The chief purpose of the bill is to expand aviation capacity in the Chicago area, through a variety of means. Section 3 of the bill deals with airport redesign and other

issues. Your staff has focused upon the interpretation and the bill language of two particular subsections—(e) and (f)—of Section 3, which are considered below.

"(e) SOUTH SUBURBAN AIRPORT FEDERAL FUNDING.—The Administrator shall give priority consideration to a letter of intent application submitted by the State of Illinois or a political subdivision thereof for the construction of the south suburban airport. The Administrator shall consider the letter not later than 90 days after the Administrator issues final approval of the airport layout plan for the south suburban airport." If enacted, this bill language would relate to the federal funding for the proposed airport to be constructed at Peotone. The "Administrator" refers to the Administrator of the Federal Aviation Administration. The Administrator is directed to give priority consideration to a letter of intent application ("application") submitted by Illinois, or a political subdivision for the construction of the "south suburban airport" the proposed airport at Peotone.

The Administrator is given specific directions concerning the application and for the time consideration of the application. Concern has been expressed that the Administrator is given certain duties and directions, but that there is no specific language to ensure and/or to compel that the Administrator will comply with the Congressional mandate, if the Administrator does not choose to follow the Congressional direction. Congress possesses inherent authority to oversee the project, as well as the Administrator's compliance with the statutory requirements, by way of its oversight and appropriations functions. Congress and congressional committees have virtually plenary authority to elicit information which is necessary to carry out their legislative functions from executive agencies, private persons, and organizations. Various decisions of the Supreme Court have established that the oversight and investigatory power of Congress is an inherent part of the legislative function and is implied from the general vesting of the legislative power of Congress. Thus, courts have held that Congress' constitutional authority to enact legislation and appropriate money inherently vests it with power to engage in continuous oversight. The Supreme Court has described the scope of this power of inquiry as to be "as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."

Specific interest is focused on the language "shall consider" used in the second sentence of the subsection. In the context of this subsection, it should not necessarily be considered to mean the implementation of an accelerated approval/construction process for the airport. While these events may occur, such a course of action is not specifically provided by the legislation.

Your staff has also focused on subsection (f), dealing with the proposed federal construction at O'Hare. The bill provides:

"(f) FEDERAL CONSTRUCTION.—

(1) On July 1, 2004, or as soon as practicable thereafter, the Administrator shall construct the runway redesign plan as a Federal project, if—

(A) the Administrator finds, after notice and opportunity for public comment, that a continuous course of construction of the runway design plan has not commenced and is not reasonably expected to commence by December 2, 2004;

(B) Chicago agrees in writing to construction of the runway redesign plan as a Federal project without cost to the United States, except such funds as may be authorized under chapter 471 of title 49, United States Code, under authority of paragraph (4);

(C) Chicago enters into an agreement, acceptable to the Administrator, to protect the interests of the United States Government with respect to the construction, operation, and maintenance of the runway redesign plan;

(D) the agreement with Chicago, at a minimum provides for Chicago to take over ownership and operations control of each element of the runway redesign plan upon completion of construction of such element by the Administrator;

(E) Chicago provides, without cost to the United States Government (except such funds as may be authorized under chapter 471 of title 49, United States Code, under the authority of paragraph (4)), land easements, rights-of-way, rights of entry, and other interests in land or property necessary to permit construction of the runway redesign plan as a Federal project and to protect the interests of the United States Government in its construction, operation, maintenance, and use; and

(F) the Administrator is satisfied that the costs of the runway redesign plan will be paid from sources normally used for airport development projects of similar kind and scope.

(2) The Administrator may make an agreement with the City of Chicago under which Chicago will provide the work described in paragraph (1), for the benefit of the Administrator.

(3) The Administrator is authorized and directed to acquire in the name of the United States all land, easements, rights-of-way, rights of entry, or other interests in land or property necessary for the runway redesign plan under this section, subject to such terms and conditions as the Administrator deems necessary to protect the interests of the United States.

(4) Chicago shall be deemed the owner and operator of each element of the runway reconfiguration plan under section 40117 and chapter 471 of title 49, United States Code, notwithstanding any other provision of this section or any of the provisions in such title referred to in this subsection."

The Administrator is directed to construct the O'Hare runway plan as a Federal project if certain conditions are met: (1) construction of the runway design plan has not begun and is not expected to begin by December 1, 2004; (2) Chicago agrees to the runway plan as a Federal project without cost to the United States, with certain exceptions; (3) Chicago enters into an agreement to protect Federal Government interests concerning construction, operation, and maintenance of the runway project; (4) the agreement provides that Chicago take over the ownership and operation control of each element of the runway design plan upon its completion; (5) Chicago provides, without cost, the land, easements, right-of-way, rights of entry, and other interests in land/property as are required to allow the construction of the runway plan as a Federal project and to protect the interests of the Federal Government in its construction, operation, maintenance, and use; and (6) the Administrator is satisfied that the redesign plan costs will be paid from the usual sources used for airport development projects of similar kind and scope.

Paragraph 2 provides that the Administrator "may" make an agreement with Chicago, whereby Chicago will provide the work described above in paragraph (1) for the benefit of the Administrator. It should be noted that the use of the word "may" would appear to make this language optional, and would not necessarily require the Administrator to enter into such agreement with Chicago.

Paragraph 3 authorizes and directs the Administrator to acquire in the name of the

Federal Government those property interests needed for the redesign plan, subject to the terms and conditions that the Administrator feels are necessary to protect the interests of the United States.

Paragraph 4 provides that Chicago will be deemed to be the owner and operator of each element of the runway reconfiguration plan, notwithstanding any other provision of this section.

Discussion has focused on the different legislative language used in subsection (e) and (f). Subsection (f) specifically states that the Administrator "shall construct" the runway redesign plan; however, there is no parallel language regarding the construction of the south suburban airport in subsection (e). The provisions of the subsections appear to be independent of each other and provide very different directions to the Administrator. Hence, it may be interpreted that subsection (f) would authorize runway construction (if certain conditions are met), and subsection (e) is concerned primarily with the review and the consideration of an airport construction plan.

It is possible that the Administrator's actions concerning the implementation of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administrative behavior. Judicial review of agency action/inaction may provide appropriate relief for a party who is injured by the agency's action/inaction. The Administrative Procedure Act ("APA") provides general guidelines for determining the proper court in which to seek relief. Some statutes provide specific review proceedings for agency actions. Subsection (h) of the bill provides for judicial review of an order issued by the Administrator. The bill provides that the bill may be reviewed pursuant to the provisions contained at 49 U.S.C. §46110.

If the Administrator does not issue an order and judicial review is not possible under this provision, then it is possible that "nonstatutory review" may occur. When Congress has not created a special statutory procedure for judicial review, an injured party may seek "nonstatutory review." This review is based upon some statutory grant of subject matter jurisdiction. Therefore, a party who wants to invoke nonstatutory review will look to the general grants of original jurisdiction that apply to the federal courts. It is possible that an available basis for jurisdiction in this case—if the Administrator does not carry out his/her Congressional mandate—may be under the general federal question jurisdiction statute which authorizes the federal district courts to entertain any case "arising under" the Constitution or the laws of the United States. An action for relief under this provision is usually the most direct way to obtain nonstatutory review of an agency action. Hence, it is possible that an action could be brought under this statute to compel the Administrator to comply with the provisions contained in the bill.

CONCLUSION

This memo has summarized staff discussion concerning certain provisions contained in the proposed National Aviation Capacity Expansion Act. Subsection (e) provides for the Administrator's review of the Peotone Airport project. Subsection (f) provides for the expansion of O'Hare. The provisions appear to operate independently of each other, are not drafted in parallel language, and provide different directions to the Administrator. The Administrator is given certain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight Administrator is given cer-

tain responsibilities under both subsections. Congress possesses plenary oversight authority over federally funded projects. This would provide oversight over the Administrator and his/her actions. A judicial proceeding may be possible against the Administrator to compel the Administrator to fulfill the statutory responsibilities provided by the bill.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE—WEDNESDAY, AUGUST 1ST, 2001 WASHINGTON, DC

I want to thank Members of the House Aviation Subcommittee for this opportunity to discuss Chicago's aviation future. As you may know, I ran on this issue in 1995, and have supported expanding aviation capacity by building a third regional airport in Peotone, Illinois.

Let me begin with a personal anecdote that, from my perspective, illustrates why we're here. I won my first term in a special election and on December 14th, 1995 took the Oath of Office. Congressman Lipinski, my good friend and fellow Chicagoan whose district borders mine, was present and his was the seventh or eighth hand I shook as a new Member. He told me then: "Young man, I want you to know that I can be very helpful to you during your stay in Congress, but you're never going to get that new airport you spoke about during your campaign."

Since then, Congressman Lipinski has been helpful and we've worked together on many important issues. But, he's also made good on his word to block a third airport.

It is this rigid stance by many Chicago officials that's allowed a local problem to escalate into a national crisis. Once the nation's best and busiest crossroads, O'Hare is now its worst choke point—overpriced, overburdened and overwhelmed.

And to think it was avoidable. This debate dates back to 1984 when the Federal Aviation Administration determined that Chicago was quickly running out of capacity. The FAA directed Illinois, Indiana and Wisconsin to conduct a feasibility study for a new airport. The exhaustive study of numerous sites concluded almost 10 years ago that gridlock could be best avoided by building a south suburban airport. The State of Illinois then drafted detailed plans for an airport near Peotone.

Unfortunately, despite the FAA's dire warning and the State's best efforts, I watched in amazement as the City of Chicago went to extremes to thwart and delay any new capacity.

In the late 1980s, Mayor Daley mocked the idea of a third airport. By 1990, the City did an about-face and proposed building a third airport within the City. The City even initiated federal legislation creating the Passenger Facility Charge (PFC) to pay for it. But two years later the City reversed itself again and abandoned the plan, yet continued to collect \$90 million a year in PFCs. This summer, the City told the Illinois Legislature that O'Hare needed no new capacity until the year 2012, then, in yet another reversal, three weeks ago declared O'Hare needed six new runways.

As the City was spending hundreds of millions of dollars on consultants to tell us that the City didn't, did, didn't, did need new capacity, it continued to be consistent on the one thing—fighting to kill the third airport.

Sadly, that opposition was never based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals and the status quo. In fact, earlier this year the Chicago Tribune won a Pulitzer Prize for documenting the "stench at O'Hare."

Still, for eight years, City Hall leveraged the Clinton FAA to stall Peotone. The FAA, ignoring its own warnings of approaching gridlock, conspired with the city to:

(1) Mandate "regional consensus," thus requiring Chicago mayoral approval for any new regional airport;

(2) Remove Peotone from the NPIAS list in 1997, after it emerged as the frontrunner. Peotone had been on the NPIAS for 12 years;

(3) Hold up the Peotone environmental review from 1997 to 2000.

In short, the same parties who created this aviation mess are now saying "trust us to clean it up" with H.R. 2107. But their hands are too dirty and their interests are too narrow. Proponents of this legislation claim to be taking the high road. But this is a dead end.

Fortunately, there is a better alternative. Compared to O'Hare expansion, Peotone could be built in one-third the time at one-third the cost—both important facts given that the crisis is imminent and that the public will ultimately pay for any fix.

Site selection aside, however, there is yet another, even bigger problem with H.R. 2107. It is the United States Constitution.

H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the "reserved powers" clause of the 10th Amendment.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake an activity, nor can it intrude upon Illinois' prerogative to exercise or delegate its power. As stated by the United States Supreme Court: "[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States . . . We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." [New York v. United States, 1992]

Supporters have cited the Commerce Clause in defending his legislation. But the Supreme Court in *Printz v. United States* specifically emphasized the 10th Amendment barrier to Congress intruding on a state's sovereignty by saying that it could not be avoided by claiming either, one, that congressional authority was pursuant to the Commerce Power, or, two, that federal law "preempted" state law under the Supremacy Clause.

Chicago has acknowledged Illinois' authority to build and operate airports by express statutory delegation through the Illinois Aeronautics Act, including the requirement that the State approve any airport alterations. Under the 10th Amendment, if Congress strips away a key element of the Illinois law, Chicago's attempt to build runways would likely be ultra vires (without authority) under Illinois law.

Moreover, H.R. 2107 converts the concept of dual sovereignty into tri-sovereignty, by going beyond states' rights to city rights. It gives Mayor Daley (and the other local officials in charge of the 68 largest airports in the country) a greater say over national aviation policy than the federal government or the fifty governors.

Indeed, H.R. 2107 sets federalism on its head. It makes about as much sense as putting the local police department in charge of national defense.

Such legislation won't improve aviation services. In fact, it increases the likelihood for a constitutional challenge that will further prolong this crisis.

So, from a practical standpoint, I urge the subcommittee to reject this measure, to reject cramming more planes into one of the nation's most overcrowded airport, to reject

turning O'Hare into the world's largest construction site for the next 20 years, and to reject sticking the taxpayers with an outrageous bill.

I strongly urge the committee to reject this unprecedented, unwise and unconstitutional attack against our fifty states and our Founding Fathers. Thank you.

SUBURBAN O'HARE COMMISSION, FEBRUARY 13, 2002—A BETTER PLAN FOR CURING THE O'HARE AIRPORT BOTTLENECK

Chicago—A plan for relieving the Chicago aviation bottleneck was unveiled today that costs less, is more efficient, less destructive and can be realized quicker than a "compromise" plan that Chicago Mayor Richard M. Daley and Illinois Gov. George Ryan are trying to rush through Congress.

The plan was crafted by the Suburban O'Hare Commission, a council of governments representing a million residents living around O'Hare Airport.

The plan includes runway, terminal and other improvements at O'Hare International Airport, to make it more efficient, competitive and convenient. The plan also includes alternatives to the costly and destructive "western access" proposed in the Daley-Ryan plan. The centerpiece of the plan remains, as it has for well over a decade, a major hub airport in the south suburbs that had been urged by experts and government officials from three states, and would be operational now if not for obstruction from Chicago Mayor Richard M. Daley. The plan provides for many more flights to the region, and, consequently, many more jobs.

"We always have been in favor of a strong O'Hare Airport because of its importance to our communities and to the regional economy," said John Geils, SOC Chairman and president of the Village of Bensenville. "This will come as a surprise only to those who have been taken in by the rhetoric of our opponents, who maliciously tried to portray us as anti-O'Hare zealots, willing to damage or

even destroy O'Hare. Our plan will expand the region's aviation and economic growth; the Daley-Ryan plan will stifle that growth.

"The claimed benefits—including delay reductions, job increases, improved safety, greater competition and less noise—of the Daley-Ryan O'Hare expansion plan are untrue. We have a plan that is better for the entire region, and not just for Chicago City Hall and its big business friends," Geils said.

Among the improvements are a realistically modernized O'Hare, instead of the impossible attempt by Daley and Ryan to stuff ten pounds of potatoes into a five-pound sack. Terminals would be updated, with an eye to matching them with capacity and making them more user friendly. Selected runways would be widened to accommodate the large new jets, such as the A380X, thus increasing the number of passengers the airport can serve, without increasing air traffic. Western access and a bypass route would be built on airport property, skirting O'Hare to the south—as originally planned, thus avoiding the destruction of uncouncted homes and businesses, as under the Daley-Ryan plan.

The SOC Solution also would increase competition at O'Hare, through terminal and other facilities improvements so that air travelers using the competition are not treated as second-class customers. Funding of O'Hare improvements would be disconnected from a complicated bonding scheme that allows United and American airlines to become more entrenched and to continue to charge anti-competitive fares. In addition, some of the lucrative gambling revenues, now going to enrich political insiders, would be used for a competitive makeover of O'Hare.

SOC's plan also would provide better safety and environmental protections. Every home impacted by noise at O'Hare and Midway would be soundproofed, instead of a select few as provided under the current, flawed standards adopted by Chicago. O'Hare neighbors would be spared the concentration of air

pollution brought by a doubling of flights at what is already the state's largest single air polluter. Under the Daley-Ryan plan, O'Hare neighbors would find themselves in federally required crash zones at the end of runways, forcing them to either give up their homes or live in devalued property in great risk. Because most of the region's air traffic growth would use the South Suburban airport where pollution and safety buffers are required under current federal standards, fewer total people in the region would be subjected to health and safety risks.

Key to the SOC Solution is the construction of a truly regional hub airport in the South Suburbs, rather than an inadequate "reliever" airport as envisioned under the Daley-Ryan plan. Just as New York City and Washington, D.C. have more than one hub airport, a true regional airport in the South Suburbs would give Chicago the kind of potential it needs with three hub airports (O'Hare, Midway and Peotone) to maintain its aviation dominance for decades. Despite the long-made assertions by entrenched interests, such as United and American airlines, that the Chicago area didn't need a second hub airport, Midway already is developing into a hub simply because of market forces. With Midway reaching capacity in just a few years, and O'Hare already at capacity, the sounds of "no one will come to Peotone" no longer are heard.

Finally, the SOC Solution will protect taxpayers by creating an oversight board of improvements at all airports, including the south suburban airport and Midway.

"The SOC Solution is not a fragmented plan that simply focuses on O'Hare, which under the Daley-Ryan proposal is merely an instrument for extending the political and economic might of a select few," said Geils. "Ours is a plan for a regional airport system—one that is based on common sense and what is fair and good for the entire public."

COMPARISONS OF THE DALEY-RYAN PLAN AND THE SOC SOLUTION

	Daley-Ryan O'Hare plan	SOC Plan
Provides Immediate Solution to the Delay Problem at O'Hare?	No—runways will not be built for years and by the time they are built, delays will increase with increased traffic growth.	Yes—delays addressed immediately by FAA recommended demand management techniques such as proposed for LaGuardia.
Which Plan Provides Greatest Capacity Growth for Region?	Max increase of 700,000 operations; likely much less	1,600,000 operations capacity at South Suburban Airport—far more than Daley-Ryan plan.
Which Plan Produces Greatest Opportunity for New Competition and Lower Fares?	Daley-Ryan O'Hare plan solidifies and expands United-American monopoly dominance—hundreds of millions in losses to Chicago travelers each year.	Wide open opportunity for major competition—both at O'Hare and at South Suburban Airport.
Which Plan Provides Greater Job Growth?	Daley-Ryan O'Hare plan job growth of 195,000 jobs dependent on 700,000 new operations capacity at O'Hare—real capacity unlikely and far less jobs.	Suburban O'Hare Commission plan provides 1.6 million new operations capacity in addition to O'Hare—far more jobs than Daley-Ryan O'Hare plan.
Which Plan Makes Peotone A Reality?	No provision in Daley-Ryan O'Hare plan to actually fund and build Peotone—an exercise in political rhetoric with little likelihood of success.	SOC plan borrows from idea by Senator Patrick O'Malley to use huge excess gambling income now going to political insiders to fund Peotone construction.
Which Plan Produces Less Toxic Air Pollution Impact on Surrounding communities?	Daley-Ryan O'Hare plan makes toxic emissions at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects public health and prevents residential exposures.
Which Plan Produces Less Noise Impact on Surrounding communities?	Daley-Ryan O'Hare plan makes aircraft noise at O'Hare much worse—900,000 flights to 1, 600,000—no environmental buffer.	Huge non-residential land buffer at Peotone protects against residential noise exposure.
Which Plan is Safer?	Daley-Ryan O'Hare plan reduces safety margins at O'Hare—more congested airspace, less safety on runways and taxiways, occupied runway crash zones.	SOC plan much safer because South Suburban Airport site can address runway safety concerns much easier than O'Hare because much more land available.
Which Plan Provides Justice and Equity for the South Side and South Suburbs?	Daley-Ryan O'Hare plan guarantees exactly what Daley wants—an empty cornfield at Peotone.	SOC plan insures construction of major new airport with adequate funding.
Which Plan Preserves State Law protections?	Daley-Ryan O'Hare plan destroys state law protections for public, health, the environment, the consumer.	SOC plan preserves and protects state law safeguards for our environment, public health and the consumer.
Which Plan Provides Greatest Economic Benefits Over Costs?	Daley-Ryan O'Hare plan has huge costs that likely far exceed the economic benefits. (which are far less than claimed).	SOC plan provides much greater regional capacity, eliminates the delay problem in the short and long term, and can be built far faster, with far less cost. Also provides much greater potential for new competition and lower fares. A much greater economic bang for far less bucks.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY

Daley-Ryan O'Hare Plan Claims	Reality
Delay Reduction Untrue. Daley-Ryan O'Hare plan claims it reduces bad weather delays by 95% and overall delay by 79%.	Total bad weather and good weather delays will increase dramatically under Daley-Ryan O'Hare plan.
Delay Savings Untrue. Daley-Ryan O'Hare plan claims it will produce delay savings of \$370 million annually and passenger delay savings of \$380 million annually.	Daley-Ryan O'Hare plan will increase total delay costs by hundreds of millions of dollars annually.
Cost Claims Untrue. Daley-Ryan O'Hare plan says cost is: \$6.6 billion	Real Costs—\$15 billion to \$20 billion.
Capacity Claims Untrue. Daley-Ryan O'Hare plan claims it will meet aviation needs of Region	Real Capacity of Daley-Ryan O'Hare plan:
Increase O'Hare passenger "enplanements" (boarding passengers) from current 34 million to 76 million	Falls far short of 76 million passenger capacity and far short of capacity of 1,600,000 operations.
Increase O'Hare operational capacity from 900,000 to 1,600,000 operations	Leaves region with huge capacity gap for both passengers and aircraft operations.
Peotone Claim untrue. Daley-Ryan O'Hare plan says they will build Peotone	Daley-Ryan O'Hare plan destroys economic rationale and funding for Peotone:
	If Daley-Ryan O'Hare plan meets its capacity claims, no economic justification for Peotone—not needed.
	If Daley-Ryan O'Hare plan falls short of capacity, \$15 billion to \$20 billion spent at O'Hare will exhaust federal and state funding resources.
Jobs Claims untrue. Daley-Ryan O'Hare plan says it will create 195,000 jobs	Actual jobs fall far short of the 195,000 jobs claimed because of enormous capacity shortfall; much greater job growth under SOC alternative.

THE DALEY-RYAN PLAN'S ALLEGED BENEFITS AND THE REALITY—Continued

Daley-Ryan O'Hare Plan Claims	Reality
Financial Claims Untrue. Daley-Ryan O'Hare plan says there is plenty of federal and airlines money to expand O'Hare and pay \$15 billion to \$20 billion cost.	Daley-Ryan O'Hare plan will bankrupt federal airport aid trust fund and United and American cannot afford billions in bonds.
Hiding the Data and Information. Daley-Ryan O'Hare plan claims based on slick Power Point Slides—no backup information provided.	Daley and Ryan O'Hare plan stonewall on documents and data backing up their claims—refuse to produce documents in Freedom of Information requests.
Monopoly Overcharge Problem. Daley-Ryan O'Hare plan makes no mention of monopoly overcharge problem at O'Hare—costing Chicago based travelers hundreds of millions of dollars per year. As Governor-Elect George Ryan said, monopoly overcharges at O'Hare gouged travelers over \$600 million per year.	Daley-Ryan O'Hare plan will expand and strengthen the monopoly hold United and American have on Chicago market—costing Chicago business travelers hundreds of millions annually in overcharges.
Where is the Western Ring Road? Daley-Ryan O'Hare plan say western ring road is needed for O'Hare expansion; yet refuse to disclose location, cost, and impact on local jobs, industry, housing.	Western Ring Road route pushed west by Daley-Ryan O'Hare plan into valuable and important industrial and residential areas of Elk Grove Village and Bensenville—leading to huge losses in jobs, tax revenues, economic development and residential quality of life.
Where are all the Terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O'Hare plan.	Daley now says all but one of the new terminals shown on the Daley-Ryan O'Hare plan (new Terminals 4 and 6) needed for existing runways and that new (as yet unidentified terminals will be needed for Daley-Ryan O'Hare plan—no locations shown, unidentified billions of dollars in additional unstated costs.
Noise—the Daley Ryan New Math. Daley-Ryan O'Hare plan says noise will be less at 1,600,000 operations than at 900,000 operations.	There will be significantly more noise at 1,600,000 operations than at 900,000 operations.
Toxic Air Pollution. Daley-Ryan O'Hare plan makes no mention of toxic air pollution yet Ryan as Governor said O'Hare should not be expanded because of toxic air pollution problem.	There will be significantly more toxic air pollution at 1,600,000 operations than at 900,000 operations.
Benefit-Cost Analysis. Daley-Ryan O'Hare plan says it meets federal benefit-cost analysis requirements—including requirement that federal government chose the alternative that produces greatest net benefits.	Reality is that benefits of Daley-Ryan O'Hare plan may not exceed the huge costs. It is also clear that placing the new capacity at the new South Suburban Airport rather than an expanded O'Hare produces far greater economic benefits at far less cost than the Daley-Ryan O'Hare plan.
Increased Safety Hazards. Daley and Ryan say their plan is safe	Daley-Ryan O'Hare plan creates major safety hazards, including: increase in traffic incursions (collision risk), destruction of safest runways for bad weather winter storm conditions (14/32s), high congestion in O'Hare area air space, risky runway protection (crash zones) in occupied areas.
Compliance With State Law. Daley and Ryan say that their plan complies with state law and that they are seeking federal preemption of state law only to prevent upsetting Daley-Ryan deal by a future governor.	Daley and Ryan both know that they (not some future governor) have both violated state law by failing to meet the requirements of the Illinois Aeronautics Act; purpose of bill is to immunize this illegality.
\$15 Billion into the O'Hare Money Pit: Problems of Corruption in Management of O'Hare. Daley and Ryan make no mention of the history of rampant corruption and kickbacks to Daley friends and cronies in O'Hare contracts or the need for safeguards and reforms to insure the integrity of the process.	Putting \$15 or more billion dollars into the corrupt contract management system that infects Chicago public works awards—especially at O'Hare, is pouring public resources into a cesspool. The First Commandment of Chicago O'Hare contracts is that the contractor has to hire one of Daley's friends or political associates on contract awards.
Economic Equity and Justice for the South Side and South Suburbs. Daley-Ryan O'Hare plan offers little but empty rhetoric for Peotone and south suburban economic development.	Daley-Ryan O'Hare plan calls for putting virtually all of the economic growth of aviation demand at O'Hare—leaving South Side and South Suburbs either empty promises, or a white elephant token airport.

GRAVE CONCERNS NEAR O'HARE

(By Robert C. Herguth)

American Indian remains that were exhumed 50 years ago to make way for O'Hare Airport might have to be moved again to accommodate Mayor Daley's runway expansion plans.

That's disturbing to some Native Americans, who say they want their ancestors and relics treated with greater respect.

And it's prompting local opponents of the proposed closure of two O'Hare cemeteries—one of which has Indians—to explore whether federal laws that offer limited protection to Native American burial sites and artifacts could help them resist the city's efforts.

"Maybe the federal law might come to our aid," said Bob Placek, a member of Resthaven Cemetery's board who estimates 40 of his relatives, all German and German-American, are buried there. "The dead folks out there aren't trying to be obstructionists, they're trying to rest in peace. . . . I feel it's a desecration to move a cemetery. It's a disregard for our family's history."

Resthaven is a resting place for European settlers, their descendants and, possibly, Potawatomi.

It seems unlikely federal law, specifically the Native American Grave Protection and Repatriation Act, would lend much muscle to those opposed to Daley's plan, which calls for knocking out three runways, building four new ones and adding a western entrance and terminal.

"Primarily, the legislation applies to federal lands and tribal lands," said Claricy Smith, deputy regional director for the Bureau of Indian Affairs.

Even if someone made the argument that O'Hare is effectively federal land because it uses federal money, the most Resthaven proponents could probably hope for is a short delay, a say in how any disinterment takes place and, if they are Indian, the opportunity to claim the bodies of Native Americans.

"They've got a hard road," Smith said of those who might try to halt a Resthaven closure on the basis of Indian remains.

When O'Hare was being built five decades back, an old Indian burial ground that had become a cemetery for the area's white settlers was bulldozed. Some bodies were moved to a west suburban cemetery and some, including an unknown number of Indians, were believed to be transferred to Resthaven, according to published accounts and those familiar with local history.

"Ma used to talk about Indians being buried at Resthaven," said the 44-year-old Placek, who believes the Indians share a

mass grave. His mother, who died in 1996, also is buried at Resthaven. "I used to hear as a little kid Potawatomi" were there.

Regardless of the tribe to which the dead belonged, the Forest County Potawatomi Community of Wisconsin, one of several Potawatomi bands relatively close to Chicago, plans to get involved.

"It's concerning," said Clarice Ritchie, a researcher for the community of about 1,000 who hadn't heard about the issue until contacted by a reporter.

"At this stage of the game, who can determine who they were specifically? But we run into this sort of circumstance in many instances throughout the state of Wisconsin, and some in Illinois, and we take care of them as if they were relatives," she said. "We're all related, we're all created from God, so we do the right thing, we take care of anybody and try to see that they're either not disturbed or properly taken care of."

"I guess we'd have to keep our mind broad as to what would be done," Ritchie said. "Naturally we don't like to see graves disturbed, but somebody has already disturbed them once. . . . I guess what I'd probably do is talk to the tribal elders and spiritual people and other tribes who could be in the area and come to a conclusion of what should be done."

Bill Daniels, one of the Potawatomi band's spiritual leaders, said spirits may not look kindly on those who move remains.

"It's not good to do that—move a cemetery or just plow over it," he said.

Daley's plan, which still must be approved by state and federal officials, also may displace nearby St. Johannes Cemetery, which is not believed to have any Native American bodies.

John Harris, the deputy Chicago aviation commissioner overseeing the mayor's \$6 billion project, said this is the first he's heard that there might be Indian remains at Resthaven, and city officials are trying to verify it.

"I have no reason to doubt them at this time, but I have no independent knowledge," he said. But "whether they're Indians or not, we would exercise an extreme level of sensitivity in the interest of their survivors."

Resthaven, which is loosely affiliated with the United Methodist Church, has about 200 graves, some of which date to the 19th century. It's located on about 2 acres on the west side of O'Hare, in Addison Township just south of the larger St. Johannes.

Self-described "advocate for the dead" Helen Scclair has heard there might be Indians buried at Resthaven, but she suspects

not all Native American remains were retrieved when Wilmer's Old Settlers Cemetery was closed in the early 1950s to make room for O'Hare access roads.

She said the Chicago region, which used to be home to Potawatomi, Chippewa and other Indians, doesn't have enough cemetery space, and the dead should be treated with more respect.

"We don't have much of a positive attitude toward cemeteries in Chicago," Scclair said. "Do you know why? Because the dead don't pay taxes or vote. . . . Well, technically they don't vote."

ROSEMARY MULLIGAN,

STATE REPRESENTATIVE 55TH DISTRICT,

Des Plaines, IL, July 5, 2002.

Hon. JESSE L. JACKSON, JR.,

U.S. House of Representatives, Washington, DC.

SUBJECT: VOTE "NO" ON H.R. 3479

DEAR REPRESENTATIVE JACKSON, JR.: As an Illinois state legislator, I would like to use this opportunity to express my concern and opposition to the National Aviation Capacity Act. The issue of expansion of Chicago O'Hare Airport is extremely important but has been so misrepresented that I believe it is imperative to make a personal plea on behalf of my local residents to each member of the House of Representatives. This plan in the form it has been presented to you contains gross misrepresentations of fact and will inflict harm on the over 100,000 constituents I have taken an oath to protect.

You may not realize that "Chicago" O'Hare Airport is virtually an outcropping of land annexed by the City of Chicago that is over 90 percent surrounded by suburban municipalities. It is the only major city airport where the people directly impacted by airport activity do not elect the mayor or city officials that make decisions about the airport. Therefore, we have had little control or recourse over what happens at the airport. This plan represents a "deal" between two men and has never been debated or voted on by the Illinois General Assembly!

My family moved to Park Ridge in 1955, long before anyone had an idea of what an overpowering presence O'Hare would become. Unfortunately, the amount of land dedicated to the airport set its fate long before the current crisis. Plainly speaking, there isn't enough room to expand.

For the past several years, I and other legislators have introduced nearly a dozen measures in the Illinois General Assembly to conduct environmental studies, provide tax relief for soundproofing, defend suburban neighborhoods from unfair "land grabs," require state legislative approval of any airport expansion and to generally protect the people we represent whose residences abut airport property. Because of the political make-up of our body and the great influence of Chicago's mayor, we have been unsuccessful. Our efforts and the health and safety of our constituents are ignored because of politics.

Please, before you vote on HR 3479, consider the following facts:

1. If the people who surround this airport could vote for the mayor of the City of Chicago, an agreement to expand O'Hare could not have been made. Whoever is mayor would have to take into consideration his immediate constituency.

2. Thorough environmental studies are being blocked. There are many documented health concerns related to current pollution levels. 800,000 additional flights will nearly double the environmental hazard.

3. The State of Illinois' rights are being trampled. The House of Representatives vote is setting a precedent that may impact your home state at some later date.

4. The safety of this plan has been questioned, particularly with its inadequate FAA Safety Zones. The lack of land does not allow for significant changes. It jeopardizes surrounding schools, homes and businesses.

5. No matter what configuration or expansion moves forward, O'Hare's Midwest location means it will always be impacted by weather from many directions.

6. Proponents claim a 79 percent decline in delays with reconfiguration of runways. However, when the increase of 800,000 flights is factored in, delays will increase to above their current levels.

Notwithstanding the economic benefits proponents subscribe to this project, the responsibility of elected officials must be first to the health, welfare and public safety of the people we represent.

Lastly, there exists a glaring discrepancy between the legislation before you and what has been told to Illinoisans. A simpler answer to all of the O'Hare congestion problems exists in the development of a third regional airport. The legislation has downgraded the priority of this solution and will further delay any true relief for our nation's transportation woes. This fact is omitted from news reports and official proponent propaganda.

With all due respect, I ask that you vote "no" on HR 3479. Let this remain a state's rights issue. Please feel free to contact me anytime if you have any questions at (847) 297-6533. Thank you for your time.

Respectfully,

ROSEMARY MULLIGAN,
Illinois State Representative, 55th District.

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION,
CHICAGO O'HARE TOWER,
Chicago, IL, November 30, 2001.

Hon. PETER FITZGERALD,
U.S. Senate, Washington, DC.

SENATOR FITZGERALD, As requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity

to each other (1200') they cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000' and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated at one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200' apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000' long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another aircraft is landing or departing. They are caused by either a mistake or misunderstanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has led the nation in runway incursions for several years. A large part of that incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong

cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts, clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into these new runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't, the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BURZYCH,
Facility Representative, NATCA-O'Hare Tower.

HOUSE OF REPRESENTATIVES,
Washington, DC, January 31, 2001.

Re Key Points Why The Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Best Interests.

Hon. ANDREW H. CARD,
*Chief of Staff to the President,
The White House, Washington, DC.*

DEAR ANDY: A matter of great importance to us is the need for safe airport capacity expansion in the metro Chicago region. At your earliest convenience, we would like to schedule a meeting with you and Secretary Mineta to discuss the situation. Enclosed is a detailed memorandum summarizing our views. We are convinced that we must build a new regional airport *now* and, for the same reasons, we believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

As set forth in that memorandum:

Most responsible observers agree that the Chicago region needs major new runway capacity now.

The question is where to build that new runway capacity—1) at a new regional airport, 2) at O'Hare, 3) at Midway, or 4) a combination of all of the above. An assessment of these alternatives reaches the following conclusions:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway.
2. More new runway capacity can be built at a new site than at O'Hare or Midway.
3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway.
4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare.
5. Construction of the new capacity at a new airport offers the best opportunity to bring major new competition into the region.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. New runways at O'Hare would doom the economic feasibility of the new airport, guarantee its characterization as a "white elephant" and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market.

The memorandum contains a series of related questions and a detailed list of suggestions that would ensure the rapid development of major new runway capacity in the Chicago region, open the region to major new competition, and accomplish these objectives in a low-cost, environmentally sound manner.

Again, we would appreciate the opportunity to discuss these matters with you and Secretary Mineta at your earliest convenience.

Very truly yours,

HENRY HYDE,
JESSE JACKSON, JR.

To: White House Chief of Staff Andrew Card.
From: Congressman Henry Hyde, Congressman Jesse Jackson, Jr.

Re: Key Points Why Chicago Region Needs A New Airport—And Why New O'Hare Runways Are Contrary To The Region and Nation's Aviation Best Interests

Date: January 31, 2001.

This memorandum summarizes our views in the debate over the need for airport capacity expansion in the metro Chicago region. For the reasons set forth herein, we are convinced that we must build a new regional airport now and, for the same reasons, believe that construction of one or more new runways at O'Hare would be harmful to the public health, economy and environment of the region.

The debate can best be summarized in a simple question and answer format.

Does the Region need new runway capacity now? Unlike The City of Chicago—which has for more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bipartisan leaders like Jesse Jackson, Jr. and myself have openly acknowledged the need for, and urged the construction of, new runway capacity in the region.

The need for new runway capacity is not a distant phenomenon; we should have had new runway capacity built several years ago. While 20 year growth projections of air travel demand show that the harm caused by this failure to build capacity will only get worse, the available information suggests that the region has already suffered serious economic harm for several years because of our past failure to build the new runway capacity.

If the answer to the runway question is yes—and we believe it is—the next question is where to build the new runway capacity? Though the issue has been discussed, the media, Chicago and the airlines have failed to openly discuss the alternatives as to where to build the new runway capacity—and especially, the issues, facts and impacts to the pros and cons of each alternative.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at a new airport, (2) build a new runway at O'Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following facts are clear:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway. Simply from the standpoint of physical construction (as well as paper and regulatory planning) the new runways can be built faster at a "greenfield" site than they can at either O'Hare or Midway.

2. More new runway capacity can be built at a new site than at O'Hare or Midway.

Given the space limitations of O'Hare and Midway, it is obvious that more new runways (and therefore more new runway capacity) can be built at a new larger greenfield site than at either O'Hare and Midway. We acknowledge that additional space can be acquired at Midway or O'Hare by destroying densely populated surrounding residential communities—but only at tremendous economic and environmental cost.

3. The new runways can be built at far less cost at a new airport than at O'Hare or Midway. Again, it is obvious that the new runways—and their associated capacity—can be built at far less cost at a "greenfield" site than they can at either O'Hare or Midway. Given the enormous public taxpayer resources that must be used for any of the alternatives—and the relative scarcity of public funds—the Bush Administration should compare the overall costs of building the new runway capacity (and associated terminal and access capacity) at a new airport vs. building the new capacity at O'Hare or Midway.

4. Construction of the new capacity at a new airport will have far less impact on the environment and public health than would expansion of either Midway or O'Hare. Midway, and later O'Hare, were sited and built at a time when concerns over environment and public health were far less than they are today. As a result, both existing airports have virtually no "environmental buffer" between the airports and the densely populated communities surrounding these airports. In contrast, the site of the new South Suburban Airport has, by design, a large environmental buffer which will ameliorate most, if not all, of the environmental harm and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than is now contemplated. We can create the same or similar environmental buffer around O'Hare or Midway—but only at a cost of tens of billions of dollars and enormous social and economic disruption.

5. Construction of the new capacity at a new airport offers the best opportunity for bringing major new competition into the region. When comparing costs and benefits of alternatives, the Bush Administration must address the existing problem of monopoly (or duopoly) fares at "Fortress O'Hare" and the economic penalty such high fares are inflicting on the economic and business community in our region. Does the lack of significant competition allow American and United to charge our region's business travelers higher fares than they could if there was significant additional competition in the region? What is the economic cost to the region—in both higher fares and lost business opportunities—of the existing "Fortress O'Hare" business fare dominance of United and American?

The State of Illinois has stated that existing "Fortress O'Hare" business fare dominance of United and American costs the region many hundreds of millions of dollars per year. Bringing in one or more significant competitors to the region would bring enormous economic benefits in increased competition and reduced fares.

And the only alternative that has the room to bring in significant new competition is the new airport. Certainly the design of Chicago's proposed World Gateway program—designed in concert with United and American to preserve and expand their dominance at O'Hare—does not offer opportunities for major competitors to come in and compete head-to-head with United and American.

6. The selected alternative cannot be expansion at O'Hare and construction of a new airport. The dominant O'Hare airlines are pushing their suggestion: add another run-

way at O'Hare and allow a "point-to-point" small airport to be built at the South Suburban Site.

That is not an acceptable alternative for several reasons:

First, it presumes massive growth at O'Hare, as it is based on the assumption that all transfer traffic growth—along with the origin-destination traffic to sustain the transfer growth—stays at O'Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic assumed to stay at O'Hare will necessitate not one, but two or more additional runways. This increase in traffic at O'Hare will have serious environmental and public health impacts on surrounding communities.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O'Hare, there would be no economic need for the new airport.

Third, assuming the new airport is built anyway, as a "compromise", this alternative guarantees that the new airport will be a "white elephant"—much as the Mid-America airport near St. Louis is today because of the Fortress Hub practices of the major airlines and as was Dulles International as long as Washington National was allowed to grow. With limits on the growth of National finally recognized, Dulles is now the thriving East Coast Hub for United.

RELATED QUESTIONS

If the Region needs new runways, what is the sense of spending over several billion dollars—much of it public money—to build the World Gateway Program at O'Hare if we decide that new runway capacity should be built elsewhere? If the decision is to build the new runways at O'Hare, then much of the 5-6 billion dollar terminal and roadway expansion proposed for O'Hare may be justified.

But if the decision is that the new runway capacity should be built elsewhere, then the proposed multi-billion dollar expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that standing alone—without new runways—will not add any new capacity to our region.

The airlines know this fact and that is why they—and their surrogates at the Civic Committee and the Chicagoland Chamber—are pushing for new runways.

If the Region needs new runways and we wish to explore the alternative of putting the new runways in at O'Hare, what is the full cost of expanding O'Hare as opposed to constructing a new airport? If others wish to explore the alternative of an expanded O'Hare as the place to build the new runways capacity for the region, let's have an honest exploration and discussion of the full costs of expanding O'Hare with new runways and compare it to the cost of building the new airport. Chicago and the airlines already know what the components of an expanded O'Hare would be.

These components are laid out in Chicago's "Integrated Airport Plan and include a new "quad runway" system for O'Hare and additional ground access through "western access".

Based on information available, we believe that the cost of the O'Hare expansion would exceed ten billion dollars. These costs should be compared with the costs of a new airport.

Are the delay and congestion problems experienced at O'Hare self-inflicted? Sadly, when Chicago and the major O'Hare airlines advocated lifting of the "slot" restrictions at O'Hare and other major "slot" controlled airports, the Clinton Administration and others ignored the warnings of Congressman Jackson, and myself that the airport could not accommodate the additional flights

without a chaotic increase in delays and congestion. Indeed, the chaos we predicted has come true and we now have a "Camp O'Hare" where air traffic is managed by cancellation rather than by adequate service.

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the slot controls and chaos ensued.

But just because our warnings were ignored doesn't mean that practical solutions should continue to be ignored. The delays and congestion were predictable and certain—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as the congestion was brought on by overstuffing O'Hare with more aircraft operations than it can handle, the congestion and delay can immediately be reduced to acceptable levels by reducing the scheduled air traffic to the level that can be easily accommodated by O'Hare without the risk of unacceptable delays. The delay chaos was self-inflicted by ignoring the flashing warnings put out by the FAA and other experts. The solution can be easily administered by the FAA recognizing—as it has at LaGuardia—that limits must be placed on uncontrolled airline desire to overscheduled flights.

Should the short-term "fix" to the delays and congestion include "capacity enhancement" through air traffic control devices? Absent new runways, the FAA has encouraged and permitted a variety of operational devices designed to allow increased levels of departures and arrivals in a set period of time. These procedures—known as "incremental capacity enhancement"—focus on putting moving aircraft closer together in time and space—to squeeze more operations into a finite amount of runways. Typically, this squeezing is done in low visibility, bad weather conditions because these are the conditions where FAA wants to increase capacity.

While the air traffic controllers remain mute on the safety concerns raised by these procedures, the pilots sure have not:

"We have seen the volume of traffic at O'Hare pick up and exceed anyone's expectations, so much so, that on occasion *mid-air*s were only seconds apart. O'Hare is at maximum capacity, if not over capacity. It is my opinion that *it is only a matter of time until two airliners collide making disastrous headlines.*" Captain John Teerling, Senior AA Airline Captain with 31 years experience flying out of O'Hare January 1999 letter to Governor Ryan (emphasis added)

Paul McCarthy, ALPA's [Airline Pilots Association] executive air safety chairman, condemned the incremental capacity enhancements *as threats to safety*. Each one puts a small additional burden on pilots and controllers, he said. Taken together, they *reduce safety margins*, particularly at multiple runway airports, to the point that they invite a *midair collision, a runway incursion or a controlled flight into terrain*. Aviation Week, September 18, 2000 at p. 51 (emphasis added)

It is clear that FAA's constant attempts to squeeze more and more capacity out of the existing overloaded runways—through such "enhancement" procedures as the recently announced "Compressed Arrival Procedures" and other ATC changes—is incrementally reducing the safety margin so cherished by the pilots and the passengers who have entrusted their safety to them.

The answer to growth is new runways at a new airport—not jamming more aircraft closer and closer together at O'Hare. The answer to delays and congestion with existing overscheduled levels of traffic is to reduce traffic levels to the capacity of the runways without the need to jam aircraft closer and closer together.

Does the current level of operations at O'Hare (and Midway) generate levels of toxic

air pollutants that expose downwind residential communities to levels of these pollutants in their communities at levels above USEPA cancer risk guidelines? Though our residents have complained for years about toxic air pollution from O'Hare, none of the state and federal agencies would pay attention. Recently however, Park Ridge funded a study by two nationally known expert firms in the field of air pollution and public health to conduct a preliminary study of the toxic air pollution risk posed by O'Hare. That study, Preliminary Study and Analysis of Toxic Air Pollution Emissions From O'Hare International Airport and the Resultant Health Risks Caused By Those Emissions in Surrounding Residential Communities (August 2000), found that current operations at O'Hare—based on emission data supplied by Chicago—created levels of toxic air pollution in excess of federal cancer risk guidelines in 98 downwind communities. The highest levels of risk were found in those residential communities that O'Hare uses as its "environmental buffer"—namely Park Ridge and Des Plaines.

Is the Park Ridge study valid? Park Ridge has challenged Chicago, the airlines, and federal and state agencies to come forward with any alternative findings as to the toxic air pollution impact of O'Hare's emissions on downwind residential communities. And that does not mean simply listing what comes out of O'Hare. The downwind communities are entitled to know how much toxic pollution comes out of O'Hare, where the toxic pollution from O'Hare goes, what are the concentrations of O'Hare toxic pollution when it reaches downwind residential communities, and what are the health risks posed by those O'Hare pollutants at the concentrations in those downwind communities.

Should not something be done to control and reduce the already unacceptable levels of toxic air pollution coming into downwind residential communities from O'Hare's current operations?

Should not the relative toxic pollution risks to surrounding residential communities created by the alternatives of a new airport, expanding O'Hare, or expanding Midway be added to the analysis and comparison of alternatives?

What about the monopoly problem at Fortress O'Hare and what should be done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for the new runway capacity. But the monopoly problem of Fortress O'Hare will be relevant even if no new airport is built. The entire design of the proposed World Gateway Program is premised on a terminal concept that solidifies and expands the current market dominance of United and American at O'Hare and in the Chicago air travel market.

What can the Bush Administration do if indeed there is a monopoly air fare problem at O'Hare or monopoly dominance is costing Chicago area business travelers hundreds of millions of dollars per year?

When these questions were raised in the Suburban O'Hare Commission report, If you Build It We Won't Come: The Collective Refusal of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. First they produced glossy charts showing that more than 70 airlines serve O'Hare. What they neglected to show was that United and American control over 80% of those flights with the remaining 60 plus airlines operating only a small percentage.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. What they emphasized, however, were low fares for reservations far in advance. The major business travel organiza-

tions representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. An examination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that they charge extremely high "lock-step" fares to business travelers to these business markets.

Finally, the airlines and Chicago argued that O'Hare is "competitive" with fares charged to business travelers in other Fortress Hub Markets. That statement ignores the fact that all the major airlines are gouging captive business travelers in all their own Fortress Hub markets. Indeed, a repeated anecdote is the fact that a passenger from a "spoke" city—e.g., Springfield, Illinois—pays a lower fare for a trip to O'Hare and then to Washington D.C. than a Chicago based traveler who gets on the same plane to Washington. Why? Because the Springfield traveler has the choice of hubbing either through O'Hare or St. Louis while the Chicago based business traveler is locked into Chicago.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement powers, the federal government has enormous leverage to break up the cartels through the funding approval process of the Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) programs. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

What about Noise? Shouldn't we be happy to exchange some soundproofing for new runways at O'Hare? The City of Chicago has a residential soundproofing program which was created on the advice of its public relations consultants to create a spirit of "compromise" that would lead to acceptance of new runways at O'Hare.

But here are some facts that are little publicized:

1. Most of our residents feel that soundproofing—while improving their interior quality of life—essentially assumes that we will give up living-out-of-doors or with our windows open in nice weather.

2. Whereas many major airport cities with residential soundproofing programs are soundproofing all homes experiencing 65 DNL (decibels day-night 24-hr. average) or greater, Chicago and the airlines are only committing funds to the 70 DNL level. Result: Chicago is only soundproofing less than 10% of the homes that Chicago itself acknowledges to be severely impacted.

3. Chicago came into our communities asking to put in noise monitors to collect "real world" data as to the levels of noise. Yet, despite promises to share the data, Chicago refuses to share the data with our communities.

4. Instead of an atmosphere of trust, these tactics by Chicago have created additional animosity as neighbors on one side of an alley or street get soundproofing while their neighbors across that alley or street get no soundproofing. Indeed, Chicago's residential soundproofing program—because it is so limited in scope and ignores thousands of adversely impacted homes—has caused even more animosity in our communities.

In short, residential soundproofing is not the panacea that Chicago and many in the downtown media perceive it to be. Moreover, it does nothing to address the toxic air pollution and other safety related concerns of our residents.

Can we have more than one "hub" airport operating in the same city? Faced with the potential inevitability of a new airport, the

airlines for the last two years have been arguing for an expansion of O'Hare (instead of a major new airport) with the argument that a metropolitan area cannot have more than one hub airport. Based on that premise, United and American say that the sole hub airport in metro Chicago should be O'Hare. That simply is not correct:

1. There are several domestic and international cities with more than one hubbing airport. Competing airlines create hubbing operations wherever airport space is available. Thus, there are multiple hubbing airports in metro New York (JFK and Newark), Washington, D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a major hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction? The answer is simply and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to induce carriers to use the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was to collect PFCs at O'Hare and use them for the new airport.

But United and American claim that the PFC revenues are "their" money. On the contrary, the PFC funds are federal taxpayer funds no different in their nature as taxpayer dollars than the similar "AIP" tax charged to air travelers. These funds don't belong to the airlines. They are federal funds collected and disbursed through a joint program administered by the FAA and the airport operator.

Nor are these federal taxpayer funds "Chicago's" money. Chicago is simply a tax collection agent for the federal government.

But how do we get the funds from O'Hare to the new airport? We do it the same way Mayor Daley is transferring funds from O'Hare to Gary and the same way he proposed getting federal funds collected at O'Hare to the Lake Calumet project: a regional airport authority.

SUGGESTIONS

We have respectfully posed some questions and posited some answers for the President's and your consideration. We believe that a thorough and candid examination and discussion of these questions leads to only one conclusion: we should build a new airport and we should not expand O'Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region's air transportation needs:

1. Let's stop the paper shuffling and build the new airport. The program we outline in this letter is virtually identical to the proposal drafted by Mayor Daley for construction of the Lake Calumet Airport. We believe that a cooperative fast-track planning and construction program for a new airport could see the new airport open for service in 3-5 years.

2. The money, resources and legal authority to build the new airport can be assembled by passage of a regional airport authority bill similar to the regional airport authority bill drafted in 1992 by Mayor Daley for the Lake Calumet project. So the Illinois General Assembly is a necessary partner in any effort. But equally important is the dominant role of the federal Administration in controlling the use of AIP and PFC funds and in assertive enforcement of federal antitrust laws. Let's put together a federal-state partnership to get the job done.

3. Give the O'Hare suburbs guaranteed protection against further expansion of O'Hare. Such guarantees are needed not only for our protection but for the viability of the new regional airport.

4. Provide soundproofing for all of the noise impacted residences around O'Hare and Midway. The new airport addresses future needs; it does not correct existing problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air toxics emissions from O'Hare.

6. Fix the short-term delay and congestion at O'Hare by returning to a recognition of the existing capacity limits of the airport. The delay and congestion now experienced at O'Hare is a self-inflicted wound brought about by airline attempts to stuff too many planes into that airport. The delays and congestion will be dramatically reduced immediately by reducing scheduled traffic to a level consistent with the exiting capacity of the airport.

7. Demand a break-up and reform of the Fortress Hub anti-competitive phenomenon—both at O'Hare and at other Fortress Hubs around the nation. This can be done with either aggressive antitrust enforcement or with proper oversight of the disbursement of massive federal subsidies.

8. The entire World Gateway Program should be examined in light of the questions raised here and should be modified or abandoned depending on the answers provided to these questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Minter at your convenience.

HOUSE OF REPRESENTATIVES,
Washington, DC.

FIVE REASONS TO OPPOSE THE NATIONAL AVIATION CAPACITY EXPANSION ACT (HR 3479)

DEAR COLLEAGUE: This legislation to expand O'Hare International Airport is fatally flawed because it will:

1. SET A TERRIBLE PRECEDENT: This bill will allow the federal government to preempt state law requiring approval of airport construction and expansion—approval that requires the blessing of the state legislature. Will your state legislature be next to lose its power to decide local airport matters?

The bill also will lead to a rash of demands from various localities for priority standing for airport funding, bypassing reasonable administrative planning and environmental review processes.

2. THREATEN SAFETY AND THE ENVIRONMENT: This legislation attempts to superimpose what amounts to an airport the size of Dulles International on a land-locked airport the size of Reagan National—an absurd idea on its face. Former U.S. Department of Transportation Inspector General Mary Schiavo has called this proposal "a tragedy waiting to happen."

Putting 1.6 million planes a year into the O'Hare airspace already overcrowded with 900,000 flights doesn't make sense. It increases the risk of a serious accident and it jeopardizes surrounding schools, homes and businesses.

A third regional airport that can be built in one-third of the time and at one-third of the cost of expanding O'Hare.

O'Hare is already the largest polluter in the Chicago region. With expansion, noise and air pollution will increase exponentially.

3. UPROOT THOUSANDS OF FAMILIES: This legislation will destroy the single largest concentration of federally assisted affordable housing in one of the nation's most affluent counties. These are the homes that low-income people and other minorities, particularly Hispanics, depend on.

Up to 1,500 or more homes will be destroyed. These homes will be condemned or

taken by eminent domain, leaving those homeowners few options to find affordable housing elsewhere.

4. THREATEN THOUSANDS OF JOBS: This legislation will destroy as much as one-third of the nation's largest contiguous industrial park, threatening tens of thousands of jobs. How many jobs will be created by the airport expansion? That remains a great mystery.

5. COST TOO MUCH: This legislation will require the expenditure of \$15 billion or more once the entire infrastructure, relocation, soundproofing and other costs are figured in. This is much more costly than the \$6.6 billion that supporters keep touting.

Commits Chicago, Illinois and federal taxpayers to a plan whose costs have not been adequately detailed. We have requested documentation of the costs, but have been rebuffed. That is why a Freedom of Information lawsuit is pending in Illinois court.

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

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

Mr. Speaker, I rise today to express my strongest possible support for H.R. 3479, the National Aviation Capacity Expansion Act of 2002. This measure will help end over 20 years of aviation gridlock at the most important crossroads of American aviation by modifying and codifying a historic agreement between Republican Governor George Ryan of Illinois and Democratic Mayor of Chicago Rich Daley that would expand and modernize O'Hare International Airport.

In December 2000, I spoke to Speaker HASTERT, Governor Ryan and Mayor Daley, asking them for their help in solving this national and international aviation capacity crisis. I am very happy to say that all these men have helped in moving this legislation forward.

Chicago O'Hare is a vital economic engine in Chicago, the State of Illinois, the Midwest and the entire Nation. It serves as the only major dual hub with United and American Airlines basing significant equipment, employees and assets at the facility. O'Hare serves more than 190,000 travelers per day, nearly 73 million in the year 2000. It is the world's busiest airport in the number of passengers. Forty-seven States have direct access to O'Hare.

But O'Hare needs to be redesigned to meet the demands of today's marketplace. Designed in the 1950s, this airport has intersecting runways and a layout designed for smaller aircraft. By simply reconfiguring the airport layout, many weather-related delays could be avoided. By replacing old runways with safer, parallel configurations, delays and cancellations would be greatly reduced, eliminating delays that often ripple through the entire Nation. Ninety percent of O'Hare's modernization will be paid by airline and airport-generated funds, including passenger facility charges, landing fees, concessions and bonds. The rest of these funds will come through the regular, and I repeat, regular FAA process for airport construction, and this legislation is very clear on that point.

The Governor-Mayor agreement also includes a south suburban airport near Peotone. This legislation will ask the FAA to give full consideration to Peotone. Just as expanding O'Hare does not eliminate the need for a third airport, building Peotone will not replace O'Hare modernization. They are not mutually exclusive. Both are needed to address serious aviation capacity problems in the region and the Nation. Simply put, just as the city wants to move ahead with using its own funds to expand its own airport, this agreement allows the State to do the same for Peotone.

While expanding O'Hare and building Peotone are needed to address the region and the Nation's aviation capacity, forward thinkers will agree that even more capacity will be needed. That is why this measure includes full consideration of commercial airports at Gary, Indiana and Rockford, Illinois.

This legislation also addresses traffic congestion along O'Hare's Northwest Corridor, including western airport access, and maintains the quality of life for residents near these airports. We have carefully crafted clean air and environmental language that is acceptable to all parties involved, including 15 environmental groups and the Sierra Club. In addition, the new runway configuration will reduce by half the number of people impacted by noise, and this agreement also includes \$450 million in funds for soundproofing.

Some might call this legislation unprecedented, but it is clear that the Chicago situation is unprecedented and unique.

□ 1615

When the Subcommittee on Aviation held a hearing on this issue in August of 2001, no other similar situation could be found where a State has veto power over a city's airport project.

In closing, Mr. Speaker, I wish to thank the gentleman from Florida (Mr. MICA) and the gentleman from Alaska (Mr. YOUNG) for their great help with this legislation. I would also like to thank the gentleman from Minnesota (Mr. OBERSTAR) for his efforts in working with me on this legislation. I agree with him that it is important that we craft a measure that is good not only for the Chicago region, but for the Nation as a whole. It is my hope that we can pass this legislation out of the House today, because I firmly believe that this bill will do more to end the aviation gridlock that plagues the American flying public than any other measure this Congress could pass.

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

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 30 seconds.

Clearly, Mr. Speaker, the fact that we are debating this bill on the floor of the Congress sets a dangerous precedent by stating that Congress, not the FAA, not the Department of Transportation, not aviation experts, but Congress shall build and plan airports.

That is what we are discussing today. If Congress was not planning to build an airport, we would not be here discussing this bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on International Relations.

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

Mr. HYDE. Mr. Speaker, my congressional district encompasses O'Hare International Airport and many of the residential communities that surround O'Hare, communities, I might add, that will lose hundreds, if not thousands, of homes and businesses to airport development should this expansion plan be approved.

Please do not be deceived because this bill is on the Suspension Calendar. As the gentleman from Illinois (Mr. JACKSON) said, it is highly controversial, involves constitutional issues, antitrust issues, environmental issues and, most seriously, the issue of bulldozing an entire community of low-income homes, largely peopled by the Hispanic population.

Northern Illinois does need additional airport capacity; everyone agrees to that. O'Hare is at capacity. So the real question is whether we build a new airport that is safe and can expand with time, or whether we refurbish the old airport.

The proponents of this bill that the gentleman from Illinois (Mr. KIRK) and the gentleman from Illinois (Mr. LIPINSKI) are advancing want to double the amount of flights going into the busiest airport in the world each year to accommodate 1,600,000 operations a year. Opponents like the gentleman from Illinois (Mr. JACKSON) and myself say, build a new airport. Build one far away from urban areas that will not do violence to the environment and one that can expand as the future of our air traffic grows.

A new airport can be built faster and cheaper than expanding O'Hare, but a lot of proponents of the bill object to that. Why? Well, I can think of two reasons. One is the City of Chicago would not own the new airport and the City of Chicago has to own that airport, and the other reason is the two major airlines that dominate O'Hare might find some competition, and competition is not a healthy thing, some people think.

This bill is corporate welfare of the most blatant sort. It is being marketed as a great leap forward for airport development; but it is a death blow to local government, because it forbids the Illinois legislature from having any voice in the deal between the City of Chicago and the governor of Illinois to double the air traffic. This bill suggests the State of Illinois has approved the deal. Well, if the Illinois general assembly is no longer relevant, if the Illinois Aeronautics Act is unimportant, I guess they are right. I do not know

what they propose to do about the 10th amendment.

The City of Chicago has only those powers given to it by the Illinois general assembly. Chicago is a municipal government, a political subdivision created and empowered by the State legislature, and this State legislature has never given to Chicago or to the Governor, for that matter, the authority to, on their own, authorize the massive expansion of O'Hare. Thousands of people's homes and businesses will be bulldozed; two cemeteries with well over 1,600 graves dating back to the 1840s will be invaded by the same bulldozers.

This bill radically restructures the constitutional relationship between Congress, the States, and their municipalities. Why, it creates what amounts to a new Federal zoning law, an idea I am sure our constituents will welcome.

If, however, establishing a dangerous precedent is not reason enough to vote against this legislation, let me add some more. This legislation ratifies a deal that was struck without adequate public participation, without an open planning process; and despite the public having no say in this matter, the airlines certainly got their say. This is corporate welfare utilizing tax dollars to subsidize a monopoly.

Right now, United and American Airlines have a stranglehold on the market at home, forcing Illinois residents to pay far too much for tickets. The Government Accounting Office estimates this market lock costs Chicago travelers \$623 million a year in overcharges.

This legislation will destroy two cemeteries and the single largest concentration of federally assisted affordable housing in one of the Nation's most affluent counties. These are the homes of low-income people and other minorities, particularly Hispanics. Proponents claim only 500 homes will need to be torn down; the truth is closer to 1,500.

This proposed expansion will ruin the quality of life for more than a million people living near O'Hare. It will increase air pollution in a region that is already nonconforming under Federal air regulations and will increase noise pollution to horrendous levels for those living near O'Hare.

What about safety? Putting 1.6 million planes a year into the O'Hare airspace, which is limited and already overcrowded with 900,000 flights, does not make sense. It increases a risk of a serious accident. I could go on and on and on.

Let me just say this: when the big and the powerful go after the weak and the vulnerable, usually the big and the powerful win. I certainly do not speak for the big and the powerful. I am speaking for the families whose homes are going to be taken, the families whose relatives and ancestors are buried in those graves, and I am saying that we have an expectation that this Congress will think of the human side of this, not just the economic side of it.

MOVING GRAVES CAN BE "ROYAL MESS"

[From the Chicago Sun-Times, July 14, 2002]

(By Robert C. Herguth)

In the 1990s, St. Louis' Lambert Airport moved thousands of bodies from the crumbling, mostly black Washington Park Cemetery to make way for a transit line and create a larger, flatter buffer for runways.

Trouble, it turned out, was almost as bountiful as bones.

An archaeologist hired to help with disinterment was accused of snatching limbs and yanking out teeth, supposedly for research, and later of hiding corpses to ensure he got paid. A state inspector climbed into a burial vault and held what was described as a "mock funeral." There also were reports of coffins being accidentally pulverized by machinery.

"That was a royal mess," a person associated with the project recently remarked.

While an extreme example, the St. Louis work demonstrates how bad an already difficult and delicate process get.

And it serves as a cautionary tale as the City of Chicago—using one of the same consultants involved in the Washington Park effort—makes plans to bulldoze two historic suburban cemeteries, and 433 acres of homes and businesses, to accommodate a proposed O'Hare Airport runway expansion.

"We've thought about those kinds of things," said Bob Sell, referring to Lambert's problems.

The Loop attorney has dozens of relatives buried at St. Johannes Cemetery, which is targeted for relocation, along with tiny Resthaven Cemetery.

"The notion of someone going to the cemetery and putting a shovel to my family member is horrible. That something could go wrong in that process, it makes me sick to my stomach."

Like many homeowners in the proposed expansion zone, leaders of Resthaven and St. Johannes don't want to sell. One and perhaps both graveyards will fight the city in court, cemetery officials said.

The process, as of last Tuesday, is in a holding pattern because of a DuPage County judge's ruling in a different lawsuit. The judge ordered Chicago to halt land buys until it receives a state permit, something city officials believe is unnecessary and will appeal. Meanwhile, the city won't even be negotiating sales.

WHERE TO MOVE THE REMAINS

In another room Tuesday in another part of DuPage, a different aspect of the same thorny issue played out as two of the city's hired guns met for the first time with leaders of Resthaven to "open up the dialogue."

That's how Jeff Boyle—a former top aide to Mayor Daley now being paid \$240 an hour as a no-bid consultant—portrayed the meeting at the Bensenville Community Public Library.

Resthaven president Lee Heinrich, vice president Bob Placek and their attorney said they were there to listen to Boyle and another consultant, Robert Merryman of O.R. Colan Associates.

Merryman—after Boyle nearly canceled the meeting because of the presence of a reporter and the lawyer—outlined several options, all of which involved the city buying the cemetery land.

"Let's start with the assumption that you have to go," he said softly, speaking in the consoling tones of a funeral director.

"The airport could simply purchase Resthaven and Resthaven is no more," he said.

The second possibility, he said, would be to "functionally replace Resthaven" by building "a new Resthaven" elsewhere.

Third, he said, the cemetery could be moved to another graveyard, where "a section can be Resthaven."

Headstones and monuments would go with the remains, the city would cover costs, and if some families wanted relatives reburied elsewhere, that would be fine, too, he said. Relatives could decide who "disinters and re-enters the body," and help monitor the process, he said.

Merryman's company was involved in the Washington Park Cemetery relocation. The firm did not select the archaeologist facing the allegations of desecrating the remains and, in fact, was asked "to come and correct the situation," according to Chicago Aviation Department spokeswoman Monique Bond.

The firm also helped handle the "land acquisition aspects" of moving graves from Bridgeton Memorial Cemetery St. Louis, which currently is being excavated to make way for new and longer runways at Lambert, said Lambert spokesman Mike Donatt.

HOW A CEMETERY IS MOVED

Locating and moving remains can be a tough process, but it's one played out quite frequently for road, airport and other public works projects, said Randolph Richardson.

He owns Kentucky-based Richardson Corp., which does the physical part of relocating graves.

For big jobs, Richardson may bring in 15 workers in blue jeans and knee boots, and heavy equipment. After mapping a cemetery, a worker with a "probe rod" tries to gauge the depth of graves and directs a backhoe operator on how far to dig. "If the grave itself is 6 feet deep, you dig down around 4½ feet, and the rest of it is hand digging," he said.

"Say we've got a row of 50 graves, we'd start at the end with a backhoe, the man with the probe rod is guiding the backhoe to tell him how deep to go, we dig a trench to expose those 50 graves, that allows us to get the men in there to work," he said.

Bodies are placed in individual wooden boxes—there are several sizes—unless coffins are intact, he said, adding that his workers may get tetanus shots before a project because of old rusty nails.

Caskets are put on trucks and driven to their new resting place, he said. His company typically charges between \$1,000 and \$1,500 per body.

Richardson, whose firm relocated some of the bodies from St. Louis' Washington Park, recalls some of the trouble there, but insists things usually are more smooth.

GUARDS QUESTIONING VISITORS

Boyle and Chicago's first deputy aviation commissioner, John Harris, have said they want to handle their cemetery situation with dignity and sensitivity. But the city is having its own public relations headaches.

The cemeteries are outside Chicago's borders, but can only be reached by a city-owned access road monitored by city guards.

Twice this month, a guard approached a St. Johannes visitor at the cemetery, questioned the person and asked that they "sign in."

In the first instance, the visitor said, he was interrupted while praying at a grave site, and after refusing to sign in was met by five Chicago police cars on the access road. The visitor in the second case was the pastor of the church that owns St. Johannes.

Just before being confronted—on Wednesday, after the judge's ruling—the minister was surprised to find four O.R. Colan employees nosing around graves at St. Johannes, apparently taking down names from headstones, although they had no permission to be there.

"They said they were doing a study," Sell said. "They're trespassing on private property."

Merryman did not return phone calls. City officials were at a loss to explain.

But Roderick Drew, a spokesman for Daley, said Friday that there's been a "change in policy" that "nobody will have to sign in any more."

"Anybody who wants access to that cemetery during those posted hours will not be stopped, will not have to sign in," he said, adding that the sign-in "has turned out to be a much greater inconvenience to the people who access it."

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

CHICAGO O'HARE TOWER,

Chicago, IL, Nov. 30, 2001.

Hon. PETER FITZGERALD,

U.S. Senate, Washington, DC.

SENATOR FITZGERALD, as requested from your staff, I have summarized the most obvious concerns that air traffic controllers at O'Hare have with the new runway plans being considered by Mayor Daley and Governor Ryan. They are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of east/west parallel runways directly north of the terminal and in close proximity to one another. Because of their proximity to each other (1200') the cannot be used simultaneously for arrivals. They can only be used simultaneously if one is used for departures and the other is used for arrivals, but only during VFR (visual flight rules), or good weather conditions. During IFR (instrument flight rules, ceiling below 1000' and visibility less than 3 miles) these runways cannot be used simultaneously at all. They basically must be operated as one runway for safety reasons. The same is true for the set of parallels directly south of the terminal; they too are only 1200' apart.

2. Both sets of parallel runways closest to the terminal (the ones referred to above) are all a minimum of 10,000' long. This creates a runway incursion problem, which is a very serious safety issue. Because of their length and position, all aircraft that land or depart O'Hare would be required to taxi across either one, or in some cases two runways to get to and from the terminal. This design flaw exists in both the Daley and the Ryan plan. A runway incursion is when an aircraft accidentally crosses a runway when another aircraft is landing or departing. They are caused by either a mistake or misunderstanding by the pilot or controller. Runway incursions have skyrocketed over the past few years and are on the NTSB's most wanted list of safety issues that need to be addressed. Parallel runway layouts create the potential for runway incursions; in fact the FAA publishes a pamphlet for airport designers and planners that urge them to avoid parallel runway layouts that force taxiing aircraft to cross active runways. Los Angeles International airport has led the nation in runway incursions for several years. A large part of their incursion problem is the parallel runway layout; aircraft must taxi across runways to get to and from the terminals.

3. The major difference in Governor Ryan's counter proposal is the elimination of the southern most runway. If this runway were eliminated, the capacity of the new airport would be less than we have now during certain conditions (estimated at about 40% of the time). If you look at Mayor Daley's plan, it calls for six parallel east-west runways and two parallel northeast-southwest runways. The northeast-southwest parallels are left over from the current O'Hare layout. These two runways simply won't be usable in day-to-day operations because of the location of them (they are wedged in between, or pointed at the other parallels). We would not

use these runways except when the wind was very strong (35 knots or above) which we estimate would be less than 1% of the time. That leaves the six east/west parallels for use in normal day-to-day operations. This is the same number of runways available and used at O'Hare today. If you remove the southern runway (Governor Ryan's counter proposal), you are leaving us five runways which is one less than we have now. That means less capacity than today's O'Hare during certain weather conditions. With good weather, you may get about the same capacity we have now. If this is the case, then why build it?

4. The Daley-Ryan plans call for the removal of the NW/SE parallels (Runways 32L and 32R). This is a concern because during the winter it is common to have strong winds out of the northwest with snow, cold temperatures and icy conditions. During these times, it is critical to have runways that point as close as possible into the wind. Headwinds mean slower landing speeds for aircraft, and they allow for the airplane to decelerate quicker after landing which is important when landing on an icy runway. Landing into headwinds makes it much easier for the pilot to control the aircraft as well. Without these runways, pilots would have to land on icy conditions during strong cross-wind conditions. This is a possible safety issue.

These are the four major concerns we have with the Daley-Ryan runway plans. There are many more minor issues that must be addressed. Amongst them are taxiway layouts, clear zones (areas off the ends of each runway required to be clear of obstructions), ILS critical areas (similar to clear zones, but for navigation purposes), airspace issues (how arrivals and departures will be funneled into these new runways) and all sorts of other procedural type issues. These kinds of things all have to go through various parts of the FAA (flight standards, airport certification etc.) eventually. These groups should have been involved with the planning portion from day one. Air traffic controllers at the tower are well versed on what works well with the current airport and what does not. We can provide the best advice on what needs to be accomplished to increase capacity while maintaining safety. It is truly amazing that these groups were not consulted in the planning of a new O'Hare. The current Daley-Ryan runway plans, if built as publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The fear is that the airport will be built, without our input, and then handed to us with expectations that we find a way to make it work. When it doesn't, the federal government (the FAA and the controllers) will be blamed for safety and delay problems.

Sincerely,

CRAIG BUREYCH,
Facility Representative, NATCA—O'Hare
Tower.

ROBERT J. SELL, ELECTED
SPOKESMAN,
ST. JOHN'S UNITED CHURCH OF
CHRIST,

Bensenville, IL., Mar. 5, 2002.

Congressman HENRY J. HYDE,
Rayburn House Office Building, Washington,
DC.

RE: O'HARE AIRPORT EXPANSION/ST. JOHN'S
UNITED CHURCH OF CHRIST

DEAR REPRESENTATIVE HYDE: From press reports, I understand that Governor Ryan and Mayor Daley have submitted to Congress their proposal for the expansion of O'Hare Airport, which will be the subject of hearings on Wednesday, March 6th. I also understand

that you will be given the opportunity to testify at these hearings.

Although I am sure that you will cover many important issues in your testimony, our hope is that you will alert the other members of Congress to an additional issue that is of great importance to me, my family and the members of Churches within your District. This issue is the treatment of two religious cemeteries that stand in the path of the runways proposed by the City of Chicago and Governor Ryan (see attached maps).

The two cemeteries are St. Johannes Cemetery (which is owned and maintained by St. John's United Church of Christ) and Resthaven Cemetery (affiliated with the Methodist Church). Most people have never heard of these cemeteries, but they serve as the final resting place of some of the first Illinois pioneers, as well as many of their modern era descendants. These cemeteries have served this purpose for over 150 years, since their first Church members were laid to rest in the 1840's.

As an example, my great, great, great grandfather, Christian Dierking came to the United States in the 1840's when the land around O'Hare was wild land. He settled in land that is now occupied by O'Hare's United Airlines Terminal. One of my other great, great, great grandfathers, Henry Kolze and his brothers, William and Frederick also came to the area in the 1840's and were heavily involved in local Republican politics in the 1850's and 1860's. The Schiller Park Historical Society has reported that Abraham Lincoln once visited property owned by William Kolze during one of his election campaigns. Together, they and their families and neighbors constructed the first Church buildings.

These individuals, their descendants and an estimated 1600 other souls lie at rest at S. Johannes Cemetery, including some buried within the last year. Hundreds of others lie at rest at Resthaven Cemetery, including one buried in the last few months. These people were mayors, business owners, farmers, factory workers, soldiers and housewives. The Chicago Sun Times has also reported that those buried at Resthaven include members of the Potawatamie tribe. But, most importantly to us, they were mothers and fathers, grandmothers and grandfathers, brothers and sisters, and children.

Although the City of Chicago's and the Governor's proposals have mentioned the relocation of homes and businesses, they curiously have failed to mention the treatment of these sacred burial grounds. Unfortunately, Church members have received letters from the Governor's office confirming that completion of the expansion plan would require removal of the cemeteries, and the Chicago Sun Times has reported the City's confirmation of this fact. The Church, its members, and the families of members past and present are understandably upset.

It is my understanding that, pursuant to Illinois law, an active cemetery may not be removed without approval of the cemetery's owner. St. John's Church, and the caretakers of Resthaven Cemetery, have stated publicly and to State of Illinois officials that *they will not* provide this consent, and will exercise all available remedies to protect the sanctity of their hallowed ground. It may be that Representative Lipinski's and Senator Durbin's federal legislation seeks to preempt the foregoing Illinois statutes, just as it seeks to preempt other Illinois statutes that stand in the way of the O'Hare Plan. However, we would hope that they are not at the same time attempting to discard the fundamental religious protections offered by our Constitution.

We would appreciate it if you would enter this letter into the record, to provide this

important information to those deliberating about the O'hare Plan. On behalf of St. John's United Church of Christ, my family and the tens of thousands of family members of those at rest in these Cemeteries, thank you for your kind consideration and any assistance that you may be able to provide.

Very Truly Yours,

ROBERT J. SELL,
Elected Spokesman, St. John's United Church
of Christ.

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

Hon. HENRY J. HYDE,
U.S. House of Representatives,
Rayburn House Office Bldg., Washington, DC.

RE: PROPOSED FEDERAL LEGISLATION GRANTING
NEW POWERS TO THE CITY OF CHICAGO

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

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

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

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

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

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

Similarly, the provisions of Section 3(f) of the proposed Durbin-Lipinski legislation are necessarily conditioned upon the existence of state law authority of Chicago to enter

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

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

SUMMARY OF ANALYSIS

The following is a summary of my analysis:

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

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

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

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

5. In the case of airport construction, the Illinois General Assembly has enacted a stat-

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

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

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

law (absent compliance with the Illinois Aeronautics Act) to enter into an agreement for the FAA to construct the runway redesign plan, Chicago also has no power or authority (absent compliance with the Illinois Aeronautics Act) to enter into the other agreements provided for in Section 3(f)(1)(B) of the Durbin-Lipinski legislation. Again, Section 3(f) is an attempt to have Congress use the Commerce power to conscript state instrumentalities as its agents. Instead of Congress regulating interstate commerce directly (which both *New York v. United States* and *Printz* allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates one of its cities (which both *New York v. United States* and *Printz* do not allow).

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

ANALYSIS

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

A. The Basic Legal Principles.

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

Nearly a century ago, the U.S. Supreme Court, in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S. Ct. 40, 52 L.Ed. 151 (1907) held

that, under the U.S. Constitution, cities are merely creatures of the State and have only those powers that the State decides to give them, subject to whatever limits the States choose to impose:

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

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

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

B. The Federation Problem

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

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

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

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion approved by the Administrator of the Federal Aviation Administration. But, under state law, Chicago cannot

expand O'Hare because it does not have the required state permit.

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

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

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

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

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

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

The leading case, New York v. United States, held that the Commerce Clause does to authorize the Federal Government to conscript state governments as its agents. "Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents. The proposed Durbin-Lipinski legislation will do exactly what New York prohibits it will conscript the City of Chicago as its agent and interfere with the relationship between the State of Illinois and the entity it created, the City of Chicago.

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

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

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

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

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

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

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

than that of implementing legislation enacted by Congress."

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

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

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

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

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

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

We should realize that the proposed Durbin-Lipinski legislation—in commanding and singling out the State of Illinois to, in effect, repeal its legislation governing the powers delegated to the City of Chicago—is quite unusual and not at all in the tradition of federal legislation. For most of our history,

Congress would explicitly only "recommend" or "request" the assistance of the governors and state legislatures in implementing federal policy. It is only in very recent times that Congress has sought explicitly to commandeer or order the legislative and executive branches of the States to implement federal policies. Because such federal legislative activity is recent, the case law in this area is recent, but the case law is clear in prohibiting this type of federal assertion of power.

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

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

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

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

Reno grew out of a congressional effort to protect the privacy of drivers' records. As a condition of obtaining a driver's license or registering a car, many States require drivers to provide personal information, such as name, address, social security number, medical information, and a photograph. Some States then sell this personal information to businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department of motor vehicles (DMV), or state officer, employee, or contractor thereof, and any resale or re-disclosure of drivers' personal information by private persons who obtain the information from a state DMV. The Court concluded: "The DPPA's provisions do not apply solely to States." Private parties also could not buy the information for certain prohibited pur-

poses nor could they resell the information to other parties for prohibited purposes, and the States could not sell the information to the private parties for certain purposes if the private parties could not buy it for those purposes.

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

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

CONCLUSION

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

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

Sincerely,

RONALD D. ROTUNDA,

The Albert E. Jenner, Jr. Professor of Law.

Mr. KIRK. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Illinois (Mr. MANZULLO), the chairman of the Committee on Small Business, another bipartisan supporter of this legislation.

Mr. MANZULLO. Mr. Speaker, I rise in support of H.R. 3479, the National Aviation Capacity Expansion Act. I want to thank the gentlemen from Illinois (Mr. KIRK) and (Mr. LIPINSKI) and other members of the Illinois delegation and the surrounding region for their hard work in coming to an agreement on this legislation.

O'Hare serves as the main hub for the Nation's two largest commercial airlines, and expansion is without a doubt going to be a tremendous benefit to travelers and businesses in the northern Illinois area, as well as the Nation.

What I particularly appreciate about this legislation is that it acknowledges the role of other regional airports, especially the Greater Rockford Airport,

and the role it can have in helping to alleviate congestion at O'Hare. This legislation clearly states how important it is for the FAA to consider existing infrastructure when constructing a plan to streamline traffic through O'Hare. With a runway that can land virtually any jet today at a distance of only 1 hour's drive from Chicago, Rockford Airport stands ready to immediately supplement traffic congestion at O'Hare during construction or in the future.

The efficiency of our Nation's air travel is ready for a dramatic upgrade in the Chicago area, and this bill is a critical step in addressing that need. I urge my colleagues to support its passage today.

Mr. LIPINSKI. Mr. Speaker, I yield 1½ minutes to the gentleman from Indiana (Mr. VISCLOSKY).

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

Mr. VISCLOSKY. Mr. Speaker, I appreciate the gentleman yielding me this time.

Mr. Speaker, I rise today in support of H.R. 3479, the National Aviation Capacity Expansion Act.

First, I am a supporter of increased airport capacity for the Chicago metropolitan area, and I commend the gentleman from Illinois (Mr. LIPINSKI) and the leadership of the Committee on Transportation and Infrastructure for achieving this equitable regional solution that will help relieve air congestion in our Nation and the Chicago region.

Second, increasing air capacity in the Chicago metropolitan area is a national concern and not just a Chicago or an Illinois problem. Air congestion is also a regional problem and it demands a regional answer. I happen to believe that the Gary/Chicago Airport has a role in helping solve the air traffic congestion problems facing the region and Nation. H.R. 3479 provides full consideration for expansion and improvement projects at the Gary/Chicago Airport.

I have worked in this body for my entire career to modernize and improve the Gary/Chicago Airport. It can play an increasingly valuable role in delivering passenger and cargo service to the area. Last year, the FAA approved the Gary/Chicago Airport's 20-year master plan. The master plan outlines the airport's existing facilities and ability to handle air traffic growth and economic forecasts.

Mr. Speaker, H.R. 3479 would guarantee that the Gary/Chicago Airport would be considered for growth and needed improvements, which will enhance its role as the Chicago airport.

Mr. JACKSON of Illinois. Mr. Speaker, I am proud to yield 6 minutes to the distinguished gentleman from Illinois (Mr. WELLER).

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

Mr. WELLER. Mr. Speaker, it is interesting what we have before us

today. Usually Suspension Calendar legislation is noncontroversial; but today we have a proposal which most people say only affects Illinois, so most Members may not be paying attention to it. But I think it is important to note that this legislation splits the Illinois delegation right down the middle.

I stand in opposition to this legislation, and I also urge my colleagues to vote against this legislation with the hope that it is defeated and that the Committee on Transportation and Infrastructure will revisit this legislation and produce legislation that truly recognizes the bipartisan agreement between Mayor Daley and Governor Ryan.

I support O'Hare expansion, and I support a third airport at Peotone. As we all know, air travel will double in the coming decade. O'Hare and Midway Airports are at capacity. We need to rebuild and modernize O'Hare, and we need to build the South Suburban Airport near Peotone.

Governor Ryan and Mayor Daley entered into a historic agreement last year which would provide for the reconfiguration and expansion of Chicago O'Hare and the development of the Chicago South Suburban Airport located near Peotone, Illinois. The gentleman from Illinois (Mr. LIPINSKI) introduced legislation which would originally have codified this agreement into law, modernizing O'Hare and pushing development of a south suburban airport. I had originally hoped to cosponsor and support this legislation, if it truly reflected the integrity of the agreement between the Governor and the mayor.

However, I would note that that is not the bill that is before us today. It is also important to note that the Governor of Illinois does not support this bill in its current form. In fact, Mr. Speaker, the bill that is before us today is only a fragment of the original legislation and represents none of the compromise that was reached between the Governor and the mayor. Rather, the legislation that is proposed before us today is an attempt to force the Congress to take an unprecedented step in mandating that Chicago O'Hare be rebuilt, as the mayor demanded, while completely ignoring the Governor's side of the agreement, the Governor's side of the agreement that a south suburban airport should also be built. As such, the Governor of Illinois, as I noted earlier, does not support this bill in its current form and as it is currently written.

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We ask that language moving for the construction of a south suburban third airport be added to this legislation.

This legislation breaks the agreement of the mayor and the Governor, as I have noted here in my chart. There is nothing in this legislation that reflects the agreement to promote the development of a south suburban airport.

This legislation takes away Illinois State's rights, and it undercuts the au-

thority of the State of Illinois to make its own decisions regarding air travel. The legislation completely ignores the needs of the south suburbs of Chicago, where 2.5 million Illinois residents live within 45 minutes of the proposed airport site.

Additionally, I would note that failure to develop Peotone will short-change the entire Chicago region by forfeiting almost 250,000 new jobs.

Unfortunately, H.R. 3479 does not pay heed to the studies that since the 1980s have consistently shown that Chicago, our region, and the Nation will have aviation gridlock in the near future, and that the best solution is a south suburban third airport. The Governor and mayor recognized these studies when they reached their agreement this past year.

Nevertheless, the bill imposes a Federal solution on a State problem and does not have the full support of the entire delegation, nor the people of Illinois, who are most impacted. In fact, the four Members of the Illinois delegation most impacted in their own districts by H.R. 3479 stand in opposition today, the gentlemen from Illinois, Mr. CRANE, Mr. HYDE, Mr. JACKSON, and myself.

Mr. Speaker, I support Chicago O'Hare, and I believe that it needs to be expanded and modernized to be a safer airport with more capacity; but expanding O'Hare alone will not solve the capacity needs of the future. Even with the development of a south suburban airport, O'Hare could still expect a 40 percent increase in passenger load. Air travel is expected to double in the next 10 to 15 years.

Expanding O'Hare will take 12 to 15 years, and we cannot land an airplane while we are pouring concrete. The South Suburban Airport at Peotone could be expanding capacity and up and running in 4 to 5 years as a complement to O'Hare expansion. However, this legislation stifles any development of the South Suburban Airport and keeps Chicago aviation gridlocked for the next decade.

Aviation is a key part of our economy for Chicago and our Nation. We must expand our capacity to accommodate the growth in aviation by building a third airport in Chicago's south suburbs, as well as expanding O'Hare. H.R. 3479 fails this goal and should be defeated.

I urge my colleagues to join me by voting "no" and asking the Committee on Transportation and Infrastructure to produce a bill that reflects the historic agreement between Mayor Daley and Governor Ryan, working towards building a south suburban third airport as well as expansion of O'Hare.

Again, the legislation before us today breaks the bipartisan agreement between Governor Ryan and Mayor Daley. I ask for a "no" vote.

Mr. LIPINSKI. Mr. Speaker, I yield 6 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member of the Committee on Transportation and Infrastructure, and the

former chairman of the Subcommittee on Aviation.

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding such an abundance of time to me. I especially want to compliment the gentleman from Illinois (Mr. LIPINSKI) for the hours and weeks of time he has personally dedicated to mediating between the City of Chicago and the State of Illinois, and working to bring us the legislation that is before the House today.

Mr. Speaker, when President John F. Kennedy dedicated O'Hare Airport in 1963, he said, "There is no other airport in the world that serves so many people and so many airplanes. This is an extraordinary airport. It could be classed as one of the wonders of the world."

Mr. Speaker, the pulse of national and international air travel remains dependent on O'Hare today, as it did when opened in 1963; but few would suggest that today it is that wonder of the world. It is simply failing to meet the capacity demands put on this airport by the extraordinary increase in air travel throughout world, as well as throughout our own Nation.

Delays at O'Hare ricochet around the world. They reverberate as far away as Frankfurt, Germany; London's Heathrow Airport; Tokyo's Narita Airport; and elsewhere around the United States. A weather delay in Chicago means business travelers inbound from the European continent or the Pacific Rim are delayed, either at their point of origin or en route.

This airport is truly an extraordinary facility in the world of aviation. It is our Nation's premier airport. It is the crown jewel of aviation in the United States, but it cannot continue to serve that role in its current configuration.

When I met with the mayor and the staff, the professional staff of the O'Hare International Airport operation over 1½ years ago to discuss their plans for expansion, I was greatly impressed with the proposals for reconfiguring this airport that would result in a 4,300-foot separation between two groups of parallel runways, the addition of an entirely new runway, and for operational improvements that would reduce reductions in operations by 95 percent in bad weather, and overall reduce delays by almost 80 percent.

That is an extraordinary improvement in aviation service and will result in untold benefits, benefits we can only estimate today, but that will run into the billions of dollars over the years and more than justify the cost of the investments needed to make these improvements.

There has been a good deal of discussion throughout the proposal when it was first surfaced over a year ago about whose responsibility it is to build this airport and what should be the role of the State. There has been, let us be candid about it, a great deal of conflict between the city and the

State, not only on O'Hare Airport, but on, as Mayor Daley testified at our committee hearings, on such matters as transit improvements, on highway improvements, where the State repeatedly has vetoed City of Chicago plans to expand, improve, and deal with its infrastructure needs.

The gentleman from Illinois, working with the city and the State, attempted to resolve the complexities through the channeling process, whereby the city must channel its request for FAA approval through the State of Illinois; but over time, contrary to best hopes and expectations, that proved to be very difficult.

The city and the State came up with a plan that initially I found to be unacceptable because it would be violative of national aviation policy. Over months of negotiations, the two parties, the State and the city, have come to an agreement. The gentleman from Illinois (Mr. LIPINSKI), our ranking member on the Subcommittee on Aviation, served as a midwife and attending physician, caregiver and nurturer of all good things. I think it has really come to fruition here.

The National Aviation Capacity Expansion Act, H.R. 3479, will facilitate projects to enhance capacity in the Chicago area, including major expansion of Chicago O'Hare Airport, our Nation's second-busiest airport and the third-most delayed. As I noted previously, the City of Chicago, which runs the airport, has proposed development that it estimates will improve O'Hare's operations in optimal conditions by 79 percent and in less-than-optimal conditions by 95 percent, while making quantum leaps in O'Hare annual capacity. The proposal, which involves one new runway and reconfiguration of the seven existing runways, is predicted to more than double O'Hare's annual enplanements, from 31 million to 76 million, and to allow the airport to handle 1.6 million annual operations, compared with the current level of less than 1 million.

Under this legislation, the State of Illinois will be preempted from using unique provisions of state law to prevent the Federal Aviation Administration (FAA) from even considering the expansion and reconfiguration of O'Hare airport. The preemption provision is narrowly crafted to preempt the *unique provisions* of the Illinois Aeronautics Act, which for years have been used to delay any consideration of expanding O'Hare.

When H.R. 3479 was introduced, I was extremely concerned with the provisions that crafted preferences or exemptions for the O'Hare and Peotone projects from: (1) the federal and state National Environmental Policy Act (NEPA) processes, (2) the Clean Air Act, (3) and the need to compete with other airports, on a merit basis, for the limited Airport Improvement Program (AIP) funding available.

The Transportation and Infrastructure Committee, however, accepted an

amendment offered by Mr. Lipinski that makes it clear that O'Hare-related projects will not receive any preference in seeking funds from the Airport Improvement Program. The amendment only allows the City of Chicago to submit to the FAA a request for AIP funds for the planning and construction of O'Hare airport, without the prior approval of the State of Illinois. FAA will use its best professional judgment to determine whether the projects should be funded under the criteria used to evaluate applications for AIP grants.

The bill makes it clear that any application submitted by the City of Chicago for the expansion of O'Hare must be evaluated under all applicable federal laws and regulations, including the federal NEPA process. In addition, it requires that proposals for the construction or expansion of Peotone, Gary/Chicago, and Greater Rockford airports should be evaluated on the same basis as any other airport project.

The bill also addresses my main concern with the Clean Air Act provision in the introduced bill. I believed that under the introduced bill, the people of Illinois would lose the right to decide which emissions should be curtailed to meet the Clean Air Act's requirements. The reported bill requires the State to follow its usual and customary practices for accounting for, and regulating emissions associated with, airport activities. The bill prevents the State from deviating from customary practices to interfere with construction of a runway at O'Hare airport or the south suburban airport. The FAA can request a review by the federal Environmental Protection Agency to ensure that the State has followed its customary practices. The bill also prohibits the FAA from approving the O'Hare runway design plan unless FAA determines that the construction and the operations at the airport will include best management practices to mitigate emissions.

In sum, the National Aviation Capacity Expansion Act of 2002 ensures that the unique provisions of Illinois law will not stand in the way of the O'Hare redesign project, while at the same time, O'Hare will not have unfair advantage in competing for scarce AIP funds; and environmental laws will not be short-circuited.

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

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

Mr. LIPINSKI. Mr. Speaker, I would just like to speak on one point. It has been mentioned here on the floor that the Governor is not in favor of this legislation. I spoke to the Governor Friday afternoon, and he is still in favor of this legislation.

Now, if he changed his mind over the weekend, I cannot attest to that; but as of last Friday, he was in favor of this particular piece of legislation. I have read nothing in the newspaper, saw nothing on television, or heard

nothing on the radio that he has changed his position.

Mr. OBERSTAR. I thank the gentleman for that addition. That has been our understanding on our side on a bipartisan basis, that the Governor is in support.

Mr. Speaker, it is important to point out that cities were the first to champion airports; States came along much later.

The SPEAKER pro tempore (Mr. RYAN of Wisconsin). The time of the gentleman from Illinois (Mr. LIPINSKI) has expired.

Mr. JACKSON of Illinois. Mr. Speaker, I ask unanimous consent that the gentleman from Illinois may have 2 additional minutes for himself and 2 minutes to our side as well.

The SPEAKER pro tempore. Is the gentleman from Illinois (Mr. JACKSON) asking for equal distribution of minutes for each side?

Mr. JACKSON of Illinois. Yes, 2 minutes for each side.

Mr. LIPINSKI. Mr. Speaker, I would like to make that 5 minutes for each side.

The SPEAKER pro tempore. Without objection, each side is distributed an additional 5 minutes.

There was no objection.

Mr. LIPINSKI. Mr. Speaker, the gentleman from Illinois (Mr. KIRK) will have an additional 5 minutes?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. KIRK) will have an additional 5 minutes, and the gentleman from Illinois (Mr. JACKSON) will have an additional 5 minutes.

Mr. KIRK. Mr. Speaker, I believe I have 8 minutes now available to me?

The SPEAKER pro tempore. That is correct.

Mr. KIRK. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. LIPINSKI) and ask unanimous consent that he control that time.

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

There was no objection.

Mr. LIPINSKI. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman from Illinois (Mr. JACKSON) for his request and the gentleman from Illinois (Mr. LIPINSKI) for yielding that additional time to me.

Mr. Speaker, in the early years of aviation, with cities that first built airports, only later did States come. As late as 1958, only seven States provided financial assistance and support for airport construction. It was in the 1940s, long before the State of Illinois ever got into the business of supporting airports, that the Chicago City Council looked into the crystal ball and saw that the future was aviation and had the foresight to buy orchard fields and an additional 7,000 acres to build O'Hare.

On the matter of constitutionality, I just want to point out, and I was concerned about this, we inquired with the

John Paul Stephens professor of law at Northwestern University, Professor Thomas Merrill, to get his opinion on the constitutionality. His view is that "the Illinois Aeronautics Act was not protected by the Tenth Amendment. The Illinois Aeronautics Act is unique. Regulation aviation capacity cannot be deemed a core or traditional State function that might be protected by the Tenth Amendment. This legislation does not require the State of Illinois to proactively regulate its citizens, it merely prohibits the State of Illinois from interfering with the city of Chicago's ability to expand capacity at O'Hare."

Mr. Speaker, I think that clearly this legislation is within the authority of the Congress. It is in the public interest. It is necessary to resolve a deadlock between the State of Illinois and the City of Chicago. It was requested by the State of Illinois. It was sought by the City of Chicago, which has the primary responsibility for airport construction, and has nurtured O'Hare Airport into the world's premier facility that it is and represents today.

We are talking here not just about this airport, but we are talking about service to the entire Nation, facilitating air service to smaller communities as well as large communities, and service to the world.

Mr. JACKSON of Illinois. Mr. Speaker, I am proud to yield 2½ minutes to the distinguished gentleman from Illinois (Mr. CRANE).

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

Mr. CRANE. Mr. Speaker, I rise today in strong opposition to the so-called National Aviation Capacity Expansion Act of 2002. If enacted into law, this measure would not accomplish the goal that most Americans have in mind, namely, a reduction in air traffic congestion as quickly and cheaply as it can be accomplished. To the contrary, it would mean years of waiting for relief, expenditures far in excess of those associated with other more effective alternatives, and the establishment of a troublesome precedent that could come back to haunt other airports around the Nation in the future.

This legislation mandates the addition of one runway at Chicago's O'Hare Airport and the reconfiguration of O'Hare's existing runways, State law, local objections, noise problems, pollution threats, cost considerations, condemnation proceedings, safety concerns, ongoing litigation, and the fate of two cemeteries notwithstanding.

Worse yet, the measure, the total cost of which is likely to far exceed the \$6.6 billion price tag, in fact, it has been estimated to be more in the neighborhood of 12 billion to \$15 billion that has been associated with it, conveniently overlooks the fact that there are at least three other ways, such as making greater use of the greater Rockford Airport, which has a runway of over 10,000 feet, the second largest

runway in the State, and it can relieve O'Hare's air traffic congestion problems almost immediately.

Not only that, but all of these alternatives can be implemented less expensively and/or more quickly than the ill-conceived plan to expand O'Hare.

□ 1645

Furthermore, this legislation poses a threat to people who live near many other airports in this country because it will set a precedent for Federal government preemption of State and/or local laws governing airport planning and development.

Mr. Speaker, I urge my colleagues to vote against H.R. 3479. It is a prescription for mischief that bodes ill, not just for the residents of Chicago's northwest suburbs, but for millions of other Americans as well.

Mr. JACKSON of Illinois. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. RYAN of Wisconsin). The gentleman from Illinois (Mr. JACKSON) has 7 minutes remaining.

Mr. JACKSON of Illinois. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, we have heard some arguments about the constitutionality of this act, this unprecedented act of Congress. But in *New York v. The United States*, the Supreme Court was really clear. The Framers, they said, explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power to directly compel the States to prohibit those acts, *New York v. The United States*.

Printz v. The United States: It is uncontestable that the Constitution established a system of "dual sovereignty." And *Federalist No. 39*: Although the States surrendered many of their powers to the new Federal Government, they retained "a residuary and inviolable sovereignty," *Federalist No. 39*.

Mr. Speaker, that brings us to, from my perspective, the *Printz* decision. You heard some of the economic arguments about 47 States going through O'Hare Airport and the implications of that. This is about process and it is about doing it right. In *Printz*, the court went on to emphasize that this constitutional structural barrier to the Congress intruding on a State's sovereignty could not be avoided by claiming, A, that the Congressional authority was pursuant to the Commerce Power. All of the economic arguments are irrelevant, according to *Printz v. The United States*; and, B, that the Federal law preempted the State law under the supremacy clause. Even the supremacy clause arguments of Congress are not unavailable. And last I checked, the majority on the current Supreme Court are the same majority

that decided Printz. And unless they are willing to overturn Printz, this piece of legislation before us, Mr. Speaker, is unconstitutional, which raises the next point.

Because this is likely heading to Federal court, we are not going to solve the national aviation capacity problem any time soon, which is why we need a faster, cheaper, safer solution of expanding aviation capacity for our Nation's aviation system. That can be accomplished, not with a 13 to \$15 billion, 20-year project at O'Hare Airport; it is accomplishable by building a third airport in Peotone, Illinois, which my colleagues who have risen today aptly support.

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

Mr. KIRK. Mr. Speaker, the majority will close.

Mr. JACKSON of Illinois. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on International Relations.

Mr. LIPINSKI. Mr. Speaker, how much time remains?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. LIPINSKI) has 4 minutes remaining, and the gentleman from Illinois (Mr. KIRK) has 3 minutes remaining. The gentleman from Illinois (Mr. JACKSON) has 5 minutes remaining.

Mr. HYDE. Mr. Speaker, I want to say that my disdain for this legislation is in reverse ratio to my admiration for the chief sponsors, the gentlemen from Illinois (Mr. LIPINSKI), (Mr. KIRK), who are splendid legislators. They are just wrong on this bill. So I want to make that clear.

First of all, I just want to appeal to your common sense. I know this is a big deal. You want to add additional flights, nearly doubling already the busiest airport in the world. That is a big deal. We are talking about a lot of money. And when you talk about a lot of money, people's ears perk up. But we are also talking about so much space in the sky. You can keep condemning people's homes and their cemeteries and get bigger and bigger, and I do not understand why a Republican would put an imprimatur on transferring local authority; and this should be a local decision. When I say local, I do not mean the Governor. I mean the legislature, the people's body. That is what the Illinois Aeronautics Act says. We shred that and throw it away?

The Illinois Aeronautics Act gives the legislature or expresses the will of the legislature on this issue; and that requires permission from the legislature to expand this airport. But you are just riding roughshod over that, saying if we cannot get that, we will go to Congress.

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

Mr. HYDE. I yield to the gentleman from Illinois (Mr. LIPINSKI).

Mr. LIPINSKI. Mr. Speaker, the gentleman refers to the State legislature

in the Illinois Aeronautics Act. It is my understanding reading it and talking to other people about it that the Illinois legislature is not involved in the process at the present time. It is exclusively the Governor's office with its arbitrary veto power and then the Department of Transportation which he controls on the channeling acts. The legislature is not involved in the process at the present time.

Mr. JACKSON of Illinois. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Illinois (Mr. JACKSON).

Mr. JACKSON of Illinois. Mr. Speaker, is it the gentleman's contention then that a governor who is essentially not running for reelection is under an obligation to enter into an agreement and, therefore, obligate this Congress and future governors to a piece of legislation that future governors cannot alter? Is that the gentleman's position?

Mr. LIPINSKI. Mr. Speaker, I am saying my position is simply expressing to the gentleman from Illinois (Mr. HYDE) what my understanding is of the Aeronautics Act in the State of Illinois. The legislature is not involved.

Mr. HYDE. Reclaiming my time, I would suggest if we are going to prolong this seminar on the law, that we do it on the gentleman's time.

Mr. Speaker, I simply want to point out that there is only so much space in the sky. And when you already have the busiest airport, and busiest does not mean people walking into Starbucks. It means planes coming in and taking off.

I sit in my living room in the evening and look out and I see them stretched all the way up to Wisconsin, plane, plane, waiting to come in.

Of course, there are delays. There will always be delays at O'Hare because we have terrible weather in the winter and the airlines schedule too many flights. That is what happens and that needs to be corrected. But to double the size of O'Hare, the flights in and out of O'Hare, is really dangerous. It is dangerous.

We have pollution, noise pollution. We have air pollution. And now we are going to have a safety situation which is really dangerous. Now, that does not solve the problem of capacity, because we need it. We are up to the hilt at O'Hare. Do we expand? What is the most efficient, cheapest, effective way to meet the need for capacity?

Peotone. Build another airport. New York has Newark, Idlewild, John F. Kennedy. That shows how old I am, Idlewild, LaGuardia, of course, which we all go in and out of regularly. But Chicago has Midway, which the gentleman has a proprietary interest in, and O'Hare. So we need another airport, one that can be out in the green where it can expand, where it has a buffer so that the homes that are adjacent to it as possible can survive.

This is an answer to a real problem. Why do not we take that answer? Why do we not build Peotone? Because the

Mayor would not have much to do with it. I have always said he ought to. I would name it after the Mayor if he would let it get built. But that is the problem; and I hope this bill is defeated.

Mr. LIPINSKI. Mr. Speaker, how much time remains?

The SPEAKER pro tempore. The gentleman from Illinois (Mr. LIPINSKI) has 4 minutes remaining. The gentleman from Illinois (Mr. JACKSON) has no time remaining. The gentleman from Illinois (Mr. KIRK) has 3 minutes remaining.

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

Mr. Speaker, we have heard a lot of charges made here on the floor, one of which is that this bill will prevent Peotone from ever being built. There is nothing in this legislation that prevents Peotone from being built if there is a need for Peotone.

Some people wanted in this legislation, for the United States House of Representatives, the U.S. Senate and the President of the United States to say we have to build Peotone. We cannot do that. That is not right. If we did that, we would have every airport that had a conflict in the country coming over here to see us trying to legislate their problem out of existence. We do not do that for O'Hare Airport in this legislation either.

Expanding and modernizing O'Hare Airport does not become a Federal law until the Federal Aviation Administration has signed off on it. We also have an airport in Rockford. We have an airport in Gary. Airports that have already been established. In all deference to the gentlemen from Illinois (Mr. JACKSON), (Mr. WELLER), Peotone at the present time is a corn field. They have been asking commercial air carriers for years to agree to come down to Peotone and operate out of Peotone. As of this moment they still do not have one single air carrier who has been willing to say they would go down and operate out of Peotone.

They talk about relocating individuals because of O'Hare's expansion. If you were to build Peotone, you would relocate almost three times as many individuals as you will by expanding and modernizing O'Hare Airport.

The only way to solve the aviation gridlock problem in this country is by modernizing and expanding O'Hare Airport. If the capacity needs grow that much greater in the future, put some of that commercial aviation into Gary, put some of it into Rockford, build Peotone. Nothing in this legislation prevents Peotone from being built.

This is the one piece of legislation that this Congress will act upon this year that can truly expand aviation capacity in this country and for the rest of the world.

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

Mr. KIRK. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. MICA), the distinguished chairman

of the Subcommittee on Aviation, my chairman, a supporter of this bill.

Mr. MICA. Mr. Speaker, I thank the gentleman for yielding me time and I thank the gentleman for handling this legislation today.

Having just arrived by air, it sounds like a simple thing, I just arrived by air, but remember back to September 11, September 12, September 13, and we see the impact that aviation has on every American. We see how dependent our economy has become on aviation.

Mr. Speaker, I chair the subcommittee and I try to be fair, and the worst thing to do is get in the middle of a food fight in a delegation or delegations of Members affected by legislative proposal.

I tried to be fair in this proposal. I have the greatest respect for the gentleman from Illinois (Mr. HYDE). No one is held in higher esteem than the gentleman from Illinois (Mr. HYDE). I have great respect for the gentleman from Illinois (Mr. MANZULLO). I have tremendous respect for the gentleman from Illinois (Mr. WELLER) and have worked with him on the Peotone question. As chair of the subcommittee, however, I have to look not only at their interests but the interests of the Nation and the interests of the American people. And this is a difficult battle.

The gentleman from Illinois (Mr. HYDE) does not want any more planes over the residents he represents and feels that this airport is already at capacity. The gentleman from Illinois (Mr. WELLER) wants additional traffic. The gentleman from Illinois (Mr. MANZULLO) wants additional traffic for an existing facility. But we have to move forward. I believe that this is as good a compromise as we can get. It is based on codifying an agreement.

Now, mayors of Chicago come and mayors of Chicago will go. Governors of Illinois will come and go.

□ 1700

One of the problems we have in trying to make these improvements that are so key to safety and capacity is that the players keep changing. This does codify an agreement, allows us to go forward in our national interest.

Our national interest is, first, the safety of people who fly in and out of O'Hare. That airport has been congested. There has not been a single runway added since 1971, and something has to give in the modernization of those runways and capacity.

If O'Hare were by itself, we could leave it by itself; but when O'Hare closes down, the Nation's air system also closes down. So we must do something to deal with that.

Do we need improvements at O'Hare? Yes, we do. Do we need additional capacity at Peotone? I believe we will. Do we need to better utilize Rockford and Gary? Yes, and I think through our policy we can bring some of those changes about.

So I support the legislation, and I ask my Members to agree with this compromise.

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

This bill has the support of the gentleman from Alaska (Mr. YOUNG), chairman of the Committee on Transportation and Infrastructure; the gentleman from Minnesota (Mr. OBERSTAR), the ranking minority member; the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation; the gentleman from Illinois (Mr. LIPINSKI), the ranking minority member; Illinois' Governor, a Republican; Chicago's mayor, a Democrat; the chamber of commerce and the AFL-CIO. It has no objection from the Sierra Club and was scheduled on the floor by Speaker HASTERT and Minority Leader GEPHARDT.

It eliminates delays, not just at O'Hare but over 100 airports connecting through O'Hare. It is the right thing to do. I urge adoption of the legislation.

Mr. Speaker, I am inserting for the RECORD an exchange of letters between the gentleman from Alaska (Mr. YOUNG) and the gentleman from New York (Mr. BOEHLERT) regarding H.R. 3479.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC., July 12, 2002.

Hon. DON YOUNG,
Chairman, Committee on Transportation and
Infrastructure, House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN. The Committee on Transportation and Infrastructure has had under consideration H.R. 3479 the National Aviation Capacity Expansion Act. In that bill there is a provision which falls under the jurisdiction of the Committee on Science. Specifically, that provision is a sense of Congress amendment which would ask that the Federal Aviation Administration expend monies for research and development for noise mitigation programs.

By waiving consideration of H.R. 3479 the Committee on Science does not waive any of its jurisdictional rights and prerogatives.

I ask that you would support our request for conferees on H.R. 3479 or similar legislation if a conference should be convened with the Senate. I also ask that our exchange of letters be included in your committee's report and also in the Congressional Record.

I look forward to working with you on this and other important pieces of legislation.

Sincerely,
SHERWOOD BOEHLERT,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE,
Washington, DC, July 12, 2002.

Hon. SHERWOOD L. BOEHLERT,
Chairman, Committee on Science,
Washington, DC.

DEAR MR. CHAIRMAN. Thank you for your letter of July 12, 2002, regarding H.R. 3479, the National Aviation Capacity Expansion Act, and for your willingness to waive consideration of provisions in the bill that fall within your Committee's jurisdiction under House rules.

I agree that your waiving consideration of relevant provisions of H.R. 3479 does not waive your Committee's jurisdiction over the bill. I also acknowledge your right to seek conferees on any provisions that are under your Committee's jurisdiction during any House-Senate conference on H.R. 3479 or similar legislation, and will support your request for conferees on such provisions.

Your letter and this response will be included in the Congressional Record during consideration on the House Floor.

Thank you for your cooperation in moving this important legislation.

Sincerely,
DON YOUNG
Chairman.

Ms. WATERS. Mr. Speaker, I rise to express my opposition to H.R. 3479, the National Aviation Capacity Expansion Act, which would force airport expansion on a community in the Chicago region that is already overburdened by airport operations.

The people of my congressional district in Southern California are overburdened by the noise, pollution and traffic congestion generated by Los Angeles International Airport (LAX). Airport expansion would only exacerbate these problems. That is why I am introducing the Careful Airport Planning for Southern California Act (the CAP Act).

The CAP Act would cap LAX air traffic at its current capacity of 78 million passengers per year. The CAP Act would encourage airport development in Southern California communities that are eager for the benefits of a local airport. The CAP Act would ensure that the benefits and burdens of airport development are fairly distributed throughout the Southern California region.

I urge my colleagues to support the CAP Act, to oppose the National Aviation Capacity Expansion Act and oppose the expansion of Chicago O'Hare and LAX.

Mr. RUSH. Mr. Speaker, I rise in support of H.R. 3479, the National Aviation Capacity Expansion Act. This legislation will codify a historic agreement reached between the Republican Governor of Illinois and the Mayor of Chicago to expand and modernize O'Hare International airport. As you know, O'Hare airport is one of the busiest airports in this nation and the hub to hundreds of destinations across the globe. Therefore, making it the center of our national transportation system.

Unfortunately, O'Hare is the third leading airport for congestion and delays. According to the FAA, O'Hare's systematic flight delays and cancellations has a crippling affect on our nation's aviation system.

Many of us, and the flying public, have spent countless hours sitting on a runway or in an airport waiting for a flight to taxi or depart. In 2000, it was estimated that O'Hare airport had 545 delays, or 63.3 delays per 1,000 operations. The principal reason attributed for these delays rests solely on the fact that O'Hare airport has antiquated runways. Hence, expanding O'Hare's runways is essential in remedying our nation's aviation crisis. It is estimated that modernizing O'Hare airport will reduce air traffic delays by 79 percent and weather delays by 95 percent.

I am glad to see that this bill includes a provision to develop a third Airport in Illinois. This airport, known as the Peotone Airport, will provide our nation's air transportation system with the additional relief required to reduce airport congestion while creating thousands of construction and permanent jobs for the South Suburban region of the state.

We need solutions to aviation delays and congestion. Let's end this 20 year old debate. Expanding O'Hare and constructing a third airport is the right thing to do. I urge my colleagues on both sides of the aisle to support this critical legislation.

Mr. BLAGOJEVICH. Mr. Speaker, I am honored to join my colleague from Illinois, Mr. LIPINSKI, here today in supporting legislation that is very important not only to my constituents in Illinois, but to the entire nation. I would also like to thank the distinguished Speaker, Mr. HASTERT, for allowing this bill to come before us today.

I have been proud to serve as an original cosponsor of the National Aviation Capacity Expansion Act here in the House, and to have worked in Illinois with a broad coalition of labor, business and civic leaders to promote the effort in Illinois. Today is the result of the unified effort of diverse groups of Illinoisans who have joined to fight for a proposal that will strengthen our state's economic and fiscal health. The bill would create 195,000 new jobs, and would bring an estimated \$19 billion to the State of Illinois.

This bill calls for comprehensive expansion of O'Hare. H.R. 3749 calls for each of the essential elements that transportation industry experts and local officials agree must be included in any effective O'Hare modernization proposal: foremost among them, the addition of a southern runway, the reconfiguration of existing runways, and the introduction of western access to the airport.

I also commend Congress' commitment to addressing the crucial issue of the nation's aviation capacity. The National Aviation Capacity Expansion Act would not only benefit my constituents and the State of Illinois, it would have an affect on the entire nation. O'Hare is not only the world's busiest airport, but it is a critical national hub through which thousands of flights connect everyday. Congestion in Chicago has a ripple effect throughout the United States and abroad, grounding and delaying flights miles away, some that are not even bound for O'Hare.

In addition to inconveniencing travelers, these delays and congestion cripple the ability of businesses to function effectively. The gridlock at O'Hare has been responsible for everything from missed business meetings to delayed shipments of goods. Mr. Lipinski's bill would reduce delays by 79 percent, and with it save a projected \$380 million that is lost due to the delays.

O'Hare's airfield has not been improved since 1971. Repeated initiatives to modernize it fell prey to local political disputes that led to delays in the project in recent years. Last year, however, the Mayor of the City of Chicago and the Governor of Illinois reached an historic agreement to modernize O'Hare and take an inclusive approach to meet the aviation needs of Chicago and the nation. On behalf of Illinois, and with the support of elected officials and businesses, labor and community groups across the nation, they are working with Congress to help meet the long-term transportation needs of the nation.

Such State and local leadership demonstrates that Illinois takes its responsibility to the nation very seriously. Nearly 10,000 organizations and individuals in all 50 states have voiced their support for expanding Chicago's aviation capacity. H.R. 3749 has been endorsed by a wide range of national groups. The bill has received the support of the U.S. Chamber of Commerce, the AFL-CIO, the National Air Traffic Controllers Association, the Airline Pilots Association, the Aircraft Owners and Pilots Association and the National Air Transportation Association—to name just a few.

This broad base of support speaks to the legislation's vital impact on the efficiency and reliability of our aviation infrastructure, as well as to the unique opportunity for enhanced business activity and increased job creation that would accompany comprehensive O'Hare expansion. As with the delays at the airport, a failure to keep this economic engine vibrant will surely affect businesses and working women and men in many parts of the nation. It is important to note that O'Hare already generates some \$35 billion annually in economic activity and produces more than 400,000 jobs in northeastern Illinois and northwest Indiana. This includes tens of thousands of people whose jobs are tied directly to the travel and tourism industry and countless others—employed in virtually every sector of the economy—whose wages are earned thanks to the economic engine that is O'Hare.

I support H.R. 3749 because I am committed to ensuring that the economic security of those workers—and that of nearly 200,000 new workers—will expand and grow.

The time to act on O'Hare's expansion is today. H.R. 3749 represents an historic opportunity that we must seize. By doing so, we will guarantee a safe, reliable air transportation system for our constituents. We will also demonstrate our commitment to a healthy economy and our ability to take decisive action in the face of a national need.

I respectfully urge you to support this vital legislation.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 3749, the National Aviation Capacity Expansion Act.

This Bill is long overdue.

Chicago O'Hare has been in need of a new runway for the last 20 years.

It's annually one of the worst airports in terms of cancellations and delays.

What's worse, problems at O'Hare ripple through our entire system, creating tie-ups and delays at dozens of other airports.

This bill furthers the agreement reached by local and State leaders to allow the city of Chicago to go ahead with a proposed capacity expansion project from O'Hare.

It likewise allows the State to go forward with its proposal for peotone and guarantees that Meig's Field will remain open.

I support H.R. 3749 to address these vital national transportation issues and urge everyone to support this bill.

Mr. DAVIS of Illinois. Mr. Speaker, I would like to commend Mr. LIPINSKI for his leadership concerning transportation issues in Illinois and especially the issue of O'Hare Expansion and today I stand in firm support of H.R. 3749.

Chicago has a vast and growing transportation industry. Over the years Chicago's O'Hare International Airport has continued its growth, in traffic and demand. Presently, O'Hare ranks as the Nation's first or second busiest airport with nearly 34,000,000 annual passengers traveling both domestically and internationally.

Expanding O'Hare offers an array of benefits: from employment to economic growth. As Chicago continues to grow, O'Hare continues to experience the backlog of delays. According to the Airport Capacity Benchmark Report in 2001, O'Hare was the third most delayed airport.

Sitting in the heart of the Mid West, these delays continue to burden connecting airports creating a snowball affect and frustrated pas-

sengers. By the addition of runways, and the expansion of O'Hare delay times will diminish and air travel at Chicago's bustling O'Hare will undoubtedly improve for the consumer and the region.

I encourage my colleagues to support H.R. 3749.

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

The SPEAKER pro tempore (Mr. RYAN of Wisconsin). The question is on the motion offered by the gentleman from Illinois (Mr. KIRK) that the House suspend the rules and pass the bill, H.R. 3749, as amended.

The question was taken.

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

Mr. JACKSON of Illinois. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

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

GENERAL LEAVE

Mr. KIRK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3749.

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

There was no objection.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 5 o'clock and 3 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

□ 1830

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. TERRY) at 6 o'clock and 30 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will now put the question on motions to suspend the rules on which further proceedings were postponed earlier today.

Votes will be taken in the following order:

H.R. 3482, by the yeas and nays;

H.R. 4755, by the yeas and nays;

H.R. 3479, by the yeas and nays.

Votes on motions to suspend the rules on House Resolution 482, House Resolution 452, and House Concurrent Resolution 395 will be taken tomorrow.

RECORD votes on remaining motions to suspend the rules, if ordered, will also be taken tomorrow.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

CYBER SECURITY ENHANCEMENT ACT OF 2002

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3482, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 3482, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 385, nays 3, not voting 46, as follows:

[Roll No. 296]

YEAS—385

Abercrombie	Combest	Gordon
Ackerman	Condit	Goss
Aderholt	Cooksey	Graham
Akin	Costello	Graves
Allen	Cox	Green (TX)
Andrews	Cramer	Green (WI)
Army	Crane	Greenwood
Baca	Crenshaw	Grucci
Baird	Cubin	Gutknecht
Baker	Culberson	Hall (OH)
Baldacci	Cummings	Hall (TX)
Baldwin	Cunningham	Hansen
Ballenger	Davis (CA)	Hart
Barcia	Davis (FL)	Hastings (WA)
Barr	Davis (IL)	Hayes
Bartlett	Davis, Jo Ann	Hayworth
Barton	Davis, Tom	Hefley
Bass	Deal	Herger
Bentsen	DeFazio	Hill
Bereuter	DeGette	Hilliard
Berkley	Delahunt	Hinojosa
Berman	DeLauro	Hobson
Berry	DeLay	Hoeffel
Biggert	DeMint	Hoekstra
Bilirakis	Deutsch	Holden
Bishop	Diaz-Balart	Holt
Blagojevich	Dicks	Honda
Blumenauer	Dingell	Hooley
Blunt	Doggett	Horn
Boehlert	Doolittle	Hostettler
Boehner	Dreier	Houghton
Bonilla	Duncan	Hoyer
Bono	Dunn	Hulshof
Boozman	Edwards	Hunter
Borski	Ehlers	Hyde
Boswell	Ehrlich	Inlee
Boyd	Emerson	Isakson
Brady (PA)	Engel	Israel
Brady (TX)	English	Issa
Brown (FL)	Eshoo	Istook
Brown (OH)	Etheridge	Jackson (IL)
Brown (SC)	Evans	Jackson-Lee
Burr	Everett	(TX)
Burton	Farr	Jefferson
Buyer	Fattah	Jenkins
Callahan	Ferguson	Johnson (CT)
Calvert	Flake	Johnson (IL)
Camp	Fletcher	Johnson, E. B.
Cannon	Foley	Johnson, Sam
Cantor	Forbes	Jones (NC)
Capito	Ford	Jones (OH)
Capps	Frank	Kanjorski
Capuano	Frelinghuysen	Kaptur
Cardin	Frost	Keller
Carson (IN)	Galleghy	Kelly
Carson (OK)	Ganske	Kennedy (MN)
Castle	Gekas	Kennedy (RI)
Chabot	Gibbons	Kerns
Clay	Gilchrest	Kildee
Clayton	Gillmor	Kind (WI)
Clement	Gilman	Kingston
Clyburn	Gonzalez	Kirk
Coble	Goode	Kleczka
Collins	Goodlatte	Knollenberg

Kolbe	Olver	Shuster
LaFalce	Ortiz	Simmons
LaHood	Osborne	Simpson
Lampson	Ose	Skeen
Langevin	Otter	Skelton
Larsen (WA)	Owens	Slaughter
Larson (CT)	Oxley	Smith (NJ)
Latham	Pallone	Smith (TX)
LaTourette	Pascrell	Smith (WA)
Leach	Pastor	Snyder
Lee	Payne	Solis
Levin	Pence	Souder
Lewis (CA)	Peterson (MN)	Spratt
Lewis (GA)	Peterson (PA)	Stearns
Lewis (KY)	Petri	Stenholm
Linder	Phelps	Strickland
Lipinski	Pickering	Stump
LoBiondo	Pitts	Stupak
Lofgren	Platts	Sullivan
Lowey	Pomeroy	Sununu
Lucas (KY)	Portman	Tancredo
Lucas (OK)	Price (NC)	Tanner
Luther	Pryce (OH)	Tauscher
Lynch	Putnam	Tauzin
Maloney (NY)	Quinn	Taylor (MS)
Manzullo	Radanovich	Terry
Markey	Rahall	Thomas
Matheson	Ramstad	Thompson (CA)
Matsui	Rangel	Thompson (MS)
McCarthy (MO)	Regula	Thornberry
McCarthy (NY)	Rehberg	Thune
McCollum	Reyes	Thurman
McCrery	Reynolds	Tiahrt
McGovern	Rivers	Tiberi
McHugh	Rodriguez	Tierney
McInnis	Roemer	Toomey
McIntyre	Rogers (KY)	Towns
McKeon	Rogers (MI)	Turner
McKinney	Rohrabacher	Udall (NM)
McNulty	Ros-Lehtinen	Upton
Meehan	Ross	Velazquez
Meek (FL)	Rothman	Viscosky
Menendez	Roybal-Allard	Walden
Mica	Royce	Walsh
Millender	Rush	Wamp
McDonald	Ryan (WI)	Waters
Miller, Dan	Sabo	Watkins (OK)
Miller, Gary	Sanchez	Watson (CA)
Mink	Sandlin	Watt (NC)
Mollohan	Sawyer	Watts (OK)
Moore	Saxton	Weiner
Moran (KS)	Schakowsky	Weldon (FL)
Moran (VA)	Schiff	Weldon (PA)
Morella	Schrock	Weller
Murtha	Scott	Wexler
Myrick	Sensenbrenner	Whitfield
Napolitano	Serrano	Wicker
Neal	Sessions	Wilson (NM)
Nethercutt	Shadegg	Wilson (SC)
Ney	Shaw	Wolf
Northup	Shays	Woolsey
Norwood	Sherman	Wu
Nussle	Sherwood	Wynn
Oberstar	Shimkus	Young (AK)
Obey	Shows	Young (FL)

NAYS—3

NOT VOTING—46

Kucinich	Miller, Jeff	Paul
Bachus	Gutierrez	Pombo
Barrett	Harman	Riley
Becerra	Hastings (FL)	Roukema
Bonior	Hilleary	Ryun (KS)
Boucher	Hinchey	Sanders
Bryant	John	Schaffer
Chambliss	Kilpatrick	Smith (MI)
Conyers	King (NY)	Stark
Coyne	Lantos	Sweeney
Crowley	Maloney (CT)	Taylor (NC)
Dooley	Mascara	Trafficant
Doyle	McDermott	Udall (CO)
Finer	Meeks (NY)	Vitter
Fossella	Miller, George	Waxman
Gephardt	Nadler	
Granger	Pelosi	

□ 1859

Ms. RIVERS changed her vote from “nay” to “yea.”

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for: Mr. FILNER. Mr. Speaker, on rollcall No. 296, I was in my district on official business.

Had I been present, I would have voted yea.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. TERRY). Pursuant to clause 8 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting on each additional motion to suspend the rules on which the Chair has postponed further proceedings.

CLARENCE MILLER POST OFFICE BUILDING

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 4755.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Connecticut (Mr. SHAYS) that the House suspend the rules and pass the bill, H.R. 4755, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 389, nays 0, not voting 45, as follows:

[Roll No. 297]

YEAS—389

Abercrombie	Capito	Ehrlich
Ackerman	Capps	Emerson
Aderholt	Capuano	Engel
Akin	Cardin	English
Allen	Carson (IN)	Eshoo
Andrews	Carson (OK)	Etheridge
Army	Castle	Evans
Baca	Chabot	Everett
Baird	Clay	Farr
Baker	Clayton	Fattah
Baldacci	Clement	Ferguson
Baldwin	Clyburn	Flake
Ballenger	Coble	Fletcher
Barcia	Collins	Foley
Barr	Combest	Forbes
Bartlett	Condit	Ford
Barton	Cooksey	Frank
Bass	Costello	Frelinghuysen
Bentsen	Cox	Frost
Bereuter	Cramer	Galleghy
Berkley	Crane	Ganske
Berman	Crenshaw	Gekas
Berry	Cubin	Gibbons
Biggert	Culberson	Gilchrest
Bilirakis	Cummings	Gillmor
Bishop	Cunningham	Gilman
Blagojevich	Davis (CA)	Gonzalez
Blumenauer	Davis (FL)	Goode
Blunt	Davis (IL)	Goodlatte
Boehlert	Davis, Jo Ann	Gordon
Boehner	Davis, Tom	Goss
Bonilla	Deal	Graham
Bono	DeFazio	Graves
Boozman	DeGette	Green (TX)
Borski	Delahunt	Green (WI)
Boswell	DeLauro	Greenwood
Boyd	DeLay	Grucci
Brady (PA)	DeMint	Gutknecht
Brady (TX)	Deutsch	Hall (OH)
Brown (FL)	Diaz-Balart	Hall (TX)
Brown (OH)	Dicks	Hansen
Brown (SC)	Dingell	Hart
Burr	Doggett	Hastings (WA)
Burton	Doolittle	Hayes
Buyer	Doyle	Hayworth
Callahan	Dreier	Hefley
Calvert	Duncan	Herger
Camp	Dunn	Hill
Cannon	Edwards	Hilliard
Cantor	Ehlers	Hinojosa

Hobson
Hoefel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslie
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kind (WI)
Kingston
Kirk
Klecza
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowe
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (NY)
Manzullo
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntyre

NOT VOTING—45

Bachus
Barrett
Becerra
Bonior
Boucher
Bryant
Chambliss
Conyers
Coyne
Crowley
Dooley
Filner
Fossella
Gephardt
Granger

Gutierrez
Harman
Hastings (FL)
Hilleary
Hinchev
John
Kilpatrick
King (NY)
Lantos
Maloney (CT)
Mascara
McDermott
Meeks (NY)
Miller, George
Nadler

Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (NM)
Upton
Velazquez
Visclosky
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

□ 1908

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILER. mr. Speaker, on roll call No. 297, I was in my district on official business.

Had I been present, I would have voted "yea."

NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

The SPEAKER pro tempore (Mr. TERRY). The pending business is the question of suspending the rules and passing the bill, H.R. 3479, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. KIRK) that the House suspend the rules and pass the bill, H.R. 3479, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 247, nays 143, not voting 44, as follows:

[Roll No. 298]

YEAS—247

Abercrombie
Ackerman
Allen
Andrews
Armye
Baca
Baird
Baker
Baldacci
Barcia
Barton
Bass
Bentsen
Bereuter
Berkeley
Berman
Berry
Biggett
Bishop
Blagojevich
Blumenauer
Boehlert
Boehner
Bonilla
Boozman
Borski
Boswell
Boyd
Brady (PA)
Brady (TX)
Brown (SC)
Callahan
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clement
Combust
Cooksey
Costello
Cox
Cramer
Cunningham
Davis (CA)
Davis (IL)
Davis, Tom
DeFazio
DeGette
DeLahunt
DeLauro
DeLay
DeMint

Ortiz
Osborne
Pallone
Pascrell
Pastor
Pence
Peterson (MN)
Petri
Phelps
Platts
Pomeroy
Portman
Price (NC)
Quinn
Rahall
Rangel
Rehberg
Reyes
Reynolds
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Ross
Roybal-Allard
Royce
Rush
Ryan (WI)

Sanchez
Sandlin
Sawyer
Saxton
Schakowsky
Schrock
Serrano
Sessions
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Solis
Souder
Spratt
Stenholm
Strickland
Sullivan
Tanner
Tauscher
Tauzin
Taylor (MS)

Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Watkins (OK)
Watts (OK)
Weiner
Weldon (PA)
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Woolsey
Wu
Young (AK)
Young (FL)

NAYS—143

Aderholt
Akin
Baldwin
Ballenger
Barr
Bartlett
Bilirakis
Blunt
Bono
Brown (FL)
Brown (OH)
Burr
Burton
Buyer
Calvert
Camp
Cannon
Castle
Chabot
Clay
Clayton
Clyburn
Coble
Collins
Condit
Crane
Crenshaw
Cubin
Culberson
Cummings
Davis (FL)
Davis, Jo Ann
Deal
Deutsch
Dingell
Dunn
Edwards
Ehrlich
Emerson
English
Everett
Flake
Foley
Forbes
Gallegly
Gilchrest
Goode
Goodlatte

Goss
Graham
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayworth
Hefley
Herger
Hilliard
Holt
Horn
Hostettler
Houghton
Hunter
Hyde
Inslie
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Jones (NC)
Jones (OH)
Keller
Kerns
Kildee
Kingston
Kucinich
LaHood
Lee
Levin
Lewis (CA)
Linder
LoBiondo
McCarthy (MO)
McInnis
McKinney
Meek (FL)
Miller, Dan
Miller, Jeff
Moran (VA)
Morella
Myrick
Nethercutt
Norwood
Obey

Ose
Otter
Owens
Oxley
Paul
Payne
Peterson (PA)
Pickering
Pitts
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rivers
Rohrabacher
Ros-Lehtinen
Rothman
Sabo
Schiff
Scott
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Shows
Smith (MI)
Smith (WA)
Snyder
Stearns
Stump
Stupak
Sununu
Tancredo
Terry
Thompson (MS)
Thurman
Toomey
Walsh
Wamp
Waters
Watson (CA)
Watt (NC)
Weldon (FL)
Weller
Wolf
Wynn

NOT VOTING—44

Bachus
Barrett
Becerra
Bonior
Boucher
Bryant
Chambliss
Conyers
Coyne
Crowley
Dooley
Filner
Fossella
Gephardt
Granger

Gutierrez
Harman
Hastings (FL)
Hilleary
Hinchev
John
Kilpatrick
King (NY)
Lantos
Maloney (CT)
Mascara
McDermott
Meeks (NY)
Miller, George
Nadler

Pelosi
Pombo
Riley
Roukema
Ryun (KS)
Sanders
Schaffer
Stark
Sweeney
Taylor (NC)
Traficant
Udall (CO)
Waxman
Wexler

□ 1922

Messrs. MORAN of Virginia, DEUTSCH, and SHOWS changed their vote from "yea" to "nay."

Ms. HART and Mr. OLVER changed their vote from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall no. 298, I was in my district on official business. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. McDERMOTT. Mr. Speaker, I was unable to vote on today's suspension bills. Had I been capable of voting, I would have voted in support of H.R. 3482, Cyber Security Enhancement Act; H.R. 4755, Clarence Miller Post Office Building Designation; and H.R. 3479, National Aviation Capacity Expansion Act.

PERSONAL EXPLANATION

Ms. KILPATRICK. Mr. Speaker, district business prevents me from being present for legislative business scheduled for today, Monday, July 15, 2002. Had I been present, I would have voted "yea" on the following rollcall votes: H.R. 3482, the Cyber Security Enhancement Act (rollcall No. 296); and H.R. 4755, the Clarence Miller Post Office Building Designation Act (rollcall no. 297). I would have voted "nay" on H.R. 3479, the National Aviation Capacity Expansion Act (rollcall No. 298).

ANNOUNCEMENT BY COMMITTEE ON RULES REGARDING AMENDMENTS TO LEGISLATIVE BRANCH APPROPRIATIONS BILL

(Ms. PRYCE of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE of Ohio. Mr. Speaker, the Committee on Rules is planning to meet later this week to grant a rule which may limit the amendment process on the legislative branch appropriations bill for fiscal year 2003. The bill was ordered reported by the Committee on Appropriations Thursday, July 11, and is expected to be filed later today.

Any Member wishing to offer an amendment must submit 55 copies of the amendment and one copy of a very brief explanation of the amendment to the Committee on Rules in room H-312 of the Capitol no later than 12 noon on Wednesday, July 17. Members should draft their amendments to the bill as reported by the Committee on Appropriations. The text is available at the Committee on Appropriations.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House.

HOUR OF MEETING TOMORROW

Mr. LUCAS of Oklahoma. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 a.m. tomorrow for morning hour debates.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1577

Mr. LUCAS of Oklahoma. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1577.

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

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

WHERE IS THE MONEY?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina. Mr. Speaker, first, I would like to say I join my colleagues on both sides of the aisle in my concerns about the corporate scandals that are taking place throughout this country and certainly the investors who have lost so much money. I resent very much the corporate leadership and how they have misled and manipulated the investors, and I hope that there will be a severe price to pay for this action.

However, Mr. Speaker, I wanted to come back to the floor tonight to talk about my concerns about the government in their report, which was the "2001 Financial Report of the United States Government." On page 110, we can see from the chart that they acknowledge in this report that the taxpayers or the government has lost \$17.3 billion of the taxpayers' money. My biggest concern is because the taxpayers do not have a choice, they have to pay their taxes at the end of the year, and those us of in Congress, I think we have a responsibility to make sure that the monies of our taxpayers are certainly being protected so there is not a report like the "2001 Financial Report of the United States Government," that said we have misplaced or lost or cannot reconcile transactions that total \$17.3 billion.

Mr. Speaker, I actually wrote to Secretary O'Neill on June 6 asking him to please respond to my letter asking questions as to where in the world could this \$17.3 billion have gone. I cer-

tainly think that the taxpayers of this country have a right to know. Certainly they are required to pay taxes, so they are investors in this government; and we have a responsibility to make certain that we can account for their monies.

In addition, there was the GAO testimony that was released on April 9, 2002. This was an appearance before the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations. I want to read one statement from David Walker, Comptroller General of the United States. He said, "As in the four previous fiscal years, we were unable to express an opinion on the consolidated financial statements because of certain material weaknesses in internal control and accounting and reporting issues. These conditions prevented us from being able to provide the Congress and the American citizens an opinion as to whether the consolidated financial statements are fairly stated in conformity with the U.S. generally accepted accounting principles."

Mr. Speaker, when I read that information to the House and to the American people, we certainly have our responsibility as elected officials to make certain that the people that have the privilege to work for the taxpayers of this country make sure that we spend their money wisely. I am almost embarrassed to be here on the floor to say to the American people and to my colleagues on the floor of the House that in this 2001 report we have acknowledged that we have lost \$17.3 billion of the taxpayers' money.

□ 1930

Mr. Speaker, I am going to close by saying in addition to Secretary O'Neill, I have written a letter to Chairman DAN BURTON asking that he hold a hearing and let us see if we cannot find out where the taxpayers' \$17.3 billion has gone. We owe them an explanation.

As we look into the corporate scandals, let us also look at the accounting system of the United States Government so that we can explain to the taxpayers of this country where their money is going.

The SPEAKER pro tempore (Mr. TERRY). Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

TIME FOR SEC HEAD TO GO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, those who were watching television just before the vote would have been treated to a softball interview with Mr. Harvey Pitt. Mr. Harvey Pitt is a former lobbyist for securities firms and accounting firms and, knowing so well the backrooms, he was named by the President of the United States to be our chief watchdog when it comes to securities enforcement. There is a little problem with Mr. Pitt as a watchdog, unfortunately. He is so ethically and morally compromised, he often cannot vote.

Recently, the Securities and Exchange Commission staff provided a compelling case against Ernst & Young, an accounting firm. There were three commissioners present, and apparently they found the evidence compelling, but unfortunately two of them were so ethically and morally challenged, both appointees of President Bush, Mr. Pitt, the chairman, and another member, they could not vote. The only person that could vote was a Clinton holdover. He did not have the ethical problems of voting for or against his former clients and buddies and he voted to fine them. An administrative law judge threw it out.

So here we have it. The chief enforcement arm of the United States Government to rein in corporate misconduct, securities fraud, the accounting firms, and the chairman cannot vote. In his first 10 months in office, he had to recuse himself from voting 29 times because these were all people whom he had represented and he will represent again soon when he leaves his position as chair of the Securities and Exchange Commission.

This is the tough new Securities and Exchange Commission which is supposed to instill confidence? Mr. Pitt carried on at great length about what he really cares about is the little guy, you know, Main Street. I do not think Mr. Pitt has seen Main Street from his penthouse apartment, his thousand-dollar-an-hour consulting with these securities and accounting firms for a heck of a long time, except maybe from the tinted windows of his limousine.

He has represented other outstanding folks: MCI, WorldCom, a \$4 billion problem there. Merrill Lynch. Arthur Andersen. Whoops. Yeah, a little bit of a problem there. In April he met with a former client, KPMG Consulting, while their audits were being investigated. He said, "Hey, you can't tell me that I can't meet with people who I worked for who are currently under investigation because I wouldn't be able to meet with anybody." This is our chief watchdog, Harvey Pitt.

Harvey Pitt. Yes, perhaps he would be a great enforcer because he knows all the backroom tricks. One of the big problems we have was conflicts of in-

terest with the accounting companies. Mr. Pitt as a \$1,000-an-hour lobbyist/lawyer, he always talks about himself as a lawyer, not a lobbyist—he was a lobbyist with a law degree and a license to practice law—had in fact worked very hard to prevent those conflict of interest rules from going into effect which, of course, allowed many of the current accounting shenanigans to go forward because these same firms, Arthur Andersen and others, were selling services to the companies that they were supposedly providing arm's length auditing services to and the companies were not going to be real eager to buy those services if their CEO was not earning tens or hundreds of millions of dollars of bonuses by inflating their earnings reports and having the accounting firms sign off on it. This is our chief watchdog.

It is not just his actions that belie Mr. Pitt. It is his words. When he was sworn in, he said the SEC will be a kinder and gentler place for accountants. He would have us believe that now he has become a veritable pit bull of enforcement, that he is the best person for the job. It is extraordinary that the Bush administration has not joined notables such as Senator JOHN MCCAIN in asking for Mr. Pitt to resign. He is an embarrassment to this administration. To have a chief law enforcement officer who cannot enforce the law because he is so morally and ethically compromised, he cannot even vote on enforcement actions recommended by his own staff and investigators.

It is time for Mr. Pitt to go if you want to restore some modicum of faith in how straight these markets, these reports and these investigations are.

The SPEAKER pro tempore (Mr. KELLER). Under a previous order of the House, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes.

(Mr. GEORGE MILLER of California addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii (Mrs. MINK) is recognized for 5 minutes.

(Mrs. MINK of Hawaii addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

DEMOCRACY AT WORK: MILITARY RETIREE GRASSROOTS SET AN EXAMPLE FOR ALL AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Mississippi (Mr. SHOWS) is recognized for 5 minutes.

Mr. SHOWS. Mr. Speaker, today through access to advanced technical means of communication, Americans are able to unite their individual voices and present a message, loud and clear, that makes Congress pay heed to what they have to say. This is truly democracy in action.

July 16 is the sixth anniversary of the beginning of a grassroots movement that exemplifies the spirit of democracy our Founding Fathers envisioned and represents the power of many individual voices uniting as one. On July 16, 1996, Colonel George "Bud" Day, a Congressional Medal of Honor recipient who was Senator JOHN MCCAIN's cellmate in North Vietnam for many years, filed a class action lawsuit against the government of the United States for breaking promises of lifetime health care. Specifically, since the founding of the Republic, the U.S. Government routinely promised military recruits if they served a career in uniformed service for 20 years, they and their dependents would receive health care for life. Indeed, that is what they received.

But beginning with laws enacted in 1956, lifetime health care benefits were chipped away. Personnel who joined the service before 1956, with the promise of lifetime care, later retired from the service to find the government had gone back on its promise. When laws passed in the mid 1990s finally kicked military retirees over the age of 65 out of the military health care system, that is when Colonel Day filed his suit on behalf of two Florida military retirees. Today, Colonel Day's class act group, CAG, represents thousands of military retirees and families across the country in a case that is pending in a Federal appeals court in Washington. Last year a three-judge panel of that court ruled in Colonel Day's favor that the United States did break a contract with its career uniformed personnel. The full 11-judge panel has reheard the case and a ruling will be forthcoming.

The government attorneys put themselves in a position of claiming essentially the military recruiters made promises on behalf of the United States Government that they never intended to keep because, in these attorneys' opinion, the law did not require them to keep their promise. The attorneys should just have said, "They make promises but had their fingers crossed behind their backs." Most observers believe the court will again side with Colonel Day. The question will be whether the United States attorneys will appeal the ruling to the Supreme Court.

Colonel Day forged a coalition of Americans who had a shared grievance against their own government. Colonel Day and the class act group's historic lawsuit and the power of the thousands of retirees who are members of CAG represent the best of what our Founding Fathers envisioned. There are other

issues relating to the broken promise and the military grassroots continues to make its collective voice heard. In 1999, thousands of retirees across the country came together when I introduced the Keep Our Promise to America's Military Retirees Act. This was the first legislation in Congress that addressed the broken promise head-on. By writing letters and e-mails to newspapers and Congress and by posting billboards across the country, military retirees made their voices heard. In just one year, the voice of the military retirees grassroots, united loud and clear around the legislation, forced Congress to act. Congress enacted TRICARE for Life, which restored much of the promises of lifetime health care for retirees over the age of 65.

TFL, as it is known, was a significant achievement for many military retirees over 65, but much more needs to be done to restore the promise of military health care to many more of our retired uniformed personnel. For too many retired military personnel, the military health care system currently in place does not provide the level of quality care they have been promised, earned and deserve. A new coalition representing military retirees has emerged to challenge the government to provide that health care. They call themselves the MRGRG, the Military Retiree Grassroots Group. These retirees do not have a formal organization or membership but are all over the country wired together via the Internet. The MRGRG's goal is to achieve full restoration of the broken promise now and have it done this year.

Recently, nine MRGRG members, recognized as leaders in the retiree movement, drafted a white paper on military health care. The 200-page white paper spells out the retirees' case clearly and in great detail. At their own expense, MRGRG members have reproduced and hand-delivered white paper binders and CDs to every member of the House and Senate. Like Colonel Day's group, the MRGRG represents exactly what our Founding Fathers intended, American citizens acting freely and of their own will, telling their elected representatives what they ought to do.

The good people of CAG and MRGRG are already heroes—they fought to defend the freedoms we all enjoy, and they made a career doing it. And now they are heroes all over again, setting an example for all of us by showing how democracy is supposed to work and by making it work exactly the way our Founding Fathers intended.

Our Founding Fathers would be proud of today's military retirees' faith in our democratic institution. I know I am. God bless them, and God Bless America.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mrs. THURMAN) is recognized for 5 minutes.

(Mrs. THURMAN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THE NATIONAL DEBT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. TAYLOR) is recognized for 5 minutes.

Mr. TAYLOR of Mississippi. Mr. Speaker, as we read about the scandals in the private sector and as we hear the President go to Wall Street to try to get them to do a better job with their accounting practices, it strikes me that the President would have much better spent his time if he had given that speech here in these halls. You see, as we talk about false billing and cooking the books going on on Wall Street, there is no more false billing and there is no bigger cooking of the books than right here in the halls of Congress and in the other body. I guess the average American would be dumfounded to know that the taxes that they pay every month called FICA, their Social Security taxes, they think is being set aside for their Social Security, would they not be surprised to find out that as of this moment, our Nation owes the Social Security trust fund \$1.3 trillion. There is not a penny in that account, nothing but an IOU of some government securities. Folks who pay taxes know that on that pay stub is a tax for Medicare. They presume it is being set aside to pay for their medical expenses when they get older. They would be shocked to find out that as of this moment, if you could find that imaginary lockbox, that we owe the Medicare trust fund \$271 billion. For folks back home, I realize a billion is a lot of money, so I walk you through it the way I have to remind myself. A billion is a thousand times a thousand times a thousand, and in this instance again times 271 is how much is owed to the Medicare trust fund.

Every year money is taken out of the Department of Defense budget with the promise that it will be set aside to pay military retirement pay. I am sure that that after what the gentleman from Mississippi (Mr. SHOWS) said, and rightly so, that they would be aghast to find out that if you were to find the so-called military retiree fund, all you would find there is an IOU for a thousand times a thousand times a thousand times 168.

The civil servants, the people on the Border Patrol, the people who work for Customs, the FBI agents who are out there trying to find kidnapped kids, the ATF agents who get shot at on a regular basis trying to keep violent people from building bombs that would harm other Americans, they have a retirement plan. They pay into it. The government pays into it. That money is supposed to be set aside just to pay for their retirement. If they could find that mythical lockbox, they would find that what is missing is a thousand times a thousand times a thousand times 540. \$540 billion.

□ 1945

In fact, I guess the average Joe would be a little surprised that after coming

to Congress and promising to balance the books, that in the approximately 1,286 days that DENNIS HASTERT has been the Speaker of the House, that the Federal debt has grown by \$511,040,208,939.15, which is more debt than was accumulated in this country from the day that George Washington became President until 1975. Our Nation went for almost 199 years and accumulated only as much debt since DENNIS HASTERT has been Speaker.

I say that to express my severe disappointment that in those 1,286 days, Speaker HASTERT has not allowed, and he sets the schedule for floor debate; only bills that he approves come to the floor and bills that he disapproves do not come to the floor. He has never set a day of debate for a Balanced Budget Amendment to the Constitution of the United States. So that regardless of which party, be they Democrats, be they Republicans, or whoever is controlling the House, and regardless of which party controls the Senate, and regardless of who is the President, they are going to spend no more money than is collected in taxes.

In the 23 years my daughter has been alive, this Nation has added \$5 trillion to that debt. We could have gone all the way from the day George Washington became President to the day Ronald Reagan became President and our Nation was only \$1 trillion in debt. In just 23 years, this much has been added. I think the American people are rightly demanding that Congress spend no more than they collect in taxes. Because no good parent would go out and buy a car and say, by the way, I have a 6-year-old child and let them pay for it, plus interest, when they grow up. No good parent would go buy a house, the most expensive house, because they are not going to pay for it, they are going to stick their grandkids with the bill.

That is what you have been doing, Speaker HASTERT; and I think it is time we had a vote on a Balanced Budget Amendment to the Constitution to stop this Congress and stop future Congresses from doing that. This is a message that I am going to deliver every day until we get a vote on the Balanced Budget Amendment.

I want to encourage Americans to check my sources. Because unlike those guys who were talking about big budget surpluses last year, but never followed it up with the facts, I want Americans to check these numbers because they will be as shocked and appalled as I am. So please look for the monthly statement of the public debt, June 2002, under <http://www.publicdebt.treas.gov>, and see for yourselves how broke our Nation is. And then when we hear the politicians ranting and raving about irresponsibility on Wall Street, maybe you will encourage them to look in the mirror.

THE NEGATIVE EFFECTS OF THE EDUCATION SYSTEM AND THE MEDIA REWRITING HISTORY

THE SPEAKER pro tempore (Mr. KELLER). Under the Speaker's announced policy of January 3, 2001, the gentleman from Maryland (Mr. BARTLETT) is recognized for 60 minutes as the designee of the majority leader.

Mr. BARTLETT of Maryland. Mr. Speaker, I want to spend a few minutes this evening talking about two events that have happened in our country recently. One of them is national and the other is very local.

The national event was the decision of two of three members of the Ninth Circuit Court in San Francisco that the Pledge of Allegiance to the flag, including the words "under God," can no longer be used in our schools with those two words; that if we are going to say the Pledge of Allegiance in our schools, we have to take "under God" out.

The second event is a very local event. It is in the town of Frederick. I live just 5 miles from there on a farm. We have a little memorial park in Frederick across from the armory. We have there memorials to our soldiers in all of the wars with their individual names on these memorials. There is also in that park a replica of the Ten Commandments on the two stones. A senior student in one of our schools; interestingly, a student in one of our schools wrote asking, is it really appropriate to have the Ten Commandments in this memorial park because the park is owned by the city and the city is a part of what we call the State, and certainly, there is this big wall of separation between church and State?

Now, this has caused quite a dither in Frederick. The ACLU came out and they said, yes, that is right, the Ten Commandments should not be there. Why do we not just sell the park for \$1 to the American Legion and then the problem will go away? But if you do not do that, then we are going to sue.

Most of our institutions are, I guess all of them, are creatures of our culture. We remember from history that the Supreme Court pre-Civil War handed down the Dred Scott decision. Now, I suspect there are very few people today who believe that that was a correct decision handed down by that Court. So our courts today are creatures, at least to some extent, of our culture. These two events would have been absolutely unheard of in my childhood, that a court would say that one could not say under God in the Pledge of Allegiance to the flag and that one could not have the Ten Commandments in a memorial park for our service people who fought and bled and died for this country.

Now, how did we get here? What has happened to this Nation? I can clearly remember 60 years ago. I can remember writing 1933 on my school papers, so I can easily remember 60 years.

There are three great lies about in our Nation today, and they are the re-

sult of, well, of two things. They are the result of an educational system that has, in large measure, tried to rewrite our history. These three lies are also the result of a media which has joined with our educational institutions in educating the American people to a history which really is not true. These three great lies are that our Founding Fathers were atheists and deists. Now, everybody knows what an atheist is. It is a person who does not believe there is a God. A deist believes there is a God. He believes that God created the Earth, but then God stood back and he placed in effect a number of physical laws and health laws, and there is no use praying to him, because these laws are going to determine what happens to us.

So the first great lie is that our Founding Fathers were atheists and deists. The second great lie is that they sought to establish a non-Christian Nation. They did not want God associated with this country. As a corollary to this, they sought to erect a wall of separation between church and State. They wanted to make sure that there was never, ever any discussion of religion in the State.

To understand how we got here, I think we need to put this in some context. It all started, of course, in 1776. We read that Declaration of Independence which, by the way clearly, three times, perhaps four, refers to God. I wonder if the courts will declare our Declaration of Independence unconstitutional because it has very clear references to God and our creator.

This was a very radical document. We read it without really concentrating on what it is and what it says. It said that all men are created equal. Now, we take that for granted, but that was not the society from which our forefathers came. Now, of course, unless you are a descendant of an American Indian, you are the child of an immigrant and today, our citizens come from forefathers have come from all parts of the world. But in 1776, essentially all of our Founding Fathers had come from England and the European continent. And in England and on the continent, essentially every country was ruled by a king or an emperor who incredibly claimed and was granted divine rights. What that says is that the rights came from God, divine rights, rights came from God to the king and he would then give what rights he wished to his people.

Our Declaration of Independence made a radical departure from that, because it said that all men are created equal. Then they set about the task of writing a Constitution that embodied the promise of the Declaration of Independence. It took them 11 years to do this. It was not until 1787 that the Constitution was ratified. And in that Constitution they sought to embody all of those promises made in the Declaration of Independence.

The story is told of Ben Franklin coming out at the constitutional con-

vention and being asked by a lady, Mr. Franklin, what have you given us? And his reply was, A Republic, madam, if you can keep it.

Now, I hear my colleagues and most everybody in this country talking about this great democracy that we have. Yet, when Ben Franklin was asked, What have you given us, he says, A Republic, Madam, if you can keep it, if we think back through that Pledge of Allegiance to the flag, we will note that it refers to a Republic.

Why is this important? It is important to the subject that we are discussing this evening.

I heard an interesting definition of a democracy. It was two wolves and a lamb voting on what they were going to have for lunch. And someone noted that an example of a democracy was a lynch mob, because clearly, in a lynch mob, the will of the majority is being expressed. Are we not glad, Mr. Speaker, that we live in a Republic where one respects the rule of law, regardless of what the majority would like at that moment?

Now, clearly, we can change the law against which all other laws are measured, which is the Ten Commandments, and we have done that 27 times; but this is a considered event. It takes two-thirds of the House and two-thirds of the Senate; it bypasses the President and goes directly to the State legislatures and three-fourths of them must ratify it.

Our Founding Fathers were not certain that the promise of the Declaration of Independence was, in fact, made crystal-clear in the Constitution, so before the ink was hardly dry on the Constitution, they started 12 amendments through the process of two-thirds of the House, two-thirds of the Senate, and three-fourths of the State legislatures. Ten of them made it through that process, and we know them as the Bill of Rights. If we read down through the Constitution, it is a little book that has had a big, big effect. If we read down through that, we will see that their primary aim in this Bill of Rights was to make sure that everybody understood what was implicit in the Constitution was explicit in these 10 amendments.

□ 2000

That is that they really wanted most of the rights to reside with the people. Remember, they had come from monarchies, from empires where the king or the emperor said that all the rights came to him. In the Declaration of Independence, they said that all men are created equal, and they wanted to make sure that it was very clear that essentially all of the rights remained with the people.

Now, our Founding Fathers came to this country not to get wealthy; as a matter of fact, many of them left wealth to come here. They came here for freedom. They came here to achieve freedom from two tyrannies.

One was the tyranny of the church. In England, it was the Episcopal

church; and on the continent, it was the Roman church. For both of those churches, power had been given to them by the state, so they wanted to make sure that never, ever in this new country would the state ever give power to a religion so that it could oppress the people.

I guess our Founding Fathers could be excused for some shortsightedness before they wrote the Constitution, because in old Virginia, Roman Catholics could not vote. In colonial Maryland, I understand that both Roman Catholics and Jews could not vote.

But to their great credit, when it came time to write the First Amendment, they recognized that that is really not what they came here to achieve; that they really wanted freedom of religion, which is very different, as Ronald Reagan pointed out, from freedom from religion, which is what the courts now want to achieve.

It was a Roman Catholic, Charles Carroll, for whom Carroll County is named, one of the counties in the district I represent; Carroll Creek runs through Frederick City, not far from the Ten Commandments in that little memorial park. So it was a Roman Catholic who was a major architect of the establishment clause in the First Amendment.

In the Second Amendment, they addressed their concerns of the tyranny of the state. This is a subject for another day, but let me just read it in that context: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Abraham Lincoln understood that this was a new experiment and that it might not succeed. In his Gettysburg Address, we remember, Four score and seven years ago, and if we go back 87 years, we will come to 1776; "Four score and 7 years ago, our fathers brought forth upon this continent a new Nation, conceived in liberty and," and note, "dedicated to the proposition that all men are created equal." He recognized what a radical departure this was from the norms of the time, and he knew that this experiment might not succeed.

He said, we are now engaged in a war "testing whether this Nation or any Nation so conceived and so dedicated can long endure."

Then he ended that Gettysburg Address with almost a prayer: "that this government of the people, by the people, and for the people shall not perish from the Earth."

I am going to use four sources to refute these three lies. Again, the three lies are that our Founding Fathers were atheists and deists; that they wanted to establish a non-Christian Nation; that they wanted a wall of separation between the church and the state. To do that, I am going to let our Founding Fathers speak for themselves. I am going to quote from some court decisions. I am going to note

some actions of Congress. Then we will take a brief look at our schools. I will use a number of quotes this evening, and I would like to make two comments regarding those quotes.

The first is that not everyone will agree to the specific wording of these quotes. No one argues that these are the kinds of things that these men, these courts, that the Congress would have said or would have done; but Members may find some dispute as to the exact wording. I will tell the Members my references, and Members can talk to those on whom I depended for these quotes.

One is David Barton, who probably is the most knowledgeable person in America today on the Christian nature of our Founding Fathers. He has thousands of original documents. He conducts a fascinating tour through the Capitol building here, stopping at statue after statue and reading from original documents their quotes.

The second source for my quotes this evening is Dr. Richard Fredericks, who is the pastor of the Road to Damascus Church in Montgomery County.

The second observation I want to make about the quotes this evening is that there will be a lot of references to Christianity and Jesus Christ. I would submit that when these quotes were made, that these words were more synonymous with the words that we would use today which would probably be "God-fearing." They meant no affront to other religious persuasions who worshipped the same God.

I just want to note that there will be lots of references to Christianity and Jesus Christ, if Members would simply hear "Judeo-Christian" and "God-fearing" when these quotes are read.

Freedom is not free. It is said that the price of freedom is eternal vigilance. That is just as true today as it was then. Certainly, our national freedom was very costly. Five of the 55 signers of the Declaration of Independence were captured and executed by the British; nine of them died in battlefields of the war; another dozen lost their homes, possessions, and fortunes to British occupation. Our birth as a Nation was not cheap for these men.

Let us first look at this wall of separation which our courts today talk so much about. That does not appear anywhere in our Constitution. It does not appear in the First Amendment. As a matter of fact, those three words, "separation," "church," and "state," do not appear, but they do appear in one constitution. It is the Constitution of the United Soviet Socialist Republic, the USSR.

Let me read from that Constitution. It is Article 124: "In order to ensure to citizens freedom of conscience, the church in the USSR is separated from the state and the schools from the church."

Let me let the Founding Fathers speak for themselves now, and then Members decide whether they think they are atheist or deist.

Patrick Henry, often called the "firebrand of the American Revolution," I want to quote his words spoken in St. John's Church in Richmond on March 23 in 1775. Those words are very well known: "Give me liberty or give me death," and they are still memorized by most students. But I will challenge the Members to go to their child's school and look in their history books and see if these words are put in context.

Here is what he said, in context: "An appeal to arms and the God of hosts is all that is left us, but we shall not fight our battle alone. There is a just God that presides over the destinies of nations. The battle, sir, is not to the strong alone. Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, almighty God. I know not what course others may take, but as for me, give me liberty or give me death."

Now, those words have a whole lot different meaning when we place them in that context, and I will wager that Members will have great difficulty finding any textbook in our current schools that puts them in that context.

Benjamin Franklin is widely noted by our history books today as being a deist. Was he a deist? Let us let him speak for himself. The time was June 28, 1787. We will recognize that that is during the Constitutional Convention.

Benjamin Franklin was 81 years old. He was the Governor of Pennsylvania, and perhaps the most honored member of the Constitutional Convention. The convention was deadlocked over several issues, and one of the key issues was the balance of State and Federal rights.

When Franklin rose and reminded them of the Continental Congress in 1776, just 11 years prior, this is what he said: "In the days of our contest with Great Britain, when we were sensible of danger, we had our daily prayer in this room for divine protection. Our prayers, sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of superintending Providence in our favor. To that kind Providence we owe this happy opportunity to establish our Nation. And have we now forgotten that powerful friend? Do we imagine that we no longer need his assistance?" And then I love these words: "I have lived, sir, a long time. And the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that a new nation can rise without his aid? We have been assured, sir, in the sacred writing that except the Lord build a house, they labor in vain that built it. I therefore beg leave to move," and this began a precedent that we follow today; we begin every day in the House with prayer, and every day in the Senate.

This is what he asked: "I therefore beg leave to move that henceforth,

prayers imploring the assistance of heaven and its blessings on our deliberations be held in this assembly every morning before we proceed to any business." Thanks to Mr. Franklin, we still do this.

The following year, in a letter to the French minister of state, Franklin, speaking of our Nation, said "Whoever shall introduce into public office the principles of Christianity will change the face of the world."

And now to that second person who is very often noted as being a deist, and by the way, did Members think these are the words of a deist, these words of Benjamin Franklin; that God created a world and then let it run on its own, with just the physical laws and the biological laws that he developed guiding it?

Thomas Jefferson was a great student of Scriptures who honored Christ as his greatest teacher and mentor, but doubted his divinity. On the front of his well-worn Bible Jefferson wrote, "I am a real Christian; that is to say, a disciple of the doctrines of Jesus. I have little doubt that our country will soon be rallied to the unity of our creator, and I hope to the pure doctrine of Jesus, also."

And note his words relative to slavery. See if this sounds like a deist. "Almighty God has created men's minds free. Commerce between master and slave is despotism. I tremble for my country when I reflect that God is just, and his justice cannot sleep forever." These are certainly not the words of a deist.

George Washington, called the Father of our Nation, listen to his heart on the Christian faith in his farewell speech September, 1796; the only President, by the way, unanimously elected by the Electoral College not once but twice, and perhaps the first ruler in 2000 years to voluntarily step down from power.

"It is impossible to govern the world without God and the Bible. Of all the dispositions and habits that lead to political prosperity, our religion and morality are the indispensable supporters. Let us with caution indulge the supposition that is the idea that morality can be maintained without religion. Reason and experience both forbid us to expect that our national morality can prevail in exclusion of religious principle."

What did Washington mean by religion? Was he a true Christian? Let me excerpt several lines from his personal prayer book: "Oh, eternal and everlasting God, direct my thoughts, words, and work. Wash away my sins in the immaculate blood of the lamb, and purge my heart by thy holy spirit. Daily frame me more and more in the likeness of thy son, Jesus Christ, that living in thy fear and dying in thy favor, I may, in thy appointed time, obtain the restoration justified onto eternal life."

In Mount Vernon, and we can go there today, just down the river, we

can see on the little crypt the benediction that George Washington asked to be put there over his grave and his wife's grave. It is John 11:25: "I am the resurrection and the life. He that believes in me shall live, even if he dies."

□ 2015

And you may wonder why as you tour through Washington and go to our monuments that you see so many references to scripture. It is because that is the milieu in which these men lived.

John Adams, our second President, also served as chairman of the American Bible Society started by our Congress, by the way. In an address to military leaders he said, "We have no government armed with the power capable of contending with human passions, unbridled by morality and true religion. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

John Jay, our first Supreme Court Justice, stated that when we select our national leaders and preserve our Nation, we must select Christians. This is what he said, "Providence has given to our people the choice of their rulers. It is the duty as well as the privilege and interest of our Christian Nation to select and prefer Christians for their rulers."

In fact, 11 of the 13 new State constitutions were also ratified in 1776. All required leaders to take an oath similar to this oath in Delaware. This is the oath in Delaware: "Everyone appointed to public office must say, I do profess faith to God, the Father, and in the Lord, Jesus Christ, his only son, and in the holy ghost and in God who is blessed forevermore. I do acknowledge the Holy Scriptures, both Old and New Testaments, which are given by divine inspiration."

The time of our Nation's bicentennial in 1976, political science professors at the University of Houston began to ask some questions. Why is it that the American Constitution has been able to stand the test of time? We have the longest enduring republic in the history of the world. Why has it not gone through massive revisions? Why is it looked on as a model by dozens of nations? What wisdom possessed these men to produce such an incredible document? Who did they turn to for inspiration?

So they looked at the writings of our Founding Fathers and they catalogued 15,000 documents. They found the Founding Fathers quoted most often three men, Baron Charles Montesquieu, Sir William Blackstone, and John Locke. Yet, most importantly they found that the Bible itself was directly quoted four times more than Montesquieu, six times more than Blackstone and 12 times more than John Locke. In fact, 34 percent of all the quotes and the writings of the Founding Fathers were direct word-for-word quotes from the Bible. Further, another 60 percent of their quotes were

quoting from men who were quoting the Bible. So that an incredible 94 percent of all of the quotes in these 15,000 documents were direct quotes or references to the Bible.

So how did they produce a document that has withstood the test of an evolving government and growing Nation for 226 years now? The answer, they were steeped in the word of God. They understood their need of its constant direction, and they established a Nation based on its underlying principles.

John Quincy Adams, the son of John Adams, was the sixth President of the United States. He was a Congressman, the U.S. minister to Russia, France and Great Britain, Secretary of the State under James Monroe. He was also the chairman of the American Bible Society, as was his father. As a matter of fact, he felt that chairmanship of that society was a more important function and a higher honor than being President of the United States. I might note that the Continental Congress bought 20,000 copies of the Bible to distribute to its new citizens. And for 100 years at the beginning of our country, taxpayers' money was used to send missionaries to the Indians.

Mr. Speaker, 104 years later, the 30th President of the United States, Calvin Coolidge reaffirmed this truth on March 4, 1925. "America seeks no empires built on blood and forces. She cherishes no purpose save to merit the favor of Almighty God." He later wrote, "The foundations of our society and our government rest so much on the teachings of the Bible that it would be difficult to support them if faith and these teachings would cease to be practically universal to our country."

Let us turn now to the Supreme Court. We have let our Founding Fathers speak for themselves. I think it is very clear they were not atheists or deists. It is very clear that they did not attempt to establish a non-Christian nation. Let us look now at the Supreme Court. For 160 years the court consistently and categorically ruled in favor of church and State united hand in hand, but never the State empowering the church, a single church, so that it could oppress the people.

The first ruling came in 1796, *Runkle v. Winemiller*. The Supreme Court ruled, "By our form of government, the Christian religion is the established religion of all sects."

The Supreme Court consistently ruled for Christian principle as the foundation of our American laws. In 1811 in the *Peoples v. Ruggles*, Mr. Ruggles' crime was that he publicly slandered the Bible. What would happen today if somebody publicly slandered the Bible? Let me read the decision the court made then. In 1811 he was arrested and his case went all the way to the Supreme Court. This was their verdict. "You have attacked the Bible. In attacking the Bible, you have attacked Jesus Christ. And in attacking Jesus Christ, you have attacked the roots of our Nation. Whatever

strikes at the root of Christianity manifests itself in the dissolving of our civil government.”

The Justices sentenced him to three months in prison and a \$500 fine. That is one year's wage in those days. You might contrast that today with convicted rapists who on average serve 85 days in jail.

In 1844, *Vida v. Gerrard*, a public school teacher decided she would teach morality without using the Bible. Incredibly she was sued and it went to the Supreme Court and this is what they said. “Why not use the Bible, especially the New Testament? It should be read and taught as the divine revelation in the schools. Where can the purest principles of morality be learned so clearly and so perfectly as from the New Testament?”

And then the Justices went on to cite 87 different legal precedents to affirm that America was formed as a Christian Nation by believing Christians.

This was in a court case in February 29, 1892, against the claims of the cult called the Church of the Holy Spirit that Christianity was not the faith of the people. The Supreme Court made a decision saying that it clearly was and they marshalled 87 different legal precedents to affirm that America was formed as a Christian Nation by believing Christians. They even spent the first 100 years' tax dollars for Christian missionaries, which I mentioned previously.

Regardless of how we feel about it today, the historical fact is there was no separation of church and state. There was a clear denial of the right of the state to empower any one religion so that it could oppress the people. But never, ever could our Founding Fathers ever imagine that we would interpret that establishment clause of the First Amendment as requiring freedom from religion. They certainly meant it to assure freedom of religion.

Let us move across the street from this House to the Supreme Court. As humanism and Darwinism began to rise in the 19th century, some made challenges to the idea that America was a Christian Nation. Both houses of Congress spent one year, from 1853 to 1854, studying the connection of America and the Christian faith.

In March 27 of 1854, Senator Badger, from the Senate, issued the final report. Let me quote very briefly from that final report. “The First Amendment religion clause speaks against an establishment of religion. What is meant by that expression? The Founding Fathers intended by this amendment to prohibit an establishment of religion such as the Church of England presented or anything like it. But they had no fear or jealousy of religion itself. Nor did they wish to see us an irreligious people.”

I really like these next words. They are so picturesque. “They did not intend to spread all over the public authorities and the whole public action of the Nation the dead and revolting spec-

tafle of atheistic apathy.” And I continue the quote, “In this age there can be no substitute for Christianity. By its general principles, the Christian faith is the great conserving element on which we must rely for the purity and permanence for our free institutions.” And it goes on and on to quote more and more in this vein.

Based on his report in May of 1854, in joint session of Congress, this resolution was passed by our Congress. “The great, vital and conserving element in our system of government is the belief of our people in the pure doctrines and divine truths of the gospel of Jesus Christ.” This was a resolution of the Congress in May of 1854.

Let us move from Congress to our public schools. For over 140 years after the First Amendment was passed, we spent tax dollars to educate students in public schools that were distinctly Christian. In 1782 the United States Congress voted this resolution: “The Congress of the United States recommends and approves the Holy Bible for use in our schools.” That was this Congress. All of our institutions, even our Congress, is at least to some extent the product of a culture, creatures of a culture.

In grammar schools from 1690 until after World War II, two books were the dominant teaching schools. The first and oldest was the *New England Primer*, used for 200 years. The basics of alphabet were taught as follows:

“A, A wise son makes a glad father but a foolish son is heaviness to his mother.

“B, Better is little with the fear of the Lord than abundance apart from him.

“C, Come unto Christ all you who are weary and heavily laden.

“D, Do not the abominable thing, which I hate, sayeth the Lord.

“E, Except a man be born again, he cannot see the Kingdom of God.”

The second great teaching tool for 100 years was the *McGuffey Reader*, and not too many years ago it was called back to some of our schools because when students used that reader, they learned to read. Now we have graduated about a million from our high schools who literally cannot read their diploma.

William Holmes McGuffey was the Professor of Moral Philosophy at Jefferson's University of Virginia and the first president of Ohio University. President Lincoln called him the School Master of the Nation.

In the introduction to teachers in the beginning of his textbook, McGuffey laid out his rationale. “The Christian religion is the religion of our country. From it are derived our notions on the character of God, on the great moral Governor of the universe. On its doctrines are founded the peculiarities of our free institutions.”

“From no source has the author drawn more conspicuously than from the sacred Scriptures. For all these extracts from the Bible I make no apology.”

Of the first 108 universities founded in this country, 106 were distinctly religious. The first of those was Harvard, named for a very popular New England teacher, Pastor John Harvard. In the original student Harvard handbook, it said that the students should come knowing Greek and Latin so they could study the scriptures. Now a direct quote. “Let every student be plainly instructed and earnestly pressed to consider well, the main end of his life and studies is, to know God and Jesus Christ, which is eternal life, John 17:3; and therefore to lay Jesus Christ as the only foundation of all sound knowledge and learning.”

For over 100 years, more than 50 percent of all of Harvard's graduates were pastors.

In 1747, the Supreme Court in *Emerson v. The Board of Education* deviated from every precedent for the first time and in a limited way affirmed a wall of separation between church and state and the public classroom. Now they did this ignoring 160 years of precedence. And I have read several decisions during 106 years and there are many, many others. There is no decision of the Supreme Court today relative to this issue that will go back to precedents before 1947 because there are none. For 160 years, clearly the Supreme Court ruled 180 degrees different than the way it is ruling today.

In 1962, less than 40 years ago, in *Engle v. Vitale*, the Supreme Court removed prayer from the public schools. Since the founding of the Nation, public school classrooms have begun their day with prayer. Now that was declared unconstitutional and an arbitrary use of the word.

I have mentioned God is three or perhaps four times in our Declaration of Independence. Will our courts now declare that unconstitutional?

Then things happened fast. On June 17, 1963, the Supreme Court ruled in *Abington v. Schemp* that Bible reading was outlawed as unconstitutional in our public school system. Remember that our Congress had recommended it for use in schools before that.

What has happened in America in these past 40 years? When we were true to our roots, we were the greatest Nation in the world, the dream destination of millions in every country. But starting in 1963, the Bible was banned as psychologically harmful to children.

□ 2030

That year, 1963, was the first year an entry about the separation of church and State ever appeared in the *World Book Encyclopedia* under the United States.

What have we reaped? America 100 years ago had the highest literacy rate of any nation on Earth. Today we spend more on education than any other nation in the world; and yet since 1987, as I mentioned before, we have graduated more than 1 million high school students who cannot even read their diploma.

We spend more than any other nation in the industrialized world to educate our children; and yet SAT scores fell for 24 straight years before finally leveling off in the 1990s.

Has this protection from religion produced better students? Morally have they changed? Are things better in this new climate of protection from the dangers of religion?

In 1960, a survey found 53 percent of America's teenagers had never kissed and 57 percent had never necked. Necking is hugging and kissing, if my colleagues wonder what that meant then; and 92 percent of teenagers in America said they were virgins.

Just 30 years later, in 1990, 75 percent of American high school students were sexually active by 18. In the next 5 years, we spent \$4 billion to educate them how to have safe sex and it worked. One in five teenagers in America today lose their virginity before their 13th birthday, and 19 percent of America's teenagers say they have had more than four sexual partners before graduation.

The result? Every day 2,700 students get pregnant, 1,100 hundred get abortions and 1,200 give birth. Every day, another 900 contract a sexually transmitted disease, many incurable. AIDS infection among high school students climbed 700 percent between 1990 and 1995. We have 3.3 million problem drinkers on our high school campuses, over half a million are alcoholics and any given weekend in America, 30 percent of the student population spends some time drunk.

A young woman in a high school in Oklahoma wrote this poem as a new school prayer. Let me read it for you: Now I sit me down in school where praying is against the rule

For this great Nation under God finds mention of Him very odd.

If scripture now the class recites violates, it violates the Bill of Rights.

And any time my head I bow becomes a Federal matter now.

Our hair can be purple, orange, or green, that's no offense, it's a freedom scene. The law is specific, the law is precise! Only prayers spoken out loud are a serious vice.

For praying in a public hall might offend someone with no faith at all.

In silence alone we must meditate, God's name is prohibited by the State.

We are allowed to cuss and dress like freaks, and pierce our noses, tongues and cheeks.

They've outlawed guns but first the Bible. To quote the Good Book makes me liable.

We can elect a pregnant senior queen and the unwed daddy our senior king.

It's inappropriate to teach right from wrong; we're taught that such judgments do not belong.

We can get our condoms and birth controls, study witchcraft, vampires and totem poles.

But the Ten Commandants are not allowed, no word of God must reach this crowd.

It is scary here I must confess; when chaos reigns the school's a mess.

So Lord, this silent plea I make: Should I be shot, my soul please take!

Our Nation, which wishes to lead the world in every arena, now leads the world in these areas: We are number one in violent crime. We are number one in divorce. We are number one in teenage pregnancies. We are number one in volunteer abortion. We are number one in illegal drug abuse. We are number one in the industrialized world for illiteracy. What happened?

First of all, Christianity went to sleep. Forty years ago, the church gave up the public arena to an increasingly secular government and said we would focus on the souls of men. Actually, the first leader to call for that division was not one of our Founding Fathers. His name was Adolph Hitler, who told the preachers of Germany, "You take care of their souls and I will take care of the rest of their lives."

Here is a million dollar question. Are we better off today? Since we banished God from all our public life and systems and allowed a vocal group of humanist activists to tell us our faith is dangerous to the liberties of this Nation, are we better off? Are we satisfied with what is happening in America?

Alexis de Tocqueville was a famous French statesman and scholar. Beginning in 1831, he toured America for years to find the secret of her genius and strength which was marveled at throughout the world. He published a two-part book entitled "Democracy in America," which is still hailed as the most penetrating analysis of the relationship of character to democracy ever written.

Here is how de Tocqueville summed up his experience: "In the United States, the influence of religion is not confined to the manners, but shapes the intelligence of the people. Christianity therefore reigns without obstacle, by universal consequence. The consequence is, as I have before observed, that every principle in a moral world is fixed and in force.

"I sought for the key to the greatness and genius of America in her great harbors; her fertile fields and boundless forests; in her rich mines and vast world commerce; in her universal public school system and institutions of learning. I sought for it in her democratic Congress and in her matchless Constitution.

"But not until I went into the churches of America and heard her pulpits flame with righteousness did I understand the secret of her genius and power. America is great because America is good; and if America ever ceases to be good, America will cease to be great!"

Let me close by suggesting the answer offered by President Abraham Lincoln in the address he gave calling for April 30, 1860, seeking a national day of humiliation, fasting and prayer.

"We have been the recipients of the choicest bounties of Heaven. We have been preserved these many years in peace and prosperity. We have grown in numbers, wealth and powers as no other Nation has ever grown.

"But we have forgotten God. We have forgotten the gracious Hand which preserved us in peace, and multiplied and enriched us; and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own.

"Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving Grace, too proud to pray to the God that made us! It behooves us then to humble ourselves before the offended Power, to confess our national sins and to pray for clemency and forgiveness."

That was Abraham Lincoln.

Today, we have an entire population that has no clue as to its true American heritage. They have not forgotten. They never knew.

Our textbooks have been bled dry of all of this aspect of the founding of our Nation. Abraham Lincoln said this to our Nation. We need to hear it again, and this also comes from his Gettysburg address.

"It is rather for us to be here dedicated to the great task remaining before us, that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion that we here highly resolve that these dead shall not have died in vain, that this Nation, under God, shall have a new birth of freedom."

The three great lies are our Founding Fathers were atheists and deists. We let them speak for themselves. They clearly were not.

The second is that they sought to establish a non-Christian Nation. We let them speak. We let the courts speak. We let the Congress speak. We listened to what was said in our schools. Clearly, this was not the case.

That wall of separation never intended that religion should not be in government. It was intended that government should not empower any religion so that it could oppress the people.

What do we do now that our textbooks have been bled dry, that so few, even those in leadership positions, understand the true beginnings of our Nation? What we need to do is to make sure that all of our people, especially our leaders, become familiar with the milieu in which our Nation was born. We need to symbolically shout it from the housetop so that none can refuse to hear it.

The two events that I started this little discussion with, the Ninth Court ruling in San Francisco and the question of whether the Ten Commandments should be taken down from Memorial Park in Frederick, these two things would have been unthinkable in the Nation that I grew up in. I can remember very well 60 years ago, and they should be unthinkable today, and since all of the institutions of our country are at least to some extent creatures of our culture, before we

change our institutions, we need to change our culture. Mr. Speaker, every one of us has a responsibility and an obligation and the privilege to do that.

MEDICARE PRESCRIPTION DRUG PROGRAM

The SPEAKER pro tempore (Mr. KELLER). Under the Speaker's announced policy of January 3, 2001, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes as the designee of the minority leader.

Mr. PALLONE. Mr. Speaker, I wanted to spend the time this evening talking about the need for a Medicare prescription drug program and also highlight the fact that more and more of my constituents, and I know this is true all over the country, are concerned about the price of prescription drugs and their inability to buy the medicine or prescription drugs that they feel that is necessary.

I have been to the floor, to the well here many times over the last 2 years, basically saying that we need on the one hand a benefit, a Federal benefit under Medicare to provide prescription drug funding for seniors through Medicare, through the Federal Government and through the Medicare program. But at the same time I have said that we need the coverage that would come from a Federal benefit, we also need to deal with the issue of price because prices continue to go up.

I know that many times during the debate that we had a few weeks ago over prescription drugs, when the Republican leadership would talk about their initiative, their bill that ultimately passed the House, and compare it with the Democratic proposal, which they did not allow to come to the floor, that there had been a hot and heated discussion about the differences between the two bills.

Of course, I have been very critical of the Republican proposal because it is not Medicare. It does not provide a guaranteed benefit, and it does not address the issue of price; and essentially, what the Republicans did when they passed a prescription drug bill a few weeks ago is that they decided to give some money to private insurance companies to essentially subsidize private insurance companies in the hope that they would offer drug-only or medicine-only policies to seniors that the seniors would find affordable.

My major concern over the Republican proposal is that like HMOs, which are private health insurance, that these private insurance companies simply would not offer a prescription drug plan, that there would be many areas in the country where there would be no coverage or even if there was a private insurer that decided to provide a prescription drug-only policy, that it would not be affordable and that essentially we would be passing a program that would never work and no one would be able to take advantage of as a senior citizen, or at least the average senior citizen.

I contrasted that and I continue to with the Democratic proposal, which, as I said, the Republicans never allowed us to bring up; but the Democratic proposal was simply an expansion of Medicare. We have a great Medicare program that almost all seniors participate in, covers their hospitalization, covers their doctors' bills. And what the Democrats said is we would simply add another plank, or provision, to Medicare so that seniors could pay \$25 a month in a premium. After the \$100 deductible, would get 80 percent of their prescription drug costs paid for by the Federal Government under Medicare, and after \$2,000 out-of-pocket expenditures for these seniors with higher drug bills 100 percent of the costs would be paid for by the Federal Government under Medicare.

It is a very simple process, expansion of Medicare. The price issue was addressed by the Democrats, unlike the Republicans, because the Democrats said that the Secretary of Health and Human Services, who basically administers the Medicare program now, would have the bargaining power of 30 to 40 million American seniors under Medicare, and he would be mandated by the Democratic bill to negotiate to reduce prices substantially, maybe 30, 40 percent.

So we had a price provision in there, too. The Republican bill, of course, could not do that kind of negotiation essentially with the Republican bill because it is with private insurance companies. It is not Medicare, and all the seniors would not be covered; but just in case there was some concern about trying to reduce price, the Republican bill specifically had a noninterference clause that said that the administrator of the program could not set up a price stricture or negotiate lower prices.

So we know the Republicans were not seeking to address the price issue. They wanted to make sure, in fact, that it was not addressed at all.

During this whole debate, a lot of my colleagues said to me, even some constituents said to me, why would the Republicans want to put forth this sham? Why would the Republicans want to pretend that they are putting forth a prescription drug plan that no private insurance company will offer or that no senior would be able to take advantage of? And why do they not want to address the issue of price?

The answer to that is fairly simple, and that is because of the special interests, because the brand-name companies do not want a Medicare benefit. They are afraid that if there is a Medicare prescription drug benefit like the Democrat's proposal and they are afraid that if there is an effort to address price, that somehow they will lose profits. I do not believe that because I think if they cover everybody under a universal program, they will be selling more medicine and they will make more money.

□ 2045

Even if the price does come down individually for the senior, the overall fact that so many more seniors are in the program should make the drug companies happy.

But they do not feel that way. They are opposed to the Democratic proposal, and they are doing whatever they can financially to make sure that the Republican proposal passes and the Democratic proposal does not. They have been taking out ads, they have been financing a huge ad program, they have been giving a lot of money to Republican candidates, Congressmen, and Senators, but I will go into that as part of this special order this evening a little later.

What I really want to point out is that this effort on the part of these large pharmaceutical brand name companies to do this, in my opinion, is very much linked to the overall problem we have in this country that has been highlighted in the last few weeks of corporate irresponsibility. We know that many of the corporations, and I do not have to go through the list, Enron, WorldCom, there are so many out there now, that basically doctored the books at the request of certain CEOs or financial officers, used accounting systems to basically doctor the books and show that they had profits when they were actually operating at a net loss or at a lot less profit than they reported. And so nationally, and here in the Congress, in the House of Representatives, we are getting a lot of my colleagues on both sides of the aisle coming up and talking about the need for corporate responsibility; the need for companies, large corporations, to be responsible in their actions.

I would suggest to my colleagues that the effort of the prescription drug industry to mask what they are doing, to give large contributions to candidates, to run massive ad campaigns where they did not even indicate they are paying the cost of them in order to support candidates or to support the Republican bill, is another example of what I call corporate irresponsibility. They need to be held to task.

Now, I want to talk a little tonight, if I could, Mr. Speaker, about some of the things that these pharmaceutical companies have been doing to promote the Republican proposal and to oppose the Democratic alternative. As we know, the other body, this week or next, will be taking up a prescription drug bill. And since the other body is dominated by the Democrats, the proposals that are out there are Medicare prescription drug programs, very much like the House Democratic bill. So we will probably have the opportunity at some point in conference to see the House Republican version and the Democratic version from the other body. So these efforts by the pharmaceutical companies to kill the House Democratic bill will obviously extend over the next few weeks in an effort to kill the Democratic majority bill in the other House as well.

During the course of the debate that we had in the Committee on Energy and Commerce on the Republican proposal here in the House, we actually had to end our debate and our committee hearing one night in the middle of the markup of the bill because Republicans had to go to a fund-raiser that was being given by the National Republican Committee that was being paid for, in large part, or in significant part, by the pharmaceutical companies.

I want to give a little flavor of that and then I want to talk about the ad campaign, because I see one of my colleagues has joined us tonight and I certainly want to yield to him.

But regarding the debate a few weeks ago in the Committee on Energy and Commerce, there was an article in the Washington Post, and I just want to read a little bit from it, it says, "Drug Firms Among Big Donors at GOP Event. Pharmaceutical companies are among 21 donors paying \$250,000 each for red carpet treatment at tonight's GOP fundraiser gala starring President Bush, 2 days after Republicans unveiled the prescription drug plan the industry is backing, according to GOP officials." Not Democrats, but GOP officials.

"Drug companies, in particular, have made a rich investment in tonight's event. Robert Ingram, Glaxo-Smith-Klein PLC's chief operating officer, is the chief corporate fundraiser for the gala. His company gave at least \$250,000. Pharmaceutical Research and Manufacturers of America, a trade group funded by the drug companies, kicked in \$250,000, too. PhRMA, as it is best known inside the beltway, is also helping underwrite a TV ad campaign touting the GOP's prescription drug plan. Pfizer contributed at least \$100,000 to the event, enough to earn the company the status of a vice chair for the dinner. Eli Lilly and Company, Bayer, AG and Merck each paid up to \$50,000 to sponsor a table. Republican officials said other drug companies donated money as part of the fund-raising extravaganza."

Then it says, "Every company giving money to the event has business before Congress. But the juxtaposition of the prescription drug debate on Capitol Hill and drug companies helping underwrite a major fundraiser highlights the tight relationship lawmakers have with groups seeking to influence the work before them. A senior House GOP leadership aide said yesterday that Republicans are working hard behind the scenes on behalf of PhRMA to make sure that the party's prescription drug plan for the elderly suits drug companies."

Now, we had an editorial from the New York Times Saturday, June 22, and I just want to read a certain section where it says: "House Republicans, who regard traditional Medicare as antiquated, would provide money to private insurance companies, a big source of GOP campaign donations, to

offer prescription drug policies. The idea of relying on private companies seems more ideological than practical. Even with Federal subsidies, it is unclear that enough insurance companies would be willing to participate and provide the economies that come from competition."

So the bottom line is, and the reason why this scam, the reason why this Republican proposal, which relies on private insurance companies and does not address the price issue is out there and passed the House is because of the contributions from the drug companies.

And just today, and there is so much more I could talk about, but I want to hear from my colleague from Maine, just today, Public Citizen issued a report and basically unmasked the ad campaign that PhRMA and the other drug companies have been conducting, which started, I guess, about a month ago and continues.

Basically, what PhRMA and the drug companies are doing is they are contributing money to United Seniors Association, which is the front senior group that is now running these issue ads in various Republican districts, telling people how wonderful Republican Congressmen are because they voted for this Republican bill, this sham bill.

It is amazing to me. I had no idea how much money we were talking about here. A few weeks ago we thought it was \$2 million, \$3 million, or \$4 million. Now this report from Public Citizen shows clearly that it is already \$10 million, and who knows where it is going, \$20 million, \$30 million, \$40 million, \$50 million, maybe \$100 million that the drug industry is going to pay to try to promote the Republican bill.

I just want to give a little breakdown of some of the things that this report says about United Seniors Association that is fronting the pharmaceutical industry ads. It says today that "Public Citizen estimates that USA," that United Seniors Association, I hate to use the acronym USA for them, but that is what they use, I guess, "that United Seniors Association has spent \$12 million on issue ads during the past 17 months. The lion's share of this spending, \$9.6 million, was used to promote President Bush and House Republican leaders' prescription drug plan."

It is amazing to me, because this talks about how in the 2000 election United Seniors Association joined Citizens for Better Medicare, which was also a drug industry front group created by the brand name drug company's trade association PhRMA, and they spent approximately \$65 million on TV advertising, a large chunk dedicated to electioneering issue ads.

So I do not know, the sky is the limit. I have to assume that we are probably talking, what, maybe \$100 million, if 2 years ago it was 65. Maybe now it will be 100. With inflation and everything, it is probably going to go up.

I will not go into all this now because I see my colleague from Maine. But we

have to point out, and I want to say to my colleague, who has been the person that has been the most outspoken in this Congress on the issue of price, and how the price of prescription drugs is just making it impossible for so many people, and not just senior citizens but all Americans, to afford their medicine any more. It is just a shame that the reason this is happening is because of the money coming from the brand name drug industry.

I said before that we keep talking about corporate responsibility. I think this is the height of corporate irresponsibility that they spend this kind of money to basically back a plan that will help no one, in my opinion.

I yield to the gentleman from Maine. Mr. ALLEN. Mr. Speaker, I thank the gentleman from New Jersey for yielding to me and for his leadership on this issue; for constantly trying to articulate to the American people the profound differences between the Republican prescription drug plan and the Democratic alternative here in the House.

As the gentleman knows, the Republican plan that was passed last month in this House was really a remarkable plan. Members on the Republican side stood up and said there is a \$35-a-month premium. They repeated it over and over again, \$35-a-month premium. Yet when we go to the bill and try to find the \$35 figure in the bill, it is not there. It is only an estimate. This is a bill with no guaranteed monthly premium, no guaranteed copayment, no guaranteed reduction in price.

It is one of those marvelous things that my friends on the other side of the aisle think will somehow emerge from the wonders of the private sector; that we will have a private stand-alone insurance policy that will take care of seniors. It is remarkable that they can imagine a world in which the insurance industry, which has said repeatedly we really do not want to provide these kinds of insurance policies, will have a change of heart and will step forward and will provide a policy that will not change year to year, will have a consistent premium, a consistent copay, and some reduction in price. We know it will not happen.

Anybody who has been paying any attention to politics in the last 2 years knows that if this prescription drug coverage for seniors were a priority for the Republican Party, it would have been brought up last year; that it would have been brought up before the tax cut. But for Republicans, tax cuts for the wealthy are far more important than prescription drug coverage for seniors. Now we can see that, as the gentleman referred to a few moments ago, the pharmaceutical company is thanking our friends on the Republican side of the aisle for coming up with this sham proposal and voting for it.

This is a hope, which has proved successful in the past, that if you repeat something often enough to a large enough group of people, a certain percentage of them will actually believe

it. And that is basically what is going on. Almost \$10 million spent by the pharmaceutical industry in the last 15 months or so, \$4.6 million in the last 2 months alone, thanking Republicans for supporting a bill that has no guaranteed premium, no guaranteed benefit, no guaranteed reduction in price, no guaranteed copay, but sounds good.

It is another election year inoculation. And if we are not successful this year in passing a real prescription drug benefit, then 2 years from now Republicans will step forward and they will say, just before the next election, we have a plan. We have a plan, and somehow it will, like magic, emerge.

There was a physician in Bangor, Maine, who wrote recently in a letter to the editor, and I quote, "The bill would be dropped like a bad date by House Republicans if they and President Bush did not need it in reelection campaigns."

It seems to me that this really comes down to a question of values, and the fundamental value is whether the first priority, when it comes to prescription drugs, is to protect the profits of the pharmaceutical industry or whether the first priority is to make sure that our seniors can afford to buy the drugs that their doctors tell them they have to take.

Now, the first half of last year, as my colleague will remember, the President traveled all across the country, and there was not any talk of prescription drugs for seniors then. It was one theme repeated over and over and over again: It was simply, "It is not the government's money, it is your money."

□ 2100

Mr. Speaker, it was an appeal to the American people to think of themselves first, to think of their own individual interests before the common good. That appeal was pounded in in the first 6 months of the administration, pounded in over and over again. It is not the government's money; it is your money.

What is the refrain today? Now that we are deep in deficit with \$165 billion projected deficit for this year with a comparable deficit projected for next year, is there an effort to say, We are in this problem together and we have to work out of it together? No. What we see is the same kind of appeal to individual interests over the common good and the common interest.

Mr. Speaker, the question really is when it comes to prescription drugs and the other issues that we face before us, whether the governing ideal of this House of Representatives will be me first or all of us together. That really is the fundamental choice. Those who come and say we are going to rely on private stand-alone insurance for prescription drugs for seniors are really saying that each individual should go out and buy his or her own insurance policy rather than having the Secretary of Health and Human Services,

as in the Democratic bill, negotiate lower prices on behalf of all Medicare beneficiaries.

That is what we have done in our legislation. We have said seniors belong to the largest health care plan in the country. It is called Medicare. Well, they ought to get a discount. If they are in the largest health care plan and 39 million Americans are getting their prescription drugs through Medicare, there ought to be a discount that reflects the market power of that buying group; but seniors on Medicare do not have the buying power of Aetna beneficiaries or Cigna beneficiaries. They do not have bargaining power at all today.

We have this anomaly. We have the largest group of health care beneficiaries in the country, Medicare beneficiaries, paying the highest prices not just in the United States but in the world for their prescription drugs. Here we have a group of seniors that make up 12 percent of the population, but they buy one-third of all prescription drugs, 33 percent of all prescription drugs. Half of them have either no coverage or very inadequate coverage for their prescription drugs, and our friends on the Republican side of the aisle, for fear of strengthening Medicare because it is a Federal health care plan, are basically saying no, no, you have to rely on the private insurance market.

In Maine and many other rural States, 15 to be exact, there is no private managed care under Medicare, no options at all. And those who say the private market provides more choice ignore the fact when private insurance companies do not want to offer prescription drug coverage or health insurance in a particular area, they just pull up and leave.

We have a program that works. It is called Medicare. It has kept our seniors with affordable health care despite its flaws, despite its problems. There is not a health care plan in the world that does not have problems. It has lifted seniors out of the condition where a trip to the hospital meant a trip to the bankruptcy court as well. That is something we have to preserve.

But coming back to this question of values, what we have seen in all of the corporate scandals over the last few years is an attitude at the top in too many American corporations which basically comes down to the same thing, me first. I will get mine. We will cook the books, drive up the stock price, and then the CEOs and officers sellout. And who gets hit in the end? The shareholders get hit in the pocketbook. Shareholders find that their pensions have dropped dramatically. What happens to the workers? They get laid off. They do not have all this money tucked away. They cannot party on their yachts when they leave the company, as some CEOs have done. They are stuck. This is fundamentally a question about values.

Are we going to take our common problems and deal with them as com-

mon problems, or are we going to say to the American people, as our friends on the other side of the aisle do all the time, each person on his own? Each person stands alone. Do the best you can with what you have got, but we are certainly not going to all work together.

Well, it is time for this country to pull together. It is time for us to take our common challenges, our economic challenges, our health care challenges, our environmental challenges and work together to build a better and stronger America. I know we can do it; but we have to shed that old motto, the "me first" motto and get to something that really reflects how much we depend on each other and how much we need to work together to build a better country.

Mr. Speaker, I thank the gentleman from New Jersey (Mr. PALLONE) for his leadership on this issue.

Mr. PALLONE. Mr. Speaker, I have to say until I saw this latest information about the level of funding that was going to United Seniors Association and how much money they were spending on this ad campaign, I still was under the belief that some of our Republican colleagues did not like the Democratic proposal and liked the private insurance option because ideologically they did not like Medicare, they thought Medicare was not a good program, they did not like government, and they had a hard time supporting a government program like Medicare, even if it works, because it is a government program.

But I am becoming more cynical now as I see the level of funding that is being spent on these ad campaigns and how it is just targeting Republicans, and particularly Republicans that are vulnerable. If we talk about a \$100 million ad campaign divided over some of the most seriously contested seats, it will be almost as much money as some of the candidates will spend on their own campaigns. I think the support on the other side is linked to the money, is linked to the fact that PhRMA and the drug companies are putting all this money out to promote Republican campaigns.

I am so glad that the gentleman raised the value issue. That is what this is about. This is about some greedy people who want to make more profit and do not care about the consequences for the average senior.

Last week, last Thursday I believe, there was a bus load of about 50 seniors that came from New Jersey. They did not go to Canada; they were highlighting that they were taking a bus to come to Washington instead of Canada. The gentleman from Maine knows about all of the people that go over to Canada because of the cheaper drug prices. We had 15 buses that went the week before to Canada from all of the border States. All the seniors from New Jersey were talking about was the price, how the price of prescription drugs keeps going up, and it is so

unaffordable to them. I do not understand how these brand-name drug companies can spend \$100 million on ad campaigns which are going to do nothing more than prevent these senior citizens from getting the medicine that they need. It is pathetic. It really is.

Mr. ALLEN. Mr. Speaker, they may be spending millions and millions on contributions to candidates, on TV ads promoting their point of view, or the feel-good ads about the industry itself as a way of trying to resurrect the industry's image; but it is also the case that many of the drugs that they have been developing these days are so close to drugs that already exist on the market that they cannot get the kind of sales volumes they want without a very heavy investment into direct-to-consumer advertising. Last year the industry spent \$2.5 billion on direct-to-consumer advertising. We can feel what has happened to the industry. It really has become a marketing operation. They depend very much on blockbuster drugs. Some of those drugs are blockbuster. This is an industry that does some remarkable things, but they move from the argument that we are earning very high profits right now to the conclusion that we have to sustain those profits at exactly the level we are at; and more particularly, that we have to charge our seniors the highest prices in the world in order to get enough money to do research. That is not true.

Just think about it. We are 280 million people in this country. Thirty-nine million are on Medicare. That is a very small percentage of the total market for prescription drugs in this country. There are 330 million people living in Europe, 125 million living in Japan, 25 million living in Canada. There are lots of people around the world who are buying prescription drugs. They are all paying lower prices than the seniors, that 39 million or maybe half that, really, half that group which is buying their prescription drugs from the pharmacist with no support from an insurance company.

Mr. Speaker, it just cannot be the 20 million Americans, very high prices charged to 20 million Americans, is the salvation of the pharmaceutical industry. It cannot be. It is not true.

But if we give enough money to groups like United Seniors Association, which sounds like a legitimate seniors organization, and they will run ads supporting the pharmaceutical industry's solution to the issue that is raised here, thanking our friends on the Republican side of the aisle for supporting a bill that will do virtually nothing for America's seniors, then we begin to understand how money has distorted the policy-making process in this House.

It is profoundly troubling that we cannot get a clean vote even. We could not get a clean vote from the Republican Committee on Rules on the Democratic alternative. That, I think, is a scandal that if people fully understood, they would be outraged about.

They expect us to have a debate here. They expect us to have a choice between competing alternative plans, and we do not. The Democratic plan gets buried in a few minutes of debate on a procedural motion. That is another part of the scandal that really we need to deal with.

If we do not pass a real Medicare prescription drug bill this year, we will just do it again 2 years down the road. They will come in with a bogus plan and hope that once again for the third cycle in a row that enough of the American people will be fooled into thinking that for them, prescription drugs is as important as tax cuts for the wealthy. It is not. We know it is not; but that is the continuing effort, to try to prove that they care.

Mr. PALLONE. Mr. Speaker, reclaiming my time, what I do not understand, it seems to me if we provide a Medicare benefit the way we have proposed as Democrats, and we take in that other half of the senior population, 20 million that are having problems, some of them are not buying the drugs or have difficulty, we are going to increase the volume of sales that the brand-name manufacturers are going to have. If we do some of the other things, like the gentleman has addressed the issue of price, not just in the context of a senior benefit, but we have collectively talked about doing more with generics, like the other body passed the bill last week that would plug up the loopholes and make it easier to move to generics.

□ 2115

We have talked about this: I know that in the other body, one of the Members has a bill which I have sponsored here that would eliminate the tax underwriting of advertising for pharmaceuticals. I mean, those are the kinds of things that would make a lot more people, even those who are not seniors, able to buy drugs. Even generics, a lot of the brand-name companies own a lot of the generic companies too, so it is not like there is this huge division between generics and brand names. A lot of the brand-name companies manufacture generics too.

So why is it that they do not see the increased volume that would come with that with many more Americans purchasing the drugs, even at a reduced price, as basically lifting their sales and their profits as well? That is what I do not understand.

Mr. ALLEN. Mr. Speaker, I am confident that they do. They do, in fact, understand that. The evidence I would give for that is the largest pharmaceutical company, Pfizer, has offered to seniors living under 200 percent of the poverty level, with incomes of less than 200 percent of the poverty level, they have said that we will sell to you all of our drugs, which average in retail \$61 or \$62 a month; we will sell all of our drugs to you for \$15 a month. That is a 75 percent discount; \$61 and \$62 drugs on average, all of them for \$15 a month. How can they do that? Well,

they will sell more medication. They will sell more drugs. We can bet that the cost of producing pills is a very, very small amount of the sale price. There is a lot that goes into research and development, no question. There is a lot, obviously, that goes into marketing. But the cost of production itself is a minor thing.

Mr. PALLONE. So what the gentleman is saying is that there may be one or two companies that see the benefit if they can get a larger volume; but overall, the trade group PhRMA does not see it that way, and they would rather keep their prices artificially high.

Mr. ALLEN. Mr. Speaker, I would distinguish between what they say and what they believe. Because if we look at all of the pharmaceutical industry drug discount card plans, they are out there advertising their discounts at being between 25 and 40 percent. That is what we have been talking about with my legislation and with other bills, getting to a 25 to 40 percent discount for all seniors. The pharmaceutical industry is out there saying, we have discount cards that will do that; we have discount prices that will do that.

Now, the question is, if they are willing to do that, what is the problem with the legislation that requires them to do that? Well, the answer is, we do not want to be hemmed in. We do not want to be required. We do not want the government to be able to tell us what to charge. In fact, a promise that is made on a temporary basis to say, we are going to promise you 25 to 40 percent does not mean they can actually deliver that or will deliver it. They will, in all likelihood, do what they have done with all of their other markets, which is charge what the market will bear; and if they give a little bit of a discount today, they may take it away tomorrow.

Seniors need predictability and continuity and stability in their Medicare plan. They need to know what the benefits are; they need to know what the premiums are for whatever services they are getting. If it is a physician service or if it is, as we have proposed, a prescription drug benefit on top of that, they need to have predictability. The pharmaceutical industry is not willing to provide it voluntarily. That is why we need legislation, so that seniors can sleep at night knowing that they are going to be able to take the medication that their doctors tell them they have to take.

That ultimately is the goal, because ultimately, lifesaving prescription drugs should not be dispensed on the basis of seniors' income. They ought to be dispensed on the basis that everyone who needs the medication will be able to get it; everyone should be able to have to pay some portion of the cost, but people who need lifesaving drugs ought to be able to get them.

Mr. PALLONE. Mr. Speaker, I see that the gentleman from Ohio (Mr.

STRICKLAND) is here joining me. I know he was there at the Committee on Commerce markup the day that we had to adjourn so that the chairman, the Republican chairman of the committee and other Republican members could go to the big fundraiser; and at the end, at 5 o'clock, because we knew that the clock was getting close to 5 and they had to leave for the fundraiser, we were sort of kidding them and hoping that they would stay for an extra half hour or hour; but boy, they certainly did not want to do that; they were determined to get out of there by 5 o'clock, no matter what. I mean, I laugh, and it really is not funny, because we have talked about the consequences in terms of seniors. But there is no question about what they were up to that night.

Mr. STRICKLAND. Mr. Speaker, I want to thank my friend. I was there and, as the gentleman knows, the next day we worked all day long and all night long; and we finally passed out a bill which only provides coverage for a person who has a prescription drug need of \$400 a month. The bill that finally passed out, the Republicans passed it out, would only provide coverage for 4½ months out of the 12-month year; and yet the poor senior would have to pay premiums every month, even during the months when they were receiving no coverage at all and, as the gentleman knows, they tell us that the premium would be on average \$35 a month, but there is no guarantee that it would not be \$65 or \$85 or \$125 a month.

So it is quite shameful, I think, that at a time when nearly every person in this Chamber, as they go home and talk to their constituents, say the right words, and they tell their seniors that they want to get them a prescription drug benefit and they want it to be affordable and they want it to provide choice, but when it comes to making the tough decisions here in this Chamber, they simply make the wrong decision.

Now, the Democratic proposal would add a voluntary drug benefit to Medicare. Why is that important? I know the gentleman from New Jersey and the gentleman from Maine have been talking about the fact that every citizen in every other country on Earth pays less for their prescription medications than does the American citizen. That is really quite sad because, as the gentleman knows, so many of these drugs are discovered, developed using tax dollars. So the American citizen pays the taxes to help develop these drugs, and then the pharmaceutical companies decide they are going to charge American citizens more than citizens anywhere else on Earth. That is shameful, and we ought to change it.

But there is something that I think is even more shameful than that, and that is the fact that here in America, America's most vulnerable, who are our elderly, our seniors citizens, end up paying more for their drugs than do

HMOs or large insurance companies or even the Federal Government. Why is that? It is simply because the individual senior citizen does not have any clout when it comes to buying their medications. They are only one little individual. And the large insurance companies, the large HMOs and the Federal Government, they buy in bulk, they buy in large quantities, and so they can get discounts. But the individual senior citizen, because we have no Medicare benefit, just simply is on their own. It is quite shameful.

It is troubling to me that this vulnerable population, the people who are most likely to be on fixed incomes, are seniors; the people most likely to have chronic health conditions that require continuous medications for the rest of life are senior citizens. The population that is most likely to need multiple medications are senior citizens. Yet senior citizens are the ones who are being charged the most for the medications. There is something really fundamentally wrong about that. I believe the American people expect us to fix that problem.

I hope the American people are paying attention, because we are going to have an election here in 4 months or so, and I believe that those of us who are willing to stand up to the pharmaceutical companies, to stand for America's senior citizens, to fight for a Medicare prescription drug benefit that is predictable, affordable, voluntary, accessible to any senior who wants to participate, I think we are the ones, quite frankly, who deserve to be returned to this lofty Chamber; and I believe those who will not support America's senior citizens, quite frankly, do not deserve to return to this Chamber.

So I hope the American people are paying attention. It is important that they pay attention to the details because, as the gentleman knows, the devil is always in the details, and words are cheap, talk is cheap. Certainly actions speak louder than words, especially when it comes to this particular issue.

I would like to point out another problem that I think deserves attention. The Congress, I think, must take action in this era of corporate misdeeds. They must look at the drug industry's behavior, including the misstatement of profits and the abuse of patents.

Particularly damaging to consumers is when drug companies use patent laws to file frivolous claims that extend their market exclusivity, blocking far more affordable generic drugs from coming to the market. I would just like to use a case in point.

Prilosec is a case study of the failure of our current patent law. Many seniors in my district take Prilosec. It is a good medication. It is the number one medication prescribed for seniors for the treatment of heartburn and acid reflux disease. Now, the original patent for Prilosec expired in October of 2001, but the manufacturer delayed

market entry of a generic by filing nearly a dozen lawsuits and by claiming that Prilosec has unique benefits when administered with applesauce. As a result, the generic manufacturer had to do time-consuming research on how the generic research works when given with applesauce before it could be approved.

In 2001, the company had Prilosec sales of more than, and this is an astounding figure, more than \$16 million per day. And during the year, the company raised the price of Prilosec by more than four times that of the rest of the inflation within our economy.

Now, this specific scenario and others like it amount to an incredible windfall for the drug industry, one that Congress simply must not allow to continue. These higher drug prices hurt seniors who depend on Medicare the most, because they are not shielded by the full cost of drugs like those who have insurance coverage.

During the past 10 years, 10 of the 50 drugs most frequently used by seniors were generic drugs, while the remaining 40 were brand-name drugs. Now, the prices of generic drugs used most frequently by seniors rose 1.8 percent, 1.8 percent from January 2001 to January 2002. During the same period, prices for the brand-name drugs increased by an average of 8.1 percent, or three times the rate of inflation.

So I think this brings us to only one reasonable conclusion and that is that we need a voluntary prescription drug benefit with a predictable premium that is a part of the Medicare benefit package that America's seniors can depend upon, just as they depend upon the Medicare system today.

As I said, I hope the American people are paying attention, because talk is cheap, actions speak louder than words; and those who do what is right for America's senior citizens, in my judgment, are those who deserve to remain in this institution. And those who turn their back on America's seniors and instead support the pharmaceutical industry, they are the ones that I think have relinquished their right to serve here.

□ 2130

Mr. PALLONE. Mr. Speaker, I want to thank the gentleman because he brought up so many good points on this issue. But particularly when the gentleman was talking about the roadblocks, if you will, that the brand-name companies put up to try to prevent generics from coming to the market, I think that is so significant.

As the gentleman mentioned earlier, the other body last week actually passed out of committee a bill that would close a lot of these loopholes with the generics, and particularly this idea that once they file suit, it is up to 30 months that they can prevent the generic from coming to market. Thirty months? We are talking about almost 3 years, 2½ years, which is absolutely crazy, when we know all these seniors that are out there that are suffering.

In fact, they passed that bill before they even passed the benefit bill. They are probably going to attach the benefit structure to that bill. I have to say that the other body, I think in large part because they have a Democratic majority, has been trying to address this price issue even before, in a sense, they have addressed the benefit issue, because they realize how important the price issue is.

The gentleman could argue, and I do not agree with that, but the gentleman could argue that if we addressed the price issue effectively, that that would go far toward solving the problem. I still think we need the benefit; but we need both, essentially.

I just find that so often the issue of price, though, is what people talk about, as my colleague, the gentleman from Maine, knows. That is what our constituents are constantly bringing up when we have a town meeting or when we see them on the street. That is what they talk about: how to address the price issue.

The Republicans here in the House did absolutely nothing to address that issue. They had that noninterference clause. I actually brought it with me, because it is amazing.

The gentleman will remember, in the Committee on Commerce markup, they never even mentioned it. They sort of suggested they were going to have discounts through competition. I remember the Republican chairman kept saying, well, we are going to have discounts.

I think the gentlewoman from Connecticut (Mrs. JOHNSON) on the floor said there was going to be a discount because of competition between the private insurance companies. But they have right in the bill, I am just going to read it, that "the administrator may not institute a price structure for the reimbursement of covered outpatient drugs, or interfere in any way with negotiations between the sponsors and Medicare+Choice organizations and drug manufacturers" that relate to price. In other words, they cannot bring up the price issue in the course of negotiations.

It is just amazing to me how, on the one hand, they suggest that somehow these private insurance companies are going to compete with each other, but that has to be totally on their own. That cannot be anything that the administrator of the Medicare program does. They cannot interfere in any way to try to bring the price down.

Mr. STRICKLAND. If the gentleman will continue to yield, Mr. Speaker, that provision certainly was influenced by the pharmaceutical industry. Basically, they are putting into law a prohibition on the Secretary of Health and Human Services, who is supposed to be representing the American people. They are really going to try to prohibit him by law from doing anything that is going to lower the prices of these prescription drugs.

Mr. PALLONE. Exactly.

Mr. STRICKLAND. Why would we do that if it were not simply to satisfy the pharmaceutical industry?

I want to tell the gentleman, this is not a Republican or Democratic issue back home at the grassroots. I went to a VFW hall this past Sunday morning for breakfast, and there were people there at that hall that were talking about not being able to afford their medicines. They were Republicans and Democrats. This is an issue that cuts across parties.

It cuts across economic levels, as well, because people can be fairly well-to-do and be unable to see that their parents or their relatives or their neighbors, their elderly neighbors, have access to life-saving medications.

People are sick of this. They are absolutely outraged at what is happening. Why that outrage does not result in some meaningful action here in the House of Representatives is beyond me. This problem has been with us for quite some time. We talk and we talk, and we have campaigns, and we say we are going to do something about it; yet time passes, and then we go through that kind of farcical exercise that we went through in our committee, where every amendment that we brought up that was designed to make these drugs more affordable was shot down by our Republican friends. They simply would not take the first step in trying to lower the cost of these drugs.

They use all kinds of rhetoric. They talk about price controls. Well, I think when a pharmaceutical company charges a large HMO a certain amount for a medication and then charges some elderly, sick, income-limited senior citizen two or three times as much for that same medication, I think that is price discrimination; and I think that is what we should be looking for, getting rid of price discrimination that is directed toward America's most vulnerable citizens.

Mr. PALLONE. Mr. Speaker, if the gentleman will remember specifically, they actually went the opposite direction, because they wanted to eliminate the Medicaid, not Medicare, but the Medicaid price structure, if you will. And actually they did vote to do that at one point and suggested that somehow it was something that the pharmaceutical industry opposed; that somehow the pharmaceutical industry did not want to eliminate the pricing structure that existed under Medicaid. That is just not true. That was another thing that was a bone, basically, to the pharmaceutical industry.

And then I remember the biggest affront to me is when, I think it was our colleague, the gentleman from Michigan (Mr. STUPAK), who introduced a couple of amendments that would basically use the negotiating or price structure, the price negotiations that we use now for the VA and I guess maybe for military, as well, and we just wanted to take that and use it for seniors. They said no, no, we do not want that; we cannot do that for sen-

iors. We can do it for the military and the veterans, but we cannot do it for the seniors. It was amazing.

Mr. Speaker, I yield to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentleman for yielding; and I agree with my friend, the gentleman from Ohio, that this is really an issue of price discrimination. Why do seniors in America pay the highest prices in the world? It is because, frankly, they do not have any bargaining power or leverage now. The only way they can get that leverage, get that bargaining power, is through Medicare, through giving the Secretary of Health and Human Services the ability to bargain on their behalf.

I have to smile sometimes when we hear about how competition is going to drive down price. Well, I am open to hearing from anybody the last time there was a price war among brand-name pharmaceutical companies, where first one cut prices and then another cut prices, and then the original one responded with a further cut in prices. I do not remember that happening, ever.

In fact, the prices basically keep going up, even though the utilization is also going up. Even though people are using more drugs, they are buying more drugs; and it does not cost that much to make them. So when people use more Prilosec, or whatever, but even so, the pharmaceutical companies are increasing prices on brand-name drugs. We do not have competition.

Mr. PALLONE. We do not because we have a monopoly. Basically, the patent structure is giving a particular company a monopoly for that particular drug for a period of time. Unless we allow generics or others to come in, which they obviously try to prevent, as my colleague, the gentleman from Ohio, mentioned, we essentially have a monopoly for a period of time and do not have competition.

The thing that was amazing to me, too, is this whole idea that they are going to create competition among the private insurance companies, but the private insurance companies do not even offer the insurance. How can there be any competition? That is the competition they are talking about with the private insurance companies.

Mr. STRICKLAND. If my friend, the gentleman from New Jersey (Mr. PALLONE), will continue to yield, I keep going back to the fact, how long are the American people going to tolerate this situation? We can go to Canada, we can go to Mexico, Belgium, England, Japan, we can go anywhere on Earth and buy medications that are developed within this country, many of them, in part using American taxpayer dollars; and we can buy those medications with much less cost to the consumer than the American citizen must pay.

How much longer are the American people going to put up with that situation? This is just a matter of gross discrimination. American citizens are subsidizing the costs of prescription medications for citizens all over this world. When are we going to put a stop to it? When are we going to say that our people are being treated unfairly?

Then, when are we going to say that in this country, America's seniors are not going to continue to be gouged and charged more than insurance companies or HMOs for the same medication? It seems like a no-brainer to me. I cannot understand why there is so much determination on the other side of the aisle to keep us from taking action against this situation.

Mr. PALLONE. I want to thank my colleagues. The answer, obviously, is because of what the brand-name pharmaceutical companies are doing to pay for the ads and pay for the campaigns. It is the special interest money.

REPORT ON H.R. 5120, TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

Mr. ISTOOK (during the Special Order of Mr. PALLONE), from the Committee on Appropriations, submitted a privileged report (Rept. No. 107-575) on the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore (Mr. SHUSTER). Pursuant to clause 1, rule XXI, all points of order are reserved on the bill.

REPORT ON H.R. 5121, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2003

Mr. ISTOOK (during the Special Order of Mr. PALLONE), from the Committee on Appropriations, submitted a privileged report (Rept. No. 107-576) on the bill (H.R. 5121) making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore. Pursuant to clause 1, rule XXI, all points of order are reserved on the bill.

RECOMMENDING VIGOROUS PROSECUTION OF CORPORATE WRONGDOERS

The SPEAKER pro tempore (Mr. SHUSTER). Under the Speaker's announced policy of January 3, 2001, the gentleman from Colorado (Mr. MCINNIS) is recognized for 60 minutes.

Mr. MCINNIS. Mr. Speaker, I have heard the gentleman from Ohio (Mr.

STRICKLAND), and I have heard the previous speaker make a little comment about political donations. I hope the gentlemen have the opportunity to read the article this morning about the Democratic Party, the Democratic National Committee, and their \$100,000 sponsorship. They were hosted by Bristol-Myers this weekend. That is the prescription drug company. I think that is what these guys are talking about.

The gentleman from Ohio (Mr. STRICKLAND) I have a good deal of respect for. He is very capable, a bright gentleman. But I would like the gentleman to show me anybody on this House floor, anybody on this House floor who opposes seniors.

He makes a statement out here on the House floor about, well, we should be the party, I guess he is referring to the Democrats, we should be the party that comes back here because the Republicans are against seniors. I challenge the gentleman from Ohio (Mr. STRICKLAND) to show me one Republican or one Democrat or one Independent or Socialist, whatever our one party is registered as, show me one person on this House floor, just one, I say to the gentleman, that is opposed to seniors.

I do not know anybody opposed to seniors. That is as absurd as the statement we hear in here, well, they are against education. Show me one Congressman, show me one elected official in this Nation, whether it is a State representative, whether it is a school board member, whether it is a city council member, whether it is a Congressman, whether it is an appointed position in our political system, a cabinet member, that is opposed to education.

These statements are absurd on their face. They should not be made in a debate, where we really want results, or we want solutions. The prudent man is not going to come up here and accuse the other side of being against seniors: they do not support seniors, they do not like seniors, they want prescription care costs to continue to skyrocket. There is nobody in this country that wants that. I do not know anybody opposed to seniors.

If Members really want to get progress, if they really want to have bipartisan efforts towards a solution, do not stand up here and blatantly make statements that the other side is opposed to education, or the other side is opposed to seniors. We do not get anywhere doing that.

So I would suggest, constructively and in a positive fashion, to my colleagues to entertain a few more positive statements. Maybe they do not agree with the process, or maybe they have a disagreement with one of the proposals dealing with a matter that impacts seniors. Then address the proposal, instead of doing the politically expedient thing, and that is to take a jab at the other party by saying, well, they oppose seniors, in whole.

Obviously, Mr. Speaker, that is not the purpose of me being here today, although I do mention it; and it was with interest that Bristol-Myers, who announced last week, one of these corporations that is looking at restating their earnings, or they took some income in by prepay of customers when they picked up their drugs at the pharmacy, I do want to note that as the Democrats, as they were attacking us this evening, take a look at who hosted their event this weekend, this last weekend.

So both parties need to be very careful about that kind of thing, because there is some corporate sickness out there.

Let me give an example. Go to any shopping mall we can find in the country and look for the most beat-up car, the most beat-up automobile we can find on the shopping mall lot and tell people around there that you are going to steal the car so somebody will call the police and say you are stealing the car. Then drive that car off the parking lot. Try and steal the car.

Do Members know what is going to happen in our society? No matter what the value of the car, and let us just say it is the biggest piece of junk we would ever see in our life, and the car is worth \$200, that is all anybody would give us, \$200, probably to drive it straight to a junkyard, you drive it off, get it on the street, and immediately tell the police, the law enforcement in our Nation, the police will stop the vehicle. They will surround you.

I used to be a police officer, and I know what it is like to make a stolen car arrest. We do not go up and issue a ticket. We get out of the car, hold a weapon on them, a deadly weapon, and we aim it at them, right where we could kill them if they tried to make any kind of move towards us. We demand and order them out of their car.

□ 2145

You have them lay on the pavement. You immediately go up. You take that car thief. You put them in handcuffs. You take them back to your police unit and you take them to jail. That is exactly what you do for somebody that steals a junk car. And yet today what we are witnessing in this country is corporate thievery the likes that we have never seen.

Last week we had a guy named Scott Sullivan, 40 years old or so, who was the chief financial officer for a corporation called WorldCom. And he was up here testifying in front of the United States Congress. Actually he refused to testify. But he was up here in front of the committee with a big smirk on his face. He took away tens and tens and tens of millions of dollars away from that corporation. By the way, he has never been in handcuffs. He has never been surrounded by police officers with their weapons drawn. And while he was smirking in front of that committee, as he was full of himself, construction continued on his 20 or \$25

million home that he is building in Florida at the expense of not only the stockholders of WorldCom, not only the bondholders of WorldCom, but probably the most important components of WorldCom Corporation and that is the employees. How many employees of WorldCom saw their pensions wiped out, saw many, many years of service?

Now, understand that WorldCom is not that old of a corporation. What they did is went out and acquired other companies, companies that had been in business for a long, long time; companies that had employees who had worked for them for many, many years; faithful employees, had dedicated their careers to that company. And WorldCom bombed and Scott Sullivan and his boss, Bernie Ebbers, who went to the board of directors and borrowed \$400 million from the corporation, walked away with a loan of \$400 million, not from a bank where anybody else has to go to get their loans, from the board of directors, the people that he wined and dined.

One of the directors, in fact, he supplied him a jet for a year. Actually he leased him a private jet. This jet probably cost the corporation 50 to 100 to maybe \$200,000 a month for that jet. And the president of the corporation loaned it to a member of the board of directors, leased it to him for a dollar a year. Those people are having these mansions built while they are testifying or appearing in front of the committee. And all of these thousands of employees of WorldCom, and many more to come, there will be layoffs, WorldCom will very likely file bankruptcy this week. It makes me ill to see the likes of Scott Sullivan building that mansion in Florida at the expense of our society. So I want to talk a little bit about that this evening.

I will keep my comments to about 30 minutes because we will shift from that to agriculture. Let me start out with kind of a basic lesson, and that is how corporations are formed. Remember that in America not all corporations are bad. In fact, most corporations are not bad. Most corporations in America, if you figure by the number of corporations, are small family businesses.

I will give you an example. My wife's family is in the ranching business. They have that incorporated. It is a small corporation. Her dad runs the ranch and he is the president of the corporation. She and her brothers are on the board of directors. Her mom is chairman or the vice president of the corporation. So there are a lot of small businesses that are corporations. A lot of your friends in their little businesses are incorporated. So not all corporations are bad, just like not all priests are bad, but you have got a few bad apples.

The thing to think about is what is the structure of a corporation? Where are the checks and balances for a corporation? Our society works because

we have checks and balances. What are the checks and balances of a corporation, and where do those checks and balances go wrong? What went wrong? Why did the system not correct itself?

Well, let us look at the structure of a corporation, and specifically look at the checks-and-balances system. A corporation consists of shareholders. Those are people in this country, a lot of people who have no idea that they own shares in a corporation or are actually shareholders probably through their mutual funds or through their pension funds. What they do is they put their retirement funds in trust for an organization that then turns around and uses those proceeds to buy stock in corporations. And there are a lot of people that have owned stock. Many Americans over the years, over the history of this country. The old corporations, the General Electrics, the General Motors, the car manufacturers like Ford and Chrysler and people like that. So the shareholders come together. They are the owners of the corporation. They are the people that invest the money, that put the capital, that is what the money is called, they put the capital in to purchase that and form that corporation.

What they do is oversee, because if you own a \$30 share of Chrysler Corporation or a share of some other company out there, you are not going to be involved in the day-to-day management of a corporation like Chrysler, for example. What you do is the shareholder gets together and they elect people to represent them in the corporation, and the people that they elect are called the board of directors.

Now the board of directors are very, very important people, very important people for a corporation. They are the trustees of the corporation, so to speak. They are a fiduciary duality, not only to the shareholders of the corporation, but they also have a fiduciary duty in their responsibilities that they carry out on behalf of the corporations. And they have a fiduciary duty not to act in their own self-interest, not to act in such a way that they make themselves rich at the expense of the corporation.

We are seeing this time after time after time. These corporations that are in trouble today, I can tell you one of the points that the checks and balances failed, the check point that failed is right there on your board of directors. You can take a look at Enron Corporation. You can take a look at Kmart Corporation. You can look at WorldCom. You can look at Adelphia. You can look at TYCO Corporation. These are people that self-enriched themselves. Instead of carrying out their fiduciary duties to protect the shareholders, to represent the shareholders, because of the fact that they were induced for self-enrichment, in other words, put money in their own pockets, put it in their own pockets, they did this. They walked away from their very fundamental duties as a

member of the board of directors. So we are having a failure in the system in some of these companies.

Well, the board of directors, remember, they were elected by the shareholders. They then turn around and they hire a president. They hire a president or a chief executive officer to run the corporation.

Now, the board of directors is not intended to be there every day, but the president of the corporation is. The president then installs his management team. And the management team in turn hires the employees underneath the management team that carry out the duties of the corporation. Now, obviously, these employees are very important, but the employees do not serve on the board of directors. The employees have to trust that the board of directors has the best interest of the corporation, which is the shareholders, in mind and the employees in mind. They have a lot of trust. These employees, they have a lot of trust in this board of directors. A lot of trust in that board of directors, and they got let down.

Without exception, in every one of these corporations you read about in Wall Street or you read about in your morning newspaper that are deceiving the shareholders, that are deceiving the American public, in every one of those cases you will see a fallacy or a letdown of the fiduciary duties by the board of directors.

Now, theoretically under the structure of a corporation, the board of directors should have legal counsel and they should have auditors. I do not have to say much about what has happened to the auditing profession with some of these corporations. What has happened, frankly, is they got in bed with the board of directors and they got in bed with the president. They have thought about self-enrichment. If there is one word that has led to the downfall of many of these major corporations, and I am not so concerned about the corporation as I am the employees of these corporations, the thousands and thousands of employees that are without their jobs, that their pension plans are wiped out, their savings plans are wiped out. They are not young people any more. They do not have a career ahead of them. Their career is behind them, and it gets wiped out. There is one word that describes all of that and that word is called self-enrichment. Self-enrichment.

The auditors did not do their job. I will tell you in the banking business, the auditors, when the Federal Government goes in and audits that bank, you cannot give the auditor his pencil. You cannot buy them a cup of coffee. You do not know those auditors. They do not go with you afterwards and have dinner. They do not go out and party with you. They do not socialize with you on weekends. That is what an auditor should be.

An auditor should be at arm's length. But that is not what happened. These

little symbols mean arm's length. That is not what happened. What happened is the auditors, and in the case of the TYCO Corporation, the legal counsel got in with the president and the CEO, and this is the president who does not pay taxes on his art, sales taxes, so you can imagine what other deception he has worked on the American public, and the legal counsel gets in and starts paying himself bonuses of \$20 or \$30 million a year and then structures the bonuses in such a way that he can hide it from the board of directors. Or if the board of directors figures it out, he can say, do not worry, the reports that we give to the shareholders, and every year the board reports to the shareholders in what is called an annual report, I can structure our pay in such a way that we do not have to reveal it in this report to the shareholders. Because if the shareholders found out that the auditors were in bed with us or if the shareholders found out that our attorney was paid \$30 million a year for bonuses, they might get upset about it. So how do we conceal it from them? And that is exactly what they did in TYCO.

Let me give you a few examples of where this structure has failed, and almost without exception, in fact, I do not think we can find exception on the examples I will give you, you will find a breakdown either with the legal counsel, the attorneys, a breakdown with the auditors that started getting too cozy. They started getting contracts with the president. They started getting opportunities to put other companies together where they could self-enrich themselves. Enron is the perfect example of that. Andrew Fastow, who was the chief financial officer on the management team, goes out and makes separate companies, makes a sweetheart deal with the auditors, makes sweetheart deals with the attorneys, and pays himself \$30 million to run these partnerships.

By the way, where is Andrew Fastow this evening? He is in his multi-million dollar home in Texas. In Enron's bankruptcy, does he have to give that up? No, in Texas and Florida you get to keep your home from bankruptcy, so Scott Sullivan gets to stay in his \$20 million home and Andrew Fastow gets to stay in his.

I can tell you if you went in and stole one hour of electricity from Enron, you would suffer more of a penalty than any of those people have suffered so far as far as criminal behavior is concerned. But let me go back here. I will point out to you where this breakdown occurred, where it has either been the board has not exercised proper oversight over the management or the management has gotten too cozy with the board and got the board intimidated to ask the management, where the management has concealed numbers with the auditors or concealed it from the auditors, or they got the legal counsel to buy into some of these deals.

Guess who the losers are? The losers in this case are at the bottom and top of this chart. The bottom, most important, the employees. They lose. They lose everything. Next, the shareholders. They lose. They lose everything. Now the shareholders knew there was some risk when they bought the stock, but they did not expect risk of fraud, but they knew there was a risk when they bought it. But the employees, they did not know there was a risk that the management would defraud the corporation, that management would walk away with multi-million dollar homes and money in accounts probably hidden all over the world. They did not know that.

Let us take a look at some of these examples. Well, let us take a look at a few examples here of where the corporate structure went wrong because some of the individuals contained within that corporate structure were focused on self-enrichment, broke or breached their fiduciary duties to their employees, to their customers, to their shareholders, to their profession, the accounting profession, which is an honorable profession. They breached their duties to the legal profession, which is an honorable profession. In any one of these cases you will see individuals who breached. They are thieves. They lied. They stole. These are two-bit crooks. That is exactly what they are, two-bit crooks. Remember my comparison at the beginning of the speech about you steal a car and the police surround you with their guns drawn. That is exactly what should have happened to the executives of these companies once they determine that they have stolen, these two-bit crooks.

Take a look at Kmart Corporation. How many employees lost their jobs because of the Kmart Corporation? What happened with the chief executives at Kmart? They went and got the board and the corporation to loan them money. The president of the corporation, I think the vice president of Kmart got the corporation to loan them millions of dollars; millions. Remember, the numbers we talked about tonight are not thousands of dollars, hundreds of dollars. They did not loan you a candy bar, a pen or a pencil. These are millions. We talk about numbers in the millions.

So Kmart Corporation executives loaned themselves millions of dollars, and then what did they do? They go back to the corporation and say we know it is a loan. Let us make it a grant. What does a grant mean? It means you do not have to pay back the loan. So at the expense of the employees of the Kmart Corporation, at the expense of the customers of the Kmart Corporation, at the expense of the shareholders of Kmart Corporation, the executives of Kmart Corporation go get this money. And what do they do a week after they get the loans? Forgiven. In other words, you do not have to pay me back.

□ 2200

They sign their own papers saying the corporation does not have to be paid back. They take it into bankruptcy. Where are those executives with Kmart Corporation this evening? They are probably filling their bellies at a local steakhouse.

Let us look at WorldCom. I have talked about WorldCom a little, but let us talk about the loans again. How can you have a board of directors, for example, where the chief executive officer, Bernie Ebbers, allows one of the board members to have one of the corporation's private jets for \$1 a year, \$1 a year? Do my colleagues think that board member's going to stand up to Bernie Ebbers when Bernie Ebbers said, look, I need \$400 million.

Why did that board director not say we are not bank, we represent the shareholders, we represent the employees? We are not going to loan you \$400 million. What do you mean you want it forgiven, \$400 million. But that is not what happened. In WorldCom, they gave Bernie Ebbers \$400 on a so-called loan.

Then Scott Sullivan dances in. Scott Sullivan's a little numbers guy, the guy who wears the green shades. He is the one that moves numbers, moves expenses into capital expenditures so that he can show higher income so his bonus is higher. Scott Sullivan takes out millions and million of dollars. What is Scott Sullivan doing tonight? Right here. Here is what Scott Sullivan, and Gary Winnick of Global Crossing. Global Crossing, Gary Winnick's been here before. He walked out with 900-and-some million dollars. I want you to see what they are doing tonight. You see that headline in USA Today, "Homes of the Rich and the Infamous." There is Gary Winnick's home in Bel Air, California, \$90 million. Here is Scott Sullivan's home and I have got a poster.

Let me show you Scott Sullivan's home. That is were Scott Sullivan is this evening. While I am giving this speech, he is sitting somewhere in that mansion. That is a \$20 million mansion. He is the guy. He is the accountant. He is the one that broke his fiduciary duties to WorldCom. And where are most of the employees of WorldCom this evening, the ones that do not have jobs? Probably sitting there in a family room with their family in tears, trying to figure out what they are going to do, all because of the corruption of these individuals.

We have got to nail these people. The Bush administration, I think, has made a solid commitment to do that. They ought to have the IRS at these people's doors. They ought to have the Securities and Exchange Commission at these people's doors; and by the way, kudos to the Securities and Exchange Commission and kudos to the Justice Department.

The Justice Department today under the President's direction came out with indictments against Adelphia,

that is the cable company where the family took \$3.5 billion out of the corporation, not million, \$3.5 billion out of that corporation, self-enrichment, but they got indicted today. Good, good, good.

Every one of these people I speak about ought to be indicted. Andersen corporation, they are the auditors. Where are their fiduciary duties? Unfortunately, because we have got a few crooked two-bit crooks, two-bit accountants in Andersen, they brought the whole corporation down.

I hope that the Justice Department or the Attorneys General of these various States or whatever local enforcement agency can do it brings charges against the individuals. There are a lot of good hardworking people for Andersen corporation, and a few of these auditors who got money in their pockets, who became the two-bit crooks, brought down the entire corporation.

How many jobs were lost with Andersen, 20, 30,000? How many of them were crooked, couple hundred? The rest of the people were hardworking people, but they have lost their careers thanks to the people at the very top of Andersen who did not maintain their fiduciary duties to the people of that corporation.

ImClone Systems Incorporated, oh, what an ironic situation there. That is the Martha Stewart case. How ironic that Martha Stewart sells her stock the day before the announcement is made, which everybody knows will result in the stock collapsing, and the president of the corporation, close friend of hers and close friend of her daughter, start taking a look at the interrelationships that exist. I am not talking about sexual relationships. I am talking about looking at the inter-related business transactions they have with the auditors, with the lawyers, with their buddies at these parties. Take a look at how many fiduciary duties were breached as a result of that.

Who suffered there? Every investor that did not know to sell their stock. Ironically, Martha Stewart had some kind of divine message to sell her stock right before the thing collapsed, the day before, hours before it collapsed. What about the poor suckers that bought that? What about the employees of that corporation? Does the president of that corporation and the chairman of the board of that corporation feel good tonight about what he has put those employees through?

We talked about Enron, Tyco. What a ripoff Tyco was. Take a look at the attorney for Tyco. The legal profession, why does the local bar in that State, the legal profession not have this guy up for disbarment? That attorney of Tyco ought to be in front of the State bar of New York trying to fight for his license to practice law, but he is not. I hope somebody from New York asks their State bar association why the attorney for Tyco is not in front of their bar fighting for his legal license. He ought to go to jail; and of course, I am

addressing the Members on the floor, but I would hope that he might hear my comments here.

Here is what ought to happen to him: Go to jail, just like that monopoly card. Now, some people say you are giving a charged speech tonight, you are speaking with a lot of emotion tonight, you are making a lot of charges.

I am not just making them on this. I can pull up another chart. Sunbeam Corporation, Global Crossing and I could talk for quite a bit of time on that, Conseco, Waste Management. The reason I feel so deeply committed to this issue, the reason I feel so strongly about this is our system has to work based on consumer confidence, based on credibility.

The system has to have self-correction in it. If one side gets out of kilter, the other side kicks in so you keep it generally in balance. We have got to make sure that the prudent standards are upheld.

What is happening is I am not so concerned about Scott Sullivan's \$20 million home in Florida or Gary Winnick's home out there in California, \$90 million. I am concerned about why the system did not catch them earlier, why is the system not in balance.

What about the employees of these corporations? What about all those people for Global Crossing or Enron or WorldCom, just about to lose it, why did not all those people, they are wiped out. That is why I am emotional this evening.

It was not the Democrats, although Sunbeam and Conseco and several of those occurred under the Clinton administration. It was not the Republican administration, although we have had this last couple of weeks. This is not a partisan issue. This is not politicians who have gone astray, who are corrupt or a massive bribery scandal. That is not what we are talking about here. This is a breakdown that must be addressed immediately by very aggressive and active and unforgiving prosecution of the people who have violated the trust of the employees and who have violated the trust of the shareholders and who have violated their fiduciary responsibilities to their professions and to the corporations and the people for whom they work.

That is not asking too much. I hope in the next few weeks we see action like we have seen from the Bush administration in the last 24 hours, and that is criminal indictment against those families with the Adelphia Cable Corporation that stole 2.3 or 3.3, I cannot remember, but I can tell you it was in the billions. We need indictments. We ought to have indictments every day.

We ought to have the IRS. About 6 weeks ago, the IRS announced they are going to start doing random audits. They will come down here and just randomly pick somebody seated behind me and say hey, they may make \$40,000 a year, we are going to audit them. IRS ought to give up their random audits

and focus audits strictly on these people, like that lawyer with Tyco, like WorldCom, like the Kmart people.

We need to come together on this, Republicans and Democrats. Again, it is not a Republican issue; it is not a Democrat issue. It is an issue that challenges the very business community, which we need in this country. This is a cleansing process. We have got to make sure that we cleanse correctly. We have got to make sure we get the cancer out, and it does require active prosecution and active pursuit of these two-bit crooks. They should not be treated any better than the way we treat somebody that steals a car. They ought to be treated exactly like that and that is go directly to jail and do not collect your \$200 as you pass go.

Enough of that subject, Mr. Speaker. Mr. Speaker, we have a fascinating half an hour. I would like to have my colleague, we have chatted about it, on agriculture, the gentleman from Nebraska (Mr. OSBORNE). All my colleagues know of his reputation. Obviously, he is one of the most reputable people here. His integrity is impeccable, and his knowledge on agriculture is second to none. I would like to at this point in time yield the balance of my time to the gentleman from Nebraska (Mr. OSBORNE) so we can have some discussions on the issue of agriculture and farming.

GENERAL PERCEPTION OF THE FARM BILL

Mr. OSBORNE. Mr. Speaker, I would like to thank the gentleman from Colorado for yielding this time, appreciate his insights on the business community and some of the difficulties we have been having; and Mr. Speaker, tonight I would like to discuss the general perception of the farm bill that was passed in May, the Farm Security and Rural Investment Act.

It has been very interesting as we have watched what has gone on around the country, particularly in the urban areas, particularly areas of both coasts here in Washington.

The farm bill has been labeled as obscene. It has been labeled as fat. It has been labeled as pork, et cetera. I would like to read just three quotes from leading newspapers that pretty much express the general sentiments that we have been hearing.

This was from the Las Vegas Review Journal. The headline was "Farm Welfare," and the body of the article said this: "The House voted to slide backwards some 70 years, choosing socialism and abandoning market-based reforms in the Nation's Stalinesque farm policy in voting for the new farm bill." Those are very strong words, that we decided to slide back 70 years, chose socialism and Stalinesque policy.

The Washington Post, under the headline: "Grins for Mr. Bush," editorialized, "Mr. Bush signed a farm bill that represents a low point in his presidency, a wasteful corporate welfare

measure that penalizes taxpayers and the world's poorest people in order to bribe a few voters." So the farm bill was labeled as a bribe and was a low point of the Bush presidency.

The Wall Street Journal, under the headline, "The Farm State Pigout," says this: "That great rooting snooting noise you hear in the distance, dear taxpayer, is the sound of election year farm State politics rolling out of the U.S. Congress. This alone amounts to one of the greatest urban to rural wealth transfers to wealth in history. A sort of farm bill great society."

The question is are these perceptions, are these quotes truly representative of the farm bill? Is this what we are all about? I would like to take a look at some of the actual data concerning this farm bill that was passed in May.

We will see that the spending on agriculture in 1999 was about \$19 billion. In 2000, under Freedom to Farm, spending was roughly \$33 billion; and in 2001, a year ago, it was roughly \$23 billion. So those were the last 3 years of Freedom to Farm, and the amounts above these marks here were emergency payments. In other words, farmers were losing their livelihood so Congress passed emergency payments.

Here we see a substantial increase of about \$12 billion emergency here, an increase of 6 or \$7 billion for emergency payments. The interesting thing is that if we look at this very carefully, we will find that the average here of these last 3 years of Freedom to Farm were \$24.5 billion per year.

We look at the new farm bill, 2002. We are projecting roughly \$19 billion. Then it goes up to 22. Then it starts to level off, and from that point on it is projected to go down. So what we are talking about in the first 4 years of the new farm bill, the projection, a little less than \$21 billion a year, which means that is \$3.5 billion less than what we averaged in the previous 3 years under the old farm bill.

□ 2215

Now, as far as I can tell, this does not represent a huge increase. Actually, it is a decrease. I do not believe that this is irresponsible policy.

And so the thing that people need to remember is that the reason that the new farm bill was passed was people decided that we could not continue to rely on emergency payments. These emergency payments were not made until October–November, so the banker did not know at the planting time what the farmer was going to receive and the farmer did not know what he was going to receive until well after harvest. So in this policy we have folded in what is emergency payments, and we believe this is a more reasonable approach and, actually, probably, will save money at this point.

Is this farm bill 15 percent of the Federal budget? We have heard of all the anguish, the weeping, wailing, and gnashing of teeth about how expensive it is. Is it 20 percent of the total tax

bill? Is it 25 percent of the Federal budget? The answer, Mr. Speaker, is that this farm bill costs roughly one-half of 1 percent of the total Federal budget. Roughly one-half of 1 percent. And, actually, less than one-half of 1 percent goes to farmers, because 30 percent of the farm bill goes to school lunch programs through nutrition programs.

So we feel the question probably should be asked then at this point, is that one-half of 1 percent being well spent? Certainly, even though it is not a huge amount of the Federal budget, do we want to waste that money? I guess if people think about it, they will realize that in that one-half of 1 percent, the United States has the safest food supply in the world. We have no foot-and-mouth disease in this country. We have no mad cow disease in this country. When we buy a piece of fruit at the grocery store, we know it has not been sprayed by DDT. So we have the safest food supply, we have the most diverse food supply, and we also have the cheapest food supply in the world.

We spend roughly 9 percent of our total income on food in this country, whereas most countries are spending 20, 25, 30, sometimes as much as 50 percent for food. So I think that this one-half of 1 percent is certainly well spent.

Another question that might arise is, are farmers getting rich? That is the perception, that this farm bill makes farmers wealthy and it is sort of a welfare system, as one of the newspaper articles said, for agriculture. Actually, I guess I can speak in terms of what my own home State has experienced. Last year, we lost 1,000 farmers in the State of Nebraska. These were farmers who no longer could keep going. Most of them left because of financial reasons.

The census figures in 1997 indicated that there were 5,500 farmers in the State of Nebraska that were under the age of 35 years of age. Ten years before that, in 1987, there were 12,600 farmers under 35 years of age. So we lost 60 percent of our farmers 35 years of age and younger. There simply are not young farmers in the business any more because it is not profitable.

So you may say, well, certainly the older farmers increased. And actually, again in Nebraska, the ages between 60 and 64 declined. Two thousand farmers left the profession at that point. So we have been losing all age brackets in the farm community.

In addition, I might mention, Mr. Speaker, that at the present time Nebraska has the three poorest counties in the country in terms of average per capita income. Now, that does not mean just three of the poorer. It is the three poorest, one, two and three. In one of these counties, the average per capita income is a little over \$4,000 a year per person. The other two counties are in the \$5,000 range. All of these counties do not have any urban area. They are totally rural. They are to-

tally dependent upon agriculture. So I can assure my colleagues that we do not find that agriculture is something where people are getting rich.

The environmental working group has published a Web site in which all of the farm payments over the preceding 4 years have been published and anyone can access that site and see the horror stories that Scotty Pippin, the NBA player, got some farm payments; and we see cases where multiple entities of 10 or 15 or 20 or 30 people have gone together and maybe they have received payments of \$1 million. So the assumption is that those payments represent net profit. And yet I guess anybody in agriculture understands that that is not the case.

Now, let me give an example. Over the past 3 or 4 years, the pricing of a bushel of corn, what it will bring at the elevator, has probably averaged about \$1.70 per bushel. The cost of production for a bushel of corn is roughly \$2.20 per bushel. So after paying for fertilizer, seed, equipment, the combine, the tractor, the pesticides, it costs about \$2.20 a bushel, on the average, to produce a bushel of corn, which means, obviously, that the farmer is losing 50 cents a bushel.

So if that farmer has a couple thousand acres of corn and they are losing 50 cents a bushel and their yield is roughly 200 bushels per acre, that means, essentially, that the farmer would need a \$200,000 payment just to break even. Now, that does not allow the farmer any profit. It does not allow for any surplus of any type and obviously, he goes out of business if all he does is break even. So most of these farm payments have been to cover rather severe deficits in the farm economy.

The question we might ask ourselves is, well, why do we need a farm bill? People often wonder, well, the person who runs the drugstore on Main Street, the person who has an implement dealership or a clothing store has no guaranties. If Wal-Mart moves in, they have trouble. Why in the world should we help farmers? Let me talk a little about that tonight, Mr. Speaker.

I believe there is some reasons why we want to think about the importance of agriculture and why agriculture deserves some special attention.

First of all, farming is a unique industry in this sense. Farming is almost totally weather-dependent. I cannot think of any other industry where you can work a whole year and do things right, and in 10 minutes of hailstorm lose your whole crop. You cannot make it rain nor can you have it rain too much. You cannot prevent a 60 or 70-mile-an-hour windstorm that knocks down all your corn or your wheat. So because of the fact that agriculture is totally weather-dependent, it is somewhat unique.

Second, in regard to agriculture, it is impossible to control inventory. When you start to plant your crop in the spring, you have no idea what your

yield is going to be, you have no idea what the yield around the United States is going to be, you have no idea what the yield in Australia or China or the European Union is going to be. And so there is no way, if there is too much of a crop, to cut back at that point.

Now, if you work for Ford, and there are too many SUVs on the road, you close down a production line or you begin to cut back on a whole plant. If there are too many suits of clothes on the market, then you begin to produce fewer suits of clothes. It is impossible for the agriculture industry to do this in adjusting their inventory.

Third, producers do not set the price. Now, I cannot think of any other industry where the person producing does not decide what it is going to cost, what the price is going to be. If you produce an automobile, you put a sticker on there that says \$20,000, \$25,000, \$30,000. A suit of clothes is \$300, \$400, or whatever. Yet the farmer, when he has harvested his crop, goes down to the elevator and finds out what the elevator operator will pay him for his crop. It may be \$2.50 for a bushel of corn, it may be \$1.50 for a bushel of corn. The same is true of the livestock producer. The cattleman has to go to the packer, the pork producers go to the packer to find out what he can receive. So in agriculture, the producer does not set the price.

Fourth, and this is a very important point, farming is critical to national security. And the reason I say this is if we think about our oil industry, our petroleum industry, about 15, 20 years ago we realized that we could buy petroleum from OPEC for roughly \$12 a barrel, \$10 a barrel. In this country, it was costing \$18, \$22 a barrel to produce. So what we did is we quit exploring, we shut down our wells, and we began to decrease the number of refineries and began to shift our petroleum industry overseas. We decided if we could get it for \$12 a barrel from OPEC, that was a good deal. So now, all of a sudden, we wake up and one day we find that we are roughly 60 percent dependent on OPEC for our oil.

As we begin to add up the price of the Gulf War, as we begin to consider what it cost to keep the fleet in the Gulf and all of the military maneuvers that we have had to protect our oil supply, we would probably have to admit that we are now paying \$60, \$70, \$80, maybe even \$100 a barrel for that oil. So we have let our petroleum industry slip overseas.

The point is, Mr. Speaker, that this can easily happen to our agriculture. If we begin to ignore agriculture, it can easily go to other countries and then, all of a sudden, we are dependent upon our food supply, which is even more critical than being dependent upon the petroleum industry from OPEC.

Fifth, there is no level playing field worldwide. So it is assumed right now by many who have criticized the farm

bill that the United States is the only country in the world that is helping our farmers, or farmers in general. And, actually, Mr. Speaker, the European Union subsidizes their farmers more than \$300 per acre, Japan subsidizes their farmers more than \$1,000 per acre, and in the United States our average subsidy is \$45 per acre. So it is a tremendous disparity here. It is much less than these other nations are subsidizing their agriculture.

So when we throw in the fact that our agricultural exports are being taxed or have tariffs of roughly 60 percent as they are sent overseas to other countries, and as goods come in from other countries to our Nation the tariff is roughly an average of 12 percent, and we look at that great disparity and then look at the difference in subsidization, we realize our agriculture producers right now are at somewhat of a disadvantage.

Sixth, I might mention this, that land, labor, and production costs vary widely worldwide. In Brazil, for instance, you can buy top quality land for \$100 to \$500 an acre. About an average of \$250 an acre. And that is top grade land. The topsoil is 50 feet deep, enough rainfall to sometimes produce two crops in one year on that cropland. And cropland like that in the United States would cost at least \$2,500 to \$3,000 an acre. So you can buy it in Brazil for one-tenth what you would spend here in the United States.

The labor cost in Brazil is 50 cents an hour. Here in the United States it would be at least 20 times that amount. And, of course, in Brazil and many South American, many Third World countries, there are absolutely no environmental regulations. Of course, here in the United States, we have those regulations.

So the point of all this argument is that if we do not do something to protect our farmers, if we do not have a farm bill of some kind, we will simply be run over by what is going on around the rest of the world, and we need to be competitive because we do not want to rely on someplace else and the rest of the world for our food supply.

Let me also mention another item here, Mr. Speaker, that I think is very important. It may have some relationship to our previous speaker, the gentleman from Colorado. And the reason I am going through all of this background work is that at the present time we are experiencing a tremendous drought throughout much of this country, particularly in the Western States.

□ 2230

At the present time, roughly 40 percent of the United States is in a severe drought situation. In an average year, we have 15 percent of the country in a drought. So we have reached a crisis situation. Looking at this chart, we can see the areas that are heavily affected. Most of the western States are

in severe drought. For instance, the home State of the gentleman from Colorado (Mr. McINNIS) had the driest spring ever in recorded history, the last 97 years. They are in this black area. Arizona is in a huge drought. Southern California is in the same situation. We see the same thing in North Dakota, South Dakota, Kansas, Nebraska and so on.

Our livestock producers, particularly our cattlemen, have no pasture. The roots are dead in the pasture. There is no moisture. Cattlemen are very independent people. These people have no safety net. They do not participate in hardly any of the farm bill. Right now we are concerned because these folks need some type of disaster assistance. Yet because of the perception of the farm bill, that it is so fat, there is so much money for agriculture, it is going to be very, very difficult to get any help for these people who are going to have to sell their herds because there is no pasture.

When everybody sells their herds at the same time, there is a huge glut and the price goes way down. We have been told that we have to have an offset from the present farm bill. In other words, we have to get some money from the farm bill that is already in the bill from somewhere else, and that is going to be very, very difficult to do. So the perception makes it difficult for agriculture at the present time.

If we think about New York State, if they had a huge flood, we would expect that they would get some disaster assistance, and we would hope that somebody would not say New York State has already received a great deal of disaster help for other causes and, therefore, they really should not get any more. This is the mentality that we are concerned about with regard to this drought and particularly with regard to our livestock producers at the present time.

Mr. Speaker, this really is pretty much the summary of what I wanted to say tonight. I appreciate the gentleman from Colorado (Mr. McINNIS) yielding me this time. I would imagine that the gentleman has a comment or two regarding the drought situation that he has endured in his State.

Mr. McINNIS. Mr. Speaker, reclaiming my time, I think the comments by the gentleman from Nebraska (Mr. OSBORNE) are particularly appropriate at this point.

Out in Colorado, we are suffering the most significant drought that we have seen in the last 97 years that the gentleman from Nebraska (Mr. OSBORNE) mentioned. The only reason I say that, that is as far back as the records are kept. It is impacting our cattle people significantly. We are looking for a pretty tough year out there. I appreciate the gentleman's comments, and I thank the gentleman for working with me this evening.

Daily Digest

HIGHLIGHTS

Senate passed H.R. 3763, Accounting Reform.

Senate

Chamber Action

Routine Proceedings, pages S6729–S6812

Measures Introduced: Three bills were introduced, as follows: S. 2 and S. 2728–2729. **Page S6808**

Measures Reported:

Report to accompany S. 2487, to provide for global pathogen surveillance and response. (S. Rept. No. 107–210) **Page S6808**

Measures Passed:

Public Company Accounting Reform and Investor Protection Act: By a unanimous vote of 97 yeas (Vote No. 176), Senate passed S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, after taking action on the following amendments proposed thereto: **Pages S6734–79**

Adopted:

Sarbanes (for Shelby) Modified Amendment No. 4261, to require the SEC to conduct a study and submit a report to the Congress on aider and abettor violations of the Federal securities laws. **Page S6777**

By a unanimous vote of 97 yeas (Vote No. 174), Reid (for Carnahan) Modified Amendment No. 4286 (to Amendment No. 4187), to require timely and public disclosure of transactions involving management and principal stockholders.

Pages S6735–77, S6777–78

By a unanimous vote of 97 yeas (Vote No. 175), Edwards Modified Amendment No. 4187, to address rules of professional responsibility for attorneys.

Pages S6735, S6778

By unanimous consent, passage of S. 2673 was subsequently vitiated, and the bill was then returned to the Senate calendar.

Corporate and Auditing Accountability, Responsibility, and Transparency Act: By unanimous consent, Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of H.R. 3763, to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and the bill was then passed, after striking all after the enacting clause and inserting in lieu thereof the text of S. 2673, Senate companion measure, as passed (listed above).

Pages S6779–93

Senate insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint conferees on the part of the Senate.

Page S6793

Subsequently, by further unanimous consent, passage of S. 2673 (listed above) was vitiated, and the bill was then returned to the Senate calendar.

Greater Access to Affordable Pharmaceuticals Act: Senate began consideration of the motion to proceed to consideration of S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pages S6797–S6801

A motion was entered to close further debate on the motion to proceed to consideration of the bill and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a cloture vote will occur on Wednesday, July 17, 2002. **Page S6798**

A unanimous-consent agreement was reached providing for further consideration of the motion to proceed to consideration of the bill at 10:30 a.m., on Tuesday, July 16, 2002.

Page S6811

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaties:

Treaty with Sweden on Mutual Legal Assistance in Criminal Matters (Treaty Doc. No. 107–12); and

Treaty with Belize on Mutual Legal Assistance in Criminal Matters (Treaty Doc. No. 107-13).

The treaties were transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed.

Pages S6810-11

Nominations Confirmed: Senate confirmed the following nomination:

Lavenski R. Smith, of Arkansas, to be United States Circuit Judge for the Eighth Circuit.

Pages S6794-97, S6812

Prior to this action, by 94 yeas to 3 nays (Vote No. 177), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the nomination of Lavenski R. Smith, of Arkansas, to be United States Circuit Judge for the Eighth Circuit.

Pages S6793-94

Nominations Received: Senate received the following nominations:

Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

Joel Kahn, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2002.

Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

David Wenzel, of Pennsylvania, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Linda Wetters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

Page S6812

Messages From the House: Pages S6806-07

Measures Placed on Calendar: Page S6807

Measures Read First Time: Page S6807

Executive Communications: Pages S6807-08

Additional Cosponsors: Pages S6808-10

Additional Statements: Page S6806

Notices of Hearings/Meetings: Page S6810

Privilege of the Floor: Page S6810

Record Votes: Four record votes were taken today. (Total—177) Pages S6778, S6779, S6794

Adjournment: Senate met at 12 noon, and adjourned at 8:12 p.m., until 9:30 a.m., on Tuesday, July 16, 2002.

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

Measures Introduced: 11 public bills, H.R. 5115-5119, 5122-5127; and 4 resolutions, H. Con. Res. 441 and H. Res. 484-486, were introduced.

Pages H4604-05

Reports Filed: Reports were filed today as follows:

H.R. 4946, to amend the Internal Revenue Code to provide health care incentives related to long-term care, amended (H. Rept. 107-572);

H.R. 3048, to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska, amended (H. Rept. 107-573);

H.R. 3401, to provide for the conveyance of Forest Service facilities and lands comprising the Five

Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, amended (H. Rept. 107–574);

H.R. 5120, making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003 (H. Rept. 107–575);

H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003 (H. Rept. 107–576); and

H. Res. 483, providing for consideration of H.R. 5093, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003 (H. Rept. 107–577).

Page H4604

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Culberson to act as Speaker pro tempore for today.

Page H4577

Recess: The House recessed at 12:48 p.m. and reconvened at 2 p.m.

Page H4579

Presidential Message—District of Columbia FY 2003 Budget Request Act: Read a message from the President wherein he transmitted the District of Columbia's Fiscal Year 2003 Budget Request Act with estimates of revenues and expenditures totaling \$5.7 billion—referred to the Committee on Appropriations and ordered printed (H. Doc. 107–242).

Page H4580

Suspensions: The House agreed to suspend the rules and pass the following measures:

Cyber Security Enhancement Act of 2002: H.R. 3482, amended, to provide greater cybersecurity (agreed to by a yea-and-nay vote of 385 yeas to 3 nays, Roll No. 296);

Pages H4580–84, H4654

American Legion Amendments Act: H.R. 3988, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion;

Pages H4585–86

AMVETS Charter Amendment Act: H.R. 3214, to amend the charter of the AMVETS organization;

Pages H4586–87

Veterans of Foreign Wars Charter Amendment Act: H.R. 3838, to amend the charter of the Veterans of Foreign Wars of the United States organization to make members of the armed forces who receive special pay for duty subject to hostile fire or imminent danger eligible for membership in the organization;

Pages H4587–89

100th anniversary of Dr. Carrier's Invention of Air Conditioning: H. Con. Res. 413, honoring the invention of modern air-conditioning by Dr. Willis H. Carrier on the occasion of its 100th anniversary;

Pages H4589–91

Clarence Miller Post Office, Lancaster, Ohio: H.R. 4755, to designate the facility of the United States Postal Service located at 204 South Broad Street in Lancaster, Ohio, as the "Clarence Miller Post Office Building" (agreed to by a yea-and-nay vote of 389 yeas with none voting "nay," Roll No. 297);

Pages H4591–92, H4654–55

Blackwater National Wildlife Refuge Expansion, H.R. 4807, to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Susquehanna National Wildlife Refuge. Agreed to amend the title so as to read: "A bill to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge."; and

Pages H4596–97

Honoring the American Zoo and Aquarium Association: H. Con. Res. 408, honoring the American Zoo and Aquarium Association and its accredited member institutions for their continued service to animal welfare, conservation education, conservation research, and wildlife conservation programs.

Page H4598

Suspension Failed—Expansion of Aviation Capacity in the Chicago Area: The House failed to agree to suspend the rules and pass H.R. 3479, to expand aviation capacity in the Chicago area, by a yea-and-nay vote of 247 yeas to 143 nays, Roll No. 298.

Pages H4609–53, H4655–56

Suspensions—Proceedings Postponed: The House completed debate on the following motions to suspend the rules. Further proceedings were postponed until Tuesday, July 16:

Honoring Ted Williams: H. Res. 482, honoring Ted Williams and extending the condolences of the House of Representatives on his death;

Pages H4592–94

Congratulating the Detroit Red Wings on its Stanley Cup Championship: H. Res. 452, congratulating the Detroit Red Wings for winning the 2002 Stanley Cup Championship; and

Pages H4594–96

50th Anniversary of the Constitution of the Commonwealth of Puerto Rico: H. Con. Res. 395, amended, celebrating the 50th anniversary of the constitution of the Commonwealth of Puerto Rico.

Pages H4598–H4601

Meeting Hour—Tuesday, July 16: Agreed that when the House adjourns today, it adjourn to meet at 10 a.m. on Tuesday, July 16 for morning-hour debate.

Senate Messages: Message received from the Senate today appears on page H4577.

Amendments: Amendments ordered printed pursuant to the rule appear on pages H4606–08.

Quorum Calls—Votes: Three yea-and-nay votes developed during the proceedings of the House today and appear on pages H4654, H4654–55, and H4655. There were no quorum calls.

Adjournment: The House met at 12:30 p.m. and adjourned at 10:34 p.m.

Committee Meetings

TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS

Committee on Rules: Granted, by voice vote, an open rule on H.R. 5093, making appropriations for the Department of the Treasury, Postal Service and General Government for the fiscal year ending September 30, 2003, providing one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The rule waives all points of order against consideration of the bill. The rule provides that amendments printed in the Rules Committee report accompanying the resolution shall be considered as adopted in the House and in the Committee of the Whole. The rule waives points of order against provisions in the bill, as amended, for failure to comply with clause 2 of rule XXI (prohibiting unauthorized appropriations or legislative provisions in an appropriations bill), except as specified in the resolution. The rule provides that the bill shall be considered for amendment by paragraph. The rule waives points of order during consideration of the bill against amendments for failure to comply with clause 2(e) of rule XXI (prohibiting non-emergency designated amendments to be offered to an appropriations bill containing an emergency designation). The rule authorizes the Chair to accord priority in recognition to Members who have pre-printed their amendments in the Congressional Record. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Representatives Skeen, Dicks, and Kildee.

IN THE MATTER OF REPRESENTATIVE JAMES A. TRAFICANT, JR.

Committee on Standards of Official Conduct: Adjudicatory Subcommittee held a hearing in the Matter of Representative James A. Traficant, Jr., to determine

whether any counts in the Statement of Alleged Violations have been proven by clear and convincing evidence. Testimony was heard from Representative Traficant, and the following Counsels of the House Committee on Standards of Official Conduct: Bernadette Sargeant; Kenneth Kellner, and Paul Lewis.

Hearings continue tomorrow.

HOMELAND SECURITY ACT

Select Committee on Homeland Security: Held a hearing on H.R. 5005, Homeland Security Act of 2002. Testimony was heard from Tom Ridge, Assistant to the President, Office of Homeland Security Advisor.

Hearings continue tomorrow.

COMMITTEE MEETINGS FOR TUESDAY, JULY 16, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: to hold hearings to examine livestock packer ownership issues, 10 a.m., SD-562.

Committee on Appropriations: Subcommittee on Defense, business meeting to mark up H.R. 5010, making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, 10 a.m., SD-192.

Full Committee, business meeting to mark up proposed legislation making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, 2 p.m., S-128, Capitol.

Subcommittee on Commerce, Justice, State, and the Judiciary, business meeting to mark up proposed legislation making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2003, 3 p.m., S-128, Capitol.

Subcommittee on Foreign Operations, business meeting to mark up proposed legislation making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2003, 5:15 p.m., SD-116.

Subcommittee on Labor, Health and Human Services, and Education, business meeting to mark up proposed legislation making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2003, 5:30 p.m., SD-124.

Committee on Banking, Housing, and Urban Affairs: to hold oversight hearings to examine the Semi-Annual Report on Monetary Policy of the Federal Reserve, 10 a.m., SH-216.

Committee on Commerce, Science, and Transportation: to hold hearings on the nomination of Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission, 2:30 p.m., SR-253.

Committee on Energy and Natural Resources: to hold hearings to examine the Administration's plans to request additional funds for wildland firefighting and forest restoration as well as ongoing implementation of the National Fire Plan, 2:30 p.m., SD-366.

Committee on Environment and Public Works: with the Committee on the Judiciary, to hold joint hearings to examine new source review policy, regulations, and enforcement activities, with respect to clean air, 10 a.m., SD-106.

Committee on Finance: to hold hearings to examine homeland security and international trade issues, 10 a.m., SD-215.

Full Committee, business meeting to consider S. 2221, to temporarily increase the Federal medical assistance percentage for the Medicaid program, 2 p.m., SD-215.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the proposed Department of Homeland Security issues, 10 a.m., SD-430.

Select Committee on Intelligence: to hold a joint closed briefing with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001, 10 a.m., S-407, Capitol.

Committee on the Judiciary: with the Committee on Environment and Public Works, to hold joint hearings to examine new source review policy, regulations, and enforcement activities, with respect to clean air, 10 a.m., SD-106.

Subcommittee on Administrative Oversight and the Courts, to hold hearings to examine the Federal Bureau of Investigations computer hardware problems from 1992 to 2002, 2 p.m., SD-226.

House

Committee on Armed Services, Merchant Marine Panel, hearing on U.S. ownership and control of vessels operating in the Maritime Security Program, 1 p.m., 2212 Rayburn.

Committee on the Budget, hearing on Mid-Session Review, 10:30 a.m., 210 Cannon.

Committee on Education and the Workforce, hearing on "Access to Higher Education for Low-Income Students: A Review of the Advisory Committee on Student Financial Assistance Report on College Access," 10:30 a.m., 2175 Rayburn.

Subcommittee on Workforce Protections, hearing on "Can a Consensus Be Reached to Update OSHA's Permissible Exposure Levels (PELs)," 2 p.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials and the Subcommittee on Health, joint hearing on Recent Developments in the EPA Office of the Ombudsman, 10 a.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, hearing regarding the Department of the Treasury's policy on the Government Sponsored Enterprises, 2 p.m., 2128 Rayburn.

Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, hearing on EPA Cabinet Elevation: Agency and Stakeholder Views, 3 p.m., 2154 Rayburn.

Subcommittee on National Security, Veterans' Affairs and International Relations, hearing on Missile Defense: A New Organization, Evolutionary Technologies and Unrestricted Testing, 10 a.m., 2154 Rayburn.

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, to mark up the following bills: H.R. 2526, Internet Tax Fairness Act of 2001; and H.R. 3995, Housing Affordability for America Act of 2002, 5 p.m., 2237 Rayburn.

Committee on Resources, Subcommittee on Energy and Mineral Resources, hearing on "The Growing Natural Gas Supply and Demand Imbalance: the Role that Public Lands and Federal Submerged Lands could play in the Solution," 10 a.m., 1324 Longworth.

Subcommittee on National Parks, Recreation and Public Lands, hearing on the following bills: H.R. 3434, McLoughlin House National Historic Site Act; H.R. 3449, to revise the boundaries of the George Washington Birthplace National Monument; and H.R. 4953, to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butt Road, 2 p.m., 1334 Longworth.

Committee on Small Business, Subcommittee on Workforce, Empowerment and Government Programs, hearing on Restructuring SBA, 2 p.m., 2360 Rayburn.

Committee on Standards of Official Conduct, Adjudicatory Subcommittee, to continue hearings in the Matter of Representative James A. Traficant, Jr., to determine whether any counts in the Statement of Alleged Violations have been proven by clear and convincing evidence, 10 a.m., 2118 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Aviation, oversight hearing on Problems with the FAA Organizational Structure, 2 p.m., 2167 Rayburn.

Subcommittee on Highways and Transit, hearing on Long-term Outlook on Highway Trust Fund: Are Fuel Taxes a Viable Measure? 10 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, to mark up the following bills: H.R. 4940, Arlington National Cemetery Burial Eligibility Act; H.R. 5005, to authorize the placement in Arlington National Cemetery of a memorial honoring the World War II veterans who fought in the Battle of the Bulge; H.R. 3645, Veterans Health-Care and Procurement Improvement Act of 2002; 9:30 a.m., followed by a hearing on H.R. 4939, Veterans Medicare Payment Act of 2002, 10 a.m., 334 Cannon.

Select Committee on Homeland Security, to continue hearings on H.R. 5005, Homeland Security Act of 2002, 10 a.m., 345 Cannon.

Joint Meetings

Joint Meetings: Senate Select Committee on Intelligence, to hold a joint closed briefing with the House

Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001, 10 a.m., S-407, Capitol.

Commission on Security and Cooperation in Europe: to hold hearings to examine the state of property restitution in Central and Eastern Europe for American claimants, 2 p.m., 334 Cannon Building.

Next Meeting of the SENATE

9:30 a.m., Tuesday, July 16

Senate Chamber

Program for Tuesday: After the transaction of any morning business (not to extend beyond 10:30 a.m.), Senate will continue consideration of the motion to proceed to consideration of S. 812, Greater Access to Affordable Pharmaceuticals Act.

(Senate will recess from 12:30 p.m. until 2:15 p.m., for their respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Tuesday, July 16

House Chamber

Program for Tuesday: Consideration of Suspensions:

- (1) H. Res. 448, Recognizing The First Tee;
- (2) H.R. 4866, Fed Up Higher Education Technical Amendments;
- (3) H. Res. 460, Recognizing and honoring Justin W. Dart, Jr.;
- (4) H. Res. 482, Honoring Ted Williams (rolled vote);
- (5) H. Res. 452, Congratulating the Detroit Red Wings (rolled vote); and
- (6) H. Con. Res. 395, Celebrating the 50th anniversary of the Constitution of the Commonwealth of Puerto Rico (rolled vote).

Consideration of H.R. 5093, FY 2003 Department of Interior Appropriations (open rule, one hour of debate).



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