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:

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 64,000,000 at London Heathrow International Airport, Europe's busiest airport, and 36,700,000 at Kimpo International Airport, Japan's busiest airport, 7,400,000 at Narita International Airport, Korea's busiest airport, 7,300,000 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 3/4 of the 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 3, 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 proposal 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 in 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.
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. 7413 et seq.) in accordance with Part 319 of the Code of Federal Regulations, and shall describe the State’s implementation of the applicable provisions of section 211 of the Clean Air Act (42 U.S.C. 7413) and the applicable provisions of section 110(a)(1)(B) of the Clean Air Act (42 U.S.C. 7401(a)(1)(B)). The plan shall address the State’s strategies for ensuring that emissions of covered pollutants from sources subject to this section are reduced in an amount that meets the requirements of section 302(a) of the Clean Air Act (42 U.S.C. 7461(a)).

(b) REPORT TO CONGRESS.—The Administrator of the Federal Aviation Administration shall submit a report to the Congress in accordance with section 1702(d) of the Clean Air Act (42 U.S.C. 7502(d)), which shall include a description of the plan prepared under subsection (a) and a statement of the conditions necessary to ensure that the plan will achieve the emission reductions required under this section.

(c) IMPEMENTATION PLAN.—The Administrator, in implementing this section, shall consult with the States and local governments and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

SEC. 105. MERRILL C. MEIGS FIELD.

(a) IN GENERAL.—The State of Illinois shall authorize Meigs Field to be used as a public airport.

(b) USE.—Meigs Field shall be open to all users capable of utilizing the airport and shall be maintained in accordance with the provisions of this subsection.

(c) DEVELOPMENT.—The Administrator, in implementing this section, shall consult with the State of Illinois and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

SEC. 106. HARE INTERNATIONAL AIRPORT.

(a) IN GENERAL.—The Administrator, in implementing this section, shall consult with the State of Illinois and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

(b) USE.—Hare International Airport shall be open to all users capable of utilizing the airport and shall be maintained in accordance with the provisions of this subsection.

(c) DEVELOPMENT.—The Administrator, in implementing this section, shall consult with the State of Illinois and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

SEC. 107. CONFERENCE REPORT.

The conference report on the bill passed by the Senate shall be treated as though it were an amendment to this title and shall be reported to the House of Representatives as an amendment to this title.

SEC. 108. SENSITIVE USE AREAS.

(a) IN GENERAL.—The Administrator, in implementing this section, shall consult with the State of Illinois and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

(b) USE.—Sensitive use areas described in subsection (a) shall be open to all users capable of utilizing the airport and shall be maintained in accordance with the provisions of this subsection.

(c) DEVELOPMENT.—The Administrator, in implementing this section, shall consult with the State of Illinois and other interested parties to ensure that the plan is consistent with the Clean Air Act and other applicable laws and regulations.

SEC. 109. DEFINITIONS.

(a) IN GENERAL.—The definitions contained in this section shall be applicable throughout this title.

(b) USE.—Any term defined in this section shall be used in the same sense throughout this title.

(c) DEVELOPMENT.—The definitions contained in this section shall be applicable throughout this title.
of Illinois enacts a law on or after January 1, 2006, authorizing the closure of Meigs Field.

(5) Net operating losses resulting from operations of Meigs Field, to the extent permitted by 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 from 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 any act of Congress, 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 Environmental and Energy of the Federal Aviation Administration should be funded to carry out noise mitigation programming and quiet aircraft technology research and development (as authorized 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. 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 citizens 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 47133 the following:

“§ 47171. DOT as lead agency

“(a) Airport Project Review Process.—The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

“(b) Coordinated Review.—The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approval required for or granted by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport shall be conducted concurrently, the project shall be prepared in a coordinated manner and completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (c) with respect to each 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.

“(d) State Authority.—If a coordinated review process is being implemented under this section 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 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, 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.—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 the project shall fail to meet the deadlines established under this section, the Secretary shall notify the requesting party of such failure.

“(g) Effect of Failure to Meet Deadline.—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 the project shall fail to meet the deadlines established under this section, the Secretary shall notify the requesting party of such failure.

“(h) Coordination and Consultation.—The Secretary shall designate a single agency to coordinate and conduct a coordinated review process under this section. The Secretary shall designate the appropriate Federal or State agency that is participating in the coordinated review process under this section with respect to the project to which the memorandum of understanding applies. The Secretary shall notify the requesting party of such designation.

“(i) Purpose and Need.—The coordinated review process shall be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

“(j) Categorical Exclusions.—Nothing in this Act shall give any priority to, or affect availability or amounts of funds under any act of Congress, 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.

“(k) Airports for the 21st Century.—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.

“(l) 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 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 additional incentive to, or removal of an impediment to, approval of the project by a State or local government; and

“(3) the cost of the mitigation measures is reasonably related in relation to the mitigation that will be achieved.

“(m) 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 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.);
§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 support of activities associated with an airport development project.

(b) FUNDING AND USE.—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 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 3302 of the Department of Transportation and Related Agencies Appropriations Act, 2003, for the activities described in subsection (a).

§47176. Authorization of appropriations

In addition to the amounts authorized to be appropriated under section 106(b), there is authorized to be appropriated to the Secretary of Transportation or the head of any other Federal agency under this part, 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.

§47177. Judicial review

(a) FILING AND VENUE.—A person dis- closing 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 the actions 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.

(b) TRIBUNALS.—A decision by a court under this section may be reviewed only by the Supreme Court under section 2526 of chapter 7 of title 28.

(c) 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 47114.

(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 Airports 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 47506(c) of title 49, United States Code, is amended—

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

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

(3) 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), (2), (3), or (4) of subsection (a) 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 section 15 of this title.”.

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) the jurisdiction, authority, 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 Chair recognizes 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 this 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.

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 too 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 modifications. 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 Containment 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 a further step in 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 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 be the same as building a new airport—by definition, non-controversial.

This bill will double the noise pollution in the northwest suburbs of Chicago. To the air capacity crisis. How can that possibly not be controversial?

This bill will impose 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 siege surrounding Chicago O'Hare and its impact on the environment, 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 improperly 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, to their 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, tread Connors v. Perry, 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 the same as building a new airport 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 technical maneuver possible 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 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 only would 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?

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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 the same as building a new airport 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 technical maneuver possible 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 to 20 billion (not the $6.6 billion generally used) versus $5 to 7 billion. This bill is hardly non-controversial for taxpayers!

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

This bill will impose 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 siege surrounding Chicago O'Hare and its impact on the environment, 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 improperly 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, to their 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.
The Chicago Tribune won a Pulitizer 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 Assem-
blly—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 Commerce Commission, 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 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 expen-
sive, take three times longer, be less protec-
tive of the environment, make the skies less safe, 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 im-
pact. About federal precedence—and I asso-
ciate myself completely with the remarks of my good friend, Mr. HYDE.

Although I oppose this bill for many rea-
sons, I rise today to discuss an important ele-
ment of this bill. The Framers explicitly chose a Constitu-
tion that confers upon Congress the power to regulate individuals, not States. ... We have always understood that even where Congress has the authority under the Constitu-
tion to pass laws requiring or prohibiting certain action, Congress does not have the power 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 invio-
able sovereignty." The Federalist No. 39, at 245 (J. Madison) (emphasis reflected throughout the Constitution's text).

Residual state sovereignty was also im-
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This separation of the two spheres is one of the Constitution's structural protections of liberty. I believe that the Constitution's con-
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ways would likely be ultra vires (without au-
thority) under state law.

Under the Tenth Amendment and the frame-
work of federalism built into the Constitution, Congress cannot command the States to ac-
firmatively undertake an activity. Nor can Con-
grress intrude upon or dictate to the states, the prerogatives of the states as to how to allo-
cate 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 Constitu-
tion 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 actions, Congress does not have the power to compel the States to require or prohibit those acts.


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

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terms of that state law delegation of authority would likely destroy the delegation of state authority to build airports by the Illinois Legislation to Chicago—leaving Chicago without delegated state legislative authority to build runways and terminals at O’Hare or midway. The requirement to receive a 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 would not be able to build new airports or to alter O’Hare without a grant of authority from the State of Illinois and that, in fact, the conditions and limitations of the State have expressly limited its 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, limitations, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congressional power—prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

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 delegation of federal power to political subdivisions is contrary to the mandates of the Illinois General Assembly.

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

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 Chicago has no state law authority 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 law and would require a grant of authority from the State of Illinois to build airports essentially an exercise of state law power delegated to Chicago by the Illinois General Assembly.

The requirement to 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, limitations, and prohibitions imposed by the Illinois General Assembly on that delegation. These constitutional restrictions on Congressional power prohibit Congress from requiring states to change their state laws governing cities—are often termed Tenth Amendment restrictions.

For the reasons discussed below, it is my opinion that the proposed legislation is unconstitutional.
represents under our constitutional structure of federalism—prohibits the federal government from using the Commerce power to compel states to implement federal policy.

7. Similar problems articulated in New York and Printz are fatal to 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 governmental agency) shall construct the “runway design plan” as a “Federal Project.” But, Section 3(f)(1) then provides that this “federal project must not be approved without the approval of the FAA Administrator.” This is an attempt to construe Section 3(f) as a federalization of the runway design plan, an attempt to enter into an agreement with the FAA Administrator to have the runway redesign plan done to the Federal government’s satisfaction. The Durbin-Lipinski legislation is not a “bilateral” contract or consent decree; it does not use the Commerce power or authority to enter into agreements and undertakings that are controlled by state law, which limits Chicago’s authority to enter into such agreements and undertakings. Chicago has no authority under the state law (which confers upon Chicago the state law power and authority to build airports) to take land by eminent domain and then transfer ownership to a federal governmental agency. Chicago also has no power or authority to enter into agreements and undertake the construction of airports considered a Federal project by the FAA Administrator. Chicago has no authority under the Illinois Aeronautics Act to enter into an agreement with the FAA Administrator to have the runway redesign plan done to the FAA Administrator’s satisfaction. Congress is commandeering a state power and authority to build airports unless Chicago first obtains a permit, a procedure that has recently been held unconstitutional by the U.S. Supreme Court.\footnote{Reno v. County of Alameda, 117 S. Ct. 1411 (1997).}

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 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 persons alike. See e.g., Reno v. County of Alameda, 526 U.S. 141 (2000) (Federal rule protecting privacy of drivers’ records upheld because they do not apply solely to the State), South Carolina v. Burdick, 504 U.S. 210 (1992) (Federal Revolution of the Creditors’ Right Act upheld because the debtors’ 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 Congress is not attempting to exercise general application but a specifically directed at the States to use state law instrumentalities as tools to implement federal policy. Here, the Durbin-Lipinski legislation is not a law of general applicability, constitutional, because it does not apply to private persons or even to all States but only to one State (Illinois) and its relationship to one city (Chicago) and the runway redesign plan proposed 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 project. 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 FAA Administrator. This is an unconstitutional expansion of the Commerce Power under the holdings in New York and Printz and does not fall within the “general applicability” line of Reno Condon, South Carolina v. Baker, and Garcia.

9. 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. It is the States and not Congress that regulate interstate commerce. The proposed Durbin-Lipinski legislation is paneled on 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 FAA Administrator to have the runway redesign plan done to the FAA Administrator’s satisfaction. The Durbin-Lipinski legislation is not a “bilateral” contract or agreement, but a law in which Congress takes the runway redesign plan and makes it a Federal project. Congress, for example, may decide to require airport security and require that the security agents be federal employees. Or, Congress could provide that it would build and take over the O’Hare Airport and construct expansion if the State of Illinois refused to do so. Congress may also use its spending power to take land by eminent domain and then construct or expand an airport, no matter what state law permits. The limits on the spending power are few.

But, the proposed law does not take such alternatives. It does not impose regulations on airports other 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 what 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 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 decades, it is now clear that Congress can use the Interstate Commerce Clause to impose various burdens on States as long as the 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, interstate commerce as long as Congress imposes the same minimum wage requirements on non-state workers in, or affecting, interstate commerce. Congress may not 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 New York v. United States, held that the Commerce Clause does not authorize the Federal Government to commandeer 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.” The so-called 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 federal provision under 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 provisions that were unconstitutional, while the Court unanimously upheld under Congress’ broad spending powers. Congress also authorized States that adopted radioactive waste and spent Federal funds on such waste. Washington, D.C. v. winds, the chief law enforcement personal of 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 without authority of Congress. . . . Whether one views the take title provision as lying outside Congress’ enumerated powers, or as infringing upon the core of state sovereignty, the Court’s decision . . . 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 the choice of regulating that activity according to federal standards or having state preemption of 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 powers 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 or additional burdens not within the general regulatory power of Congress under the Commerce Clause to regulate interstate commerce. What is the proposed federal O’Hare Airport bill. It gives the State’s regulatory power over 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 branch officials for federal purposes. An alternative way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called “unreasonable” state and federal Government may not accept 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. An other way to think about this issue is that, to a certain extent, the Constitution forbids Congress from imposing what recently have been called “unreasonable” state and federal Governments. 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 imposes 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 recognized two important

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 gives the State’s regulatory powers over interstate commerce by telling the State that it must act as if the City of Chicago has 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 v. United States decision, the Court invalidated another federal statute imposing certain administrative duties on local law enforcement officials. The Brady Act, for a temporary period of time, required local law enforcement officials to facilitate the terms and conditions of employees, including state employees. For example, 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 federal commerce power, could not dictate to the states how they 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 private parties or individuals to use a State’s personal information to third parties without the owner’s consent. Chief Justice Rehnquist, for a unanimous Court, upheld the law as regulating information concerning 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 sell this information to businesses and individuals, generating significant revenue. To limit such sales, Congress enacted the DPPA, which governs any state department in 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 or 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 states to enforce 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 redevelopers in the chain. “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 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 reinscribe the instrumentality of state government and state power as tools of federal power. The “generally applicable” feature 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 federal airport.

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 appropriate that authority to 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 dare authorize the State of Illinois to order state and city police to take over security and pay the bills. That’s because the federal government knew it could not regulate by enlisting state or city governments as its agents.

Congress acknowledged that fundamental principle in 1789, and to this very day 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 to do so, but merely recommended to their legislatures, and offered to pay 50 cents per month for each prisoner. When Illinois 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 state or city 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 decided 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. Congress then took title to radioactive waste that private parties had generated, and be responsible for its disposal, at not cost to the federal government. Congress invalidated the law, calling it an unprecedented effort by the federal government to co-opt legislative and executive branch officials of state governments.

A few years later, Congress mandated background checks in connection with gun purchases. It didn’t want to spend federal dollars on new federal law enforcement personnel to carry out the background checks. Printz v. United States invalidated that provision, and 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 and city officials. 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 dollars. Congress can use its 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. If the state permits the project to be 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 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 half a million airplanes take off and land at O’Hare, Midway, Midway, and O’Hare Airports yearly! This puts a tremendous strain on those airports, and their struggle to keep this area safe and without significant delay. With air travel continuously increasing, delays and safety will become nearly impossible.

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 runways and a third airport, 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 a small twenty-mile radius. With Highways and roads bordering 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 Chicago International major airport is loud and clear. With the projections of air traffic on the rise, additional airports must be available. This is my position. Peotone is an excellent location for a new commercial airport. Peotone is located just outside the main flow of air traffic in and out of Chicago. Airplanes currently using the third airport would not adversely affect air traffic facilities located east, south, and west of Peotone. A third airport located in Peotone would fill the need for another corporate airport in the Chicagoland area, namely Gary, Indiana, west of Peotone. A third airport located in Peotone and financed significantly would expand 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 and the departure of the Petone Airport project, one would fill the need for another corporate airport crucial to south Chicagoland businesses. Furthermore, the industry suggests that a third major airport, located in the south Chicagoland area, namely Gary, Indiana, would not alleviate the saturation problem Chicago is already facing. In conclusion, I would like to thank all those involved with the Petone Airport project. I am greatly anticipating the future events surrounding this project.

Sincerely,

John W. Tierling

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 modest compared to the national average or anything over 50 percent, it is my opinion that it is only a matter of time until two airliners collide making disasterous headlines.

Cities like Atlanta, Dallas and especially Miami continue to increase their traffic, some months exceeding Chicago, and at some points could exceed Chicago permanently. If Chicago and Illinois are to remain as the major Hub for airline traffic, a third major airport has to be built, and built now. Midway, with its location and shorter runways will never fill this void. A large international airport located in the Petone area, complete with good ground infrastructure, can serve Chicago, Kane, Kendall, Joilet, 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 Kane-Kankakee. Very often when one is receiving snow, the other is not. Therefore, I have frequently observed that the visibility and ceiling conditions determining whether the airports operate normally or not. Because of the difference in weather patterns when one airport, say O’Hare, is experiencing a hampered operation, an airport in Peotone, in all probability, could be having more normal operations. Airlines could then divert to the “other” Chicago Airport, saving time and money as well as causing less inconvenience to the passengers of the airport 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 market 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 the area. American and United are of course dead set against that. What they are not considering is that their presence at a third airport would allow Peotone to capture a share of the Chicago regional pie as well as put them in a perfect 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 the leftover Chicago traffic leave 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 under the East of Peotone, imagine the damaging economic impact it would have on Northern Illinois!

Sincerely,

John W. Tierling

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 concentrating on a dual airport system. This plan calls for a new airport to be built on the South Suburbs. To date, this plan 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 under the East of Peotone, imagine the damaging economic impact it would have on Northern Illinois!

The navigation of 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’s have some—perhaps we should listen to them. Other representatives—Congressmen Jerry Weller, Bobby Rush, and Tom Ewings, 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 are all joining the airport to the South Suburbs. Perhaps, with the airport in place, we can begin to truly balance growth, continue inflight development and share the wealth of the region.
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 Chicago Region’s 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, and may be limited to increased efficiency in plane size or load factor; neither is expected to increase further. The City’s $1.8 billion in investment in terminals will not increase capacity. These impacts are already evident. Businesses and residents are witnessing major increases in fares in the Chicago region, according to IDOT, the USBOT, 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 O’Hare and landfilling 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 flight centers thanks to O’Hare’s 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 cheaper to fly from Green Bay to Las Vegas than from Green Bay to Chicago. It is cheaper to fly from Seattle to Orlando than from Seattle to Chicago. Something is wrong. Due to capacity constraints, O’Hare’s airlines are over-charging their patrons by $750 million, annually (the difference between average fares for large U.S. airports and those at O’Hare). This fact is beginning to affect regional development—especially conventions and tourism—but it also affects every major and start-up business. It is important to small business, as is well-known, to access many indications that the Chicago region must increase its aviation capacity. While unprecedented growth takes place around O’Hare, to the north, the three million residents of the region who reside south of 100-300 north 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 small 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. To commute 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. In stead, 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 region’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. A provision, as shown below, the “Metropolis 2020” study addresses this disparity issue by calling for a sharing of revenues with the “lesser haves.” The most responsive, sustainable and—ultimately—more-equitable solution is to provide the South Side with the Economic opportunities generated by the Third Chicago Airport.

Whether the region expands O’Hare or builds a supplemental airport, O’Hare’s riches will remain and grow. It is currently enjoying a $1 billion public investment to upgrade its terminals. Midway, as well, will continue to thrive, as the recipient of an $800 million-publicly-funded new terminal. However, this $1.8 billion investment will not increase capacity. The initial infrastructure investment of $500 million ($2.5 billion through 2010) to build the Third Chicago Air port, will. And, it will produce more than just added aviation capacity. The Third Chicago Airport will provide 235,000 airport-related jobs 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 tradi tional/competing airport. 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; trip users are attractive to large and small airlines. These are: Damped 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, 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. 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 runway improvements are needed. Resources are available to build the airport.

The FAA has committed $125 million in 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 region.

Ultimately, the passenger pays through Passenger Facility Charges.

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:

Doubling traffic at O’Hare drives new development farther away from the region’s core—the Chicago Central Area—and its resi dents 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.

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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 1.3 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 side.

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

6. With 500,000 jobs in Chicago’s CBD, versus 450,000 in North Suburban Cook and
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 summed 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) to 1995, the FAA has generated five 12-year forecasts, five long-range national forecasts through 2020, and five terminal area forecasts. All the FAA’s terminal forecasts are higher than the study’s base forecast. Although it continues to contest IDOT’s forecasts, the City and Chicago and its constituents are using forecasts that are nearly identical.

The City and State are using IDOT socioeconomic and aviation forecasts for all throughout the nation’s airports.

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. This city region has reached aviation capacity. These aviation capacity constraints have dampened regional growth:

Since 1985, O’Hare’s growth in commercial operations has slowed. 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 2000.

The forecasts have arrived a bit ahead of schedule. Without additional capacity, the economic well-being of both Chicago and the region is 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 currently 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 toxic credits, be enacted?

Yes, said strong majorities of participants.

The Forecast: A Growing Region

An examination of forecasts of future population, households, and employment is one of NIPC’s most important responsibilities. These are not simple forecasts of the number of people, homes, 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 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 be obsolete; where streets and sewers will be required, and where streams and wetlands will come under...
pressure form growing population. The forecasts thus have implicit in them a generalized land use plan for the region. It is critical that they be as realistic as possible in reflecting the trends and constraints of the market, the influences of public policy, and expectations of local governments.

We have previously described the process being followed by the Commission for development of a Preferred Development Pattern for the Chicago metropolitan region 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 for the year 2020. These figures represent a 25 percent increase in population and a 37 percent increase in employment from 1990 to 2025. 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 considered for decision-making.

A Preferred Development Pattern in Northwestern Illinois

On June 26, 1996, the Commission conducted the first of two regional workshops on alternatives to current 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 workshops intended by 127 people representing a broad spectrum of organizations and interests.

Three general scenarios were presented. Each was designed by 34 illustrators to summarize the outcome of a unique combination of public policies with respect to transportation and community development. The broad patterns of new households and job growth to which these scenarios would lead are shown in the maps below. Participants were not asked to express views about the scenarios themselves, but to evaluate the relative importance of the impacts which each would have on communities and the natural environment. This was to help the participants concerned the importance of land development patterns which would (1) help preserve farmland, (2) encourage the use of public transportation, and (3) encourage the use of public transportation, and (4) promote affordable housing close to centers of job growth.

Conservation. 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 is projected beyond what has currently been 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 at 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 disruption of urban patterns seen on lakes and streams. Automobile use would continue to increase and transit use to decline. The separation of affordable housing from low-income jobs would continue to increase.

South Suburban. 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 assumptions as the transportation policy assumption as the trends alternative. Employment and population in Chicago would increase, although the city's regional employment growth rate would be lower than under existing trends in the northern and western parts of the region and suburban 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-balancing and on redeveloping by bringing employment to a portion of the region which is now relatively job-poor.

Redevelopment and Infill. This scenario represents a rate of moderate development and to encourage investment in mature communities. Like the trends scenario, this alter- Native American Development in new surface transportation and satisfaction of future aviation requirements at the existing regional airports. In addition, the scenario represents a relatively strong emphasis on farmland protection policies in the agricultural protection zones in Kane, McHenry and Will counties, (2) intensive population and employment forecasts with significant distances of selected transit stops in Chicago and the inner suburbs, and (3) high employment growth through redevelopment in certain built-up suburbs, with higher densities in 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 jobs and households, 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 use, but at lower rates. Because both jobs and population would increase in the communities with the greatest low-income population, job-housing balance will be improved.

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 not be easy. The central scenario would represent one path.
compete in each other’s Fortress Hub markets—creates serious economic, social, and environmental harm in broad areas of the metro Chicago region.

Modern Airspace

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 problems posed by the high-profit, low-fare airlines 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 “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 Metropolitan Chicago hubs. That strategy, 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 anti-trust laws. Does the Big Seven’s refusal to compete in the Chicago marketplace constitute a violation of federal antitrust laws?

4. The Big Seven’s Explicit Refusal to Compete in Metropolitan Chicago: If You Build it, We Won’t Come. By focusing on 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 the Big Seven of any significant role at O’Hare Airport, and (2) the announcement by the Big Seven and its allied airline associations 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.”—violate federal anti-trust law?

The SOC study also focuses 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. The 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 the Chicago marketplace constitute a violation of federal antitrust laws?

In reality, this collective refusal to use a new regional airport is nothing more than a manifestation of the Big Seven’s horizontal geographic restraint 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 capacity to compete in metropolitan Chicago is but an individual manifestation of a collective decision by the major airlines allocating geographic markets by the major airlines. “If you build it, we won’t come” is a blatant violation of the federal antitrust laws.

5. The City of Chicago’s Participation in Opposing New Capacity and in Assisting Big Seven in Their Refusal to Use the New South Suburban Airport in Need of 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 in their refusal to use the new South Suburban Airport. Absent express approval by the State of Illinois of metropolitan Chicago air travel market (other than the State of Illinois and the City of Chicago alone). 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—federal officials have participated in and authorized federal funds to assist Chicago and United in obstructing new metropolitan airport construction. The heart of the monopoly problem in Fortress Hub markets—and the resultant high monopolistically-induced air fares—has been the de facto agreement among the Big Seven to stay out of each other’s markets. The heart of this de facto arrangement is the refusal of the major airlines to compete in their fellow major airlines’ Fortress Hub markets—which costs consumers billions annually—constitutes a violation of federal antitrust laws.

The Hub-and-Spoke Market. The heart of the so-called “Fortress Hub” monopoly—constructed by the Big Seven Airlines—has been the concerted refusal of the Big Seven to compete in Metropolitan Chicago. None of the other Big Seven will come to the Chicago market. United executives have stated their goal as “Kill Peone” (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—Including Chicago’s Mayor—have been paid several million dollars in fees to assist Chicago and United 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: (1) federal Passenger Facility Charge (PFC) funds, (2) federal Airport Improvement Program (AIP) funds, or (3) federally subsidized municipal airport bonds (“GARPs” 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 the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should immediately conduct an inquiry into the misuse of all PFC, AIP, and GARPs expenditures at O’Hare to determine if any federal funds were used as part of a campaign to “kill Peone” (i.e., to prevent construction of a new South Suburban Airport.

7. Federal Officials Have Participated in and Supported the Big Seven’s Illegal Monopoly Arrangement to Refuse to Compete in the Chicago Market. Not only have federal funds been used to support the major air transportation monopoly 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—federal officials have participated in and supported the illegal monopoly—constructed by the Big Seven Airlines—has been the concerted refusal of the Big Seven to compete in Metropolitan Chicago. None of the other Big Seven will come to the Chicago market. United executives have stated their goal as “Kill Peone” (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—Including Chicago’s Mayor—have been paid several million dollars in fees to assist Chicago and United 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: (1) federal Passenger Facility Charge (PFC) funds, (2) federal Airport Improvement Program (AIP) funds, or (3) federally subsidized municipal airport bonds (“GARPs” 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 the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should immediately conduct an inquiry into the misuse of all PFC, AIP, and GARPs expenditures at O’Hare to determine if any federal funds were used as part of a campaign to “kill Peone” (i.e., to prevent construction of a new South Suburban Airport.

8. Defining the Market Under Monopoly Control and in Need of New Competition—The “Hub-and-Spoke” Market. The heart of the monopoly—constructed by the Big Seven Airlines—has been the concerted refusal of the Big Seven to compete in Metropolitan Chicago. None of the other Big Seven will come to the Chicago market. United executives have stated their goal as “Kill Peone” (and thus kill new competitive capacity) campaign by representatives of the City of Chicago—Including Chicago’s Mayor—have been paid several million dollars in fees to assist Chicago and United 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: (1) federal Passenger Facility Charge (PFC) funds, (2) federal Airport Improvement Program (AIP) funds, or (3) federally subsidized municipal airport bonds (“GARPs” 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 the money to implement this illegal arrangement is coming from federal taxpayer dollars. The GAO and the Department of Justice should immediately conduct an inquiry into the misuse of all PFC, AIP, and GARPs expenditures at O’Hare to determine if any federal funds were used as part of a campaign to “kill Peone” (i.e., to prevent construction of a new South Suburban Airport.

In an attempt to expand their monopoly and reduce competition in 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 serve as the hub-and-spoke airport in metropolitan Chicago.

By shaping the argument in this fashion, United and American’s guarantee that the new airport will be allowed to continue and dramatically expand their Fortress Hub monopoly at O'Hare. According to their arguments, the lion’s share of 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. Hare's so-called “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 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 dominance of the United and American at O'Hare. It is this market dominance of the hub-and-spoke market—not the point-to-point—where lack of competition endangers travelers and those travelers from “spoke” cities who must use a single Fortress Hub. There is a desperate need for new competitive hub-and-spoke airports in the South Suburban Airport. In Chicago the place to put that hub-and-spoke is the new South Suburban Airport.

Beyond Antitrust Law Enforcement, Federal Transportation Officials Play a Major Antitrust Policy Role—In Either Promoting Monopoly Abuses or Encouraging Competitive Hub-and-Spoke Systems. Decisions on the Use of Federal Taxpayer Funds. Not only have federal officials blocked development of new major physical changes at O'Hare, they have prevented the competitive hub-and-spoke system. Furthermore, the single-runway 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 eco-nomically viable competing hub-and-spoke airport because the new "delay" runway—once built—could easily be used to carry the new additional traffic for which the new airport monopoly would be piecemealing incremental expansion at O'Hare, Chicago and American and United can keep the region under the thumb of the O'Hare monopoly.

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 new runway will meet all of the connecting and international traffic should go to the sole hub-and-spoke airport in the region: O'Hare. Hare makes economic sense when much more new capacity

12. United's and American’s Fight to Preserve and Expand Fortress Hub Monopoly Power at O'Hare Has Grave Social, Economic and Political Life Consequences for the Region. Much of the discussion in this paper focuses on the billions of dollars in monopoly induced over-charge the consumers of the city of Chicago and the airlines and Chicago to "Kill Peotone."

5. The United States Department of Transportation should withhold any further approval of 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 airlines and Chicago to "Kill Peotone."

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 at O'Hare. On a multiple year basis in Illinois alone, the treble damages recoverable for consumers would exceed several billion dollars.

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 charged by American and United at five of Chicago’s seven major airports. The Illinois Attorney General should bring suit to recover treble damages for the hundreds of millions of dollars in monopoly profits by American and United at Midway O'Hare. On a multiple year basis in Illinois alone, the treble damage recoverable for consumers would exceed several billion dollars.

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 Fortresses 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.

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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 will be hub-and-spoke clogged at stuffed 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 dislocations because of the illegal Fortress Hub Airport—which should have been built years ago—lies hostage to the unholy alliance struck between the monopoly interest of the United, American and the political pique of Chicago's mayor.

RECOMMENDATIONS

Based on the facts and the antitrust law analysis contained in this report, the Subcommittee on Transportation recommends the following actions:

1. The United States Attorney General and the United States Attorney for the Northern District of Illinois should undertake 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 of federal officials in actively assisting O'Hare 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.

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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 hub-and-spoke competition to Chicago market; (3) recover the billions in excess monopoly profits from the Foreign

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 re-serve” because the Big Seven monopoly airports in New York and O'Hare in Chicago. One of the principal asserted justifications for lifting the slots was to provide access to the aviation monopoly abuses also inflict other serious harm on a variety of important public and social interests.

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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 or other improvements at O'Hare that will further 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 asked specifically what they will do to break up the Fortress O'Hare system nationally and Fortress O'Hare in particular. Vice President Gore in particular should be asked why his administration has literally been asleep at the switch with respect to the construction of this facility. 

For O'Hare to continue to exist, the Big Seven will continue to control the market, the Big Seven will continue to be the elephant in the corner and there will be no small and upstart competitors. It is for these reasons why we strongly support H. J. 115, which will prevent the construction of a third airport.

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.

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 American employees last year. 

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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 St. Louis at Pittsburgh, which were included in the lawsuit by United, Northwest, and others in Atlanta. In turn, Delta’s presence in Atlanta is a significant challenge to United States and American at O’Hare or to Northwest at Minneapolis. Other major airlines have developed de facto, quid pro quo non-competitive accommodations by the major airlines can be seen at virtually every major hub.

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 fares far above the competitive level in the markets they serve (as study after study has shown). Furthermore, the major airlines defend their high price hub markets with predatory pricing. These markets are described by the hub’s own opinion’.”

“There are two things the major airlines are doing to monopolize large segments of the country. First, they work hard to see that the profit he makes from having their business. John W. Galbraith, president of Twin Advertising, a small company based in Rochester that had $2 million in billings last year, said he was talking about dropping clients outside the city because the high cost of visiting them cancels out the profit he makes from having their business. ‘The only way a small company to companies like ours is kept from growing,’ he said. (New York Times January 11, 1998)

But 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 of 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 outside the city because the high cost of flying into the hub cancels out the profit he makes from having their business. ‘The only way a small company to companies like ours is kept from growing,’ he said. (New York Times January 11, 1998)

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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 has 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 generally factor geographic allocation of major air travel markets into their pricing despite the development of “Fortress Hubs” constitutes a per se violation of the antitrust laws. The Supreme Court has uniformly condemned arrangements and practices that are per se violations of Section 1 of the Sherman Act. See e.g., Palmer v. BRG Group of Georg., 498 U.S. 46, 49 (1990); United States v. Topco Associates, Inc., 405 U.S. 596, 697-699 (1972).

Virtually all laymen and most lawyers shy away from the antitrust law as an economic moose of which they are not sure. 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 will claim a per se violation by 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 arrangements and 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 and costly antitrust inquiry into 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 restraint prescribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and protracted economic investigation into the entire history of the industry involved, as well as related industries, in an effort to determine whether a particular restraint has been unreasonable—an inquiry so often wholly fruitless when undertaken."

"It is only after considerable experience with the operation of trade and commerce among the several States, or with foreign nations, is here by declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy here to be 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 $100,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

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, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy here to be 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, $300,000, 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))

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Section 4 of the Act provides civil injunctive relief and creates 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 sue in court for treble damages, treble damages plus the mone-

tary losses caused by the violations.

[An] person who shall be injured in his business or property by reason of anything done by any person in violation of this act, 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 enforcement of antitrust laws has been ‘an effective means of maintaining a competitive market’ (Philadelphia South Suburban Airport v. Continental Airlines, Inc., 469 U.S. 52 (1985)).

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 a 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 purpose of the challenged monopolistic goal is political expression—i.e., lobbying government.

But the post-Noerr-Pennington doctrine 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 question that the antitrust laws can be applied. First, the State of Illinois has not authorized the airlines to maintain an airport in the metro Chicago market, there is no question that otherwise unrefused services would bring new competitive entry 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 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 limitations simply expanded United’s and American’s monopoly—not increase competition.

Senator Fitzgerald and congressman Hyde can easily see that in June 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 American 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 these federal and state actions make matters much worse at O’Hare requires a brief analysis of the related issues of capacity and delay at airport—particularly O’Hare.

The 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 high levels of delay and cancellations. As stated by the City of Chicago:

‘The actual practical capacity of an airport will be defined as the maximum level of average all-weather throughput achievable while maintaining an acceptable level of delay.’

Ten years ago, United was 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 acceptable delay-sensitive capacity is illustrated in a FAA chart copied from a FAA report on the subject,

This relationship holds true whatever the input data as to the level of demand or whatever the configuration of all the airport units.

Once the demand reaches a point approaching the physical capacity of the airport the delay at the hub airport increases geometrically. The acceptable or "practical capacity" of the airport is at that level where delays are acceptable. To push more traffic beyond this point is to cause severe delays, massive delays, major cancellations, and gridlock.

At one point FAA defined the acceptable level of capacity of the airport as four minutes average annual delay. That translated into about a 30-minute delay in peak periods. Now FAA, IDOT and Chicago define capacity as a level of delays that occur at 15 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 that an annual delay at O'Hare is currently in excess of 10 minutes average annual delay—already above the 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 create massive increases in delays and 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—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 completed? What will be the capacity/delay numbers (compared to DOT’s analysis) with the new capacity? Why were there no public hearings and environmental disclosure on these capacity improvements?

We believe 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. FAA charges that the airport is at the limits of acceptable delays—i.e., the practical capacity limit—very small shifts in either demand of capacity 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. A certain increase in passenger traffic 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 that they will add 400–500 flights into O'Hare—an announcement made the same day that United’s and American’s front organization (the Civic Committee) and the hub-and-spoke airport (Fortress 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 must immediately build a new runway at O'Hare.

B. The "Point-To-Point" Shell Game: Building the South Suburban Airport as a Result of "Point-To-Point" Hub-and-Spoke Hub Monopoly of Fortress O'Hare.

The heart of the monopoly overcharges to travelers is that hub-and-spoke traffic 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 (along with the Civic Committee and the Chicagoland Chamber) have sought to distract attention by suggesting a south suburban airport as an alternative to the hub-and-spoke airport—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 offer of "point-to-point" origin-destination traffic thatMidway 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 concerns narrow-based 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 the current airport in the Chicago market in point-to-point service. The real lack of competition in the Chicago market concerns narrow-based 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 is any less of a waste of federal dollars than 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 point-to-point traffic) has gone to the sole hub-and-spoke airport in the region (O'Hare). Any minor offer of point-to-point origin-destination traffic that a dramatically expanded airport (Fortress 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 must immediately build a new runway at O'Hare.

Yet an analysis using FAA’s own capacity analysis standards and criteria demonstrates that O'Hare would substan-

defeat the prospect of new hub-and-spoke airports in the region. Nor are federal officials examining whether spending 10 billion dollars to create another runway at O'Hare is any less of a waste of federal dollars than using billions of dollars of federal taxpayer funds to subsidize expansion of monopoly power—is proper use of federal funds.

D. At the limits of acceptable delays—i.e., the practical capacity limit—the airport is at the limits of acceptable delays. Any minor offer of "point-to-point" origin-destination traffic thatMidway could not handle 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 that a new runway at O'Hare is needed to "reduce delays". They claim that a new runway would not increase O'Hare’s capacity but simply reduce delays.

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 to accommodate additional levels of traffic.

This capacity increase at O'Hare—by building a runway to "reduce delay"—would dramatically expand United and American’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 "runway—once built"—could easily be used to carry the new additional traffic for which the new airport was intended. Simply by proposing adding incremental runway capacity 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 Flight 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 air-
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 internal flights will be transferred to O’Hare and the lion’s share of the origin-destination traffic will jammed into an already over-stuffed O’Hare. Any new airport—even if built near the original Hare hub—will be a destruction of the city’s economic infrastructure.

South Chicago and South suburban communities 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 to extend 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 attribution of the collective refusal of the Big Seven airlines to compete with United and American and the political pique of Chicago’s mayor should be looked at in the context.

The United States Attorney General and the United States Attorney for the Northern District of Illinois should initiate an investigation to determine the collective refusal by the Big Seven airlines to compete with each other in the competition for the new airport. In a world of anti-trust action to monopolize power and the social and economic injustices incident to that monopoly power might very well be seen as a necessary consequence of preserving and expanding their monopoly at O’Hare.

In a world of anti-trust action by major airlines to monopolize power that, in the context of the Big Seven (including United and American) will simply result in more noise, more air pollution, and more safety hazards because the Big Seven’s monopoly control at the airport will ensure the economic viability of the New South Suburban Airport. Any new airport—whether it is built near the original Hare hub or not—will simply receive the origin-destination passengers 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 Big Seven’s monopoly control at the airport will ensure the economic viability of the New South Suburban Airport.

The United States Attorney General and the United States Attorney for the Northern District of Illinois 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 millions of dollars from the lines that were used to build the South Suburban Airport.

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 nationally and internationally; (2) bring forth new hub-and-spoke competitors into the Chicago market; (3) recover the billions in excess monopoly profits from the Fortress O’Hare operation of 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 be simply enhanced 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 from American consumers. Mr. Gore should also be asked to explain why his administration has blocked development of new competitive capacity in the Chicago market, in the Metropolitan Chicago—and the announcement that they would not use a South Suburban Airport if built.

The two major airlines cannot continue to compete with each other and thus the anti-trust practices with the “no-fluffery” doctrine, which asserts that petitioning the government to help the industry continue unbridled antitrust activities 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, which are 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. The Antitrust Laws have never been used to suppress competition and violate antitrust laws in the Chicago market.

The Clinton administration has not only looked the other way in failing to use 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 new competition to enter the Chicago market. Instead—as predicted by Senator Fitzgerald and Congressman Hyde—the lifting of the slots will be accompanied by a massive increase in fares charged 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 result in even worse 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

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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 the South Suburban Airport.

Civic action by the Attorney General and U.S. Attorney here to break up the Fortress Hub system in the metro Chicago region.

A Government Accounting Office and Department of Transportation study asserts that abetted the antitrust violations, particularly efforts to kill the South Suburban Airport.

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

A Government Accounting Office study at the South Suburban Airport.

Amendments that would provide for a new south suburban airport.

A clear statement by Republican and Democratic Districts, with nearly 600,000 residents, to break up the Citadel Hub system in Chicago.

An explanation and action by Illinois' highest elected officials as to what they will do to break up the Citadel Hub system and provide for a new south suburban airport.

A clear statement by Republican and Democratic candidates for president to state their position on the Citadel Hub, and the role of the federal government in either breaking up the Citadel Hub or building new capacity for new competition at the South Suburban Airport.

STUDY FINDS MAJOR AIRLINES AND CHICAGO VIOLETE 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 Show Up"

Said Geils: "The antitrust movement 100 hunky-dory decisions that exemp- tion of new airlines to expand at O'Hare and would doom the economic jus-

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 accept in order to maintain a monopoly," he said. "It is simply not enough to protect and expand the Citadel Hub monopoly. We now live in a bizarre world where the desire to protect and profit from the current illegal oligopoly is more important than 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 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 "federaлизm" would be an important issue in the 2000 campaign. The Bush Administration 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 committed 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 took a different tack.

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 reports, 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 Chicago Mayor's Office and the DOT took Peotone off the national planning list, making it ineligible for federal funds. Thus, one is led to conclude that, in Chicago, local politics 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 $5 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 million square feet of additional space for 110,000 new jobs. Such a plan would create balanced economic growth. A recent downtown business study said current plans will add $10 billion to the economy around O'Hare and Midway. However, such a plan would doom the economic growth of Chicago. A recent downtown business study said current plans will add $10 billion to the economy around O'Hare and Midway. Such a plan would doom the economic growth of Chicago.
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 is enormous. In Gore's view, if we privatize this airport, the property rights of the citizens of Elk Grove and Cook County even poorer, blacker, more segregated and dependent on government and taxpayers. In Gore claiming that such economic imbalance and racial segregation are in the public interest?

Are increased class and caste disparities in the public interest of Gore? Quite naturally, politicians representing areas of excess private jobs will want lower taxes and less government—"the Republican agenda. My arena, 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 lifeboat of last resort to keep it afloat.

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 relating to the impact of the language in the Lipinski/Oberstar bill (see §3 of the bill) to create a federal law overruling part of the Illinois Aeronautics Act—specifically as that impact relates to expanding Chicago's power to engage in widespread condemnation and demolition of residences and businesses in other municipalities outside Chicago's boundaries.

As you know, on July 9, 2002 Judge Hollis of the Cook 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 Bbildlill) testified:

1. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish all of the homes and businesses upon which IDOT has no direct control (over 500 homes and dozens of businesses) and only after such acquisition and demolition, would IDOT some years later hold a hearing in which it could consider whether the harm caused by the acquisition and demolition justified IDOT's application of the proposed project. Essentially IDOT, in reaching its decision on the certificate of approval, would have to consider evidence of the harm caused by the acquisition and demolition as a basis and not only after the harm (and destruction) had been inflicted.

2. Without judicial enforcement of the Illinois Aeronautics Act, Chicago could acquire and demolish 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 "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 condemnation power by municipalities. Here is the Illinois constitutional and Illinois statutory framework as upheld and enforced by Judge Webster:

1. The Lipinski (and Durbin) legislation 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 ("Dillion's rule") followed in almost all of the 50 states, a municipality may acquire property by condemnation or otherwise all of the land in another municipality for airport purposes without first obtaining a certificate of approval from IDOT.

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 5/102-4) but as an essential element of that authority to condemn has expressly mandated in the Illinois Municipal Code. Why not just abolish state condemnation authority of Governor Ryan and the Illinois Constitution and Illinois General Assembly. As Senator Fitzgerald has pointed out in his recent colloquy with Senator Durbin, the Lipinski (and Durbin) legislation would give Chicago an unbridled power to condemn properties outside the City of Chicago. If applied in other states, it would "literally open the chicken coop" to widespread potential for corruption.

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 followed in almost all of the 50 states. Therefore, in the present context, I agree that building airports in Chicago is appropriately within the purview of the states.
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—Massachusetts (Boston), 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, the States or their delegated agents (state political subdivisions or other agents of state power) can act 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 or 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 including the allocation and exercise of 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 160 (1992).

It is incontestable that the Constitution established a system of “dual sovereignty.” Printz v. United States, 521 U.S. 898, 913 (1997).

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

Residual state sovereignty was also implied, 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 reconfirmed 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. “[T]he framers of the Constitution and the people who adopted it intended to safeguard the individual against the power of government.” Printz v. United States, 521 U.S. 898, 913 (1997).

The Supreme Court in Printz went on to emphasize that this constitutional structural barrier to the Congress intruding on the State's sovereignty could not be avoided by claiming either a) that the congressional authority was pursuant to the Commerce Clause or b) that the federal law is “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 states decide to engage in interstate commerce. United States v. Lopez, 514 U.S. 549 (1995). Thus in Reno, the Court upheld an act of Congress that restricted the ability of the state to distribute personal drivers' licenses. But in Reno the Court did not involve an affirmative command of Congress to a state to affirmatively undertake an activity desired by Congress. Nor did Reno involve an invasion 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. 2307 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 both determine from deciding the allocation of the state’s power to build an airport or runways—and especially the terms and conditions imposed by the State of Illinois—undermining 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 states political subdivisions—whether that subdivision be Chicago, Reno, 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 en trusted to them upon the wise and necessary purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personnel and real property.

The acquisition 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 and 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 throw it away. 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, un restrained 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 by express statutory delegation. 65 ILCS 111/102-1, 110-102 and 11-102-5. These state law delegations of power to build airports and runways by the State are not paramount. The 2000 Aviation and Transportation 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 state authority and 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 new 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. 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 new runways and terminals at O’Hare—not 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. BEFOR THE U.S. SENATE COMMERCe COMMITTEE—THURSDAY, MARCH 21ST, 2002

WASHINGTON, DC—Today I would like to 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, last week I sent a letter to the President 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. And 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.

As I stated that the issue—in my first speech—is now before the Congress. And while I thank Members of the Senate for their interest in trying to resolve 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 Congress must address many grave concerns about this specific expansion plan. Concerns about cost. About safety. About environment impact. About federal preemption. And about state and local 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 3rd Chicago airport near Peotone, Illinois. The plain truth is Peotone could be built in one-third the time at one-third the cost. It would destroy few 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 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 SHORCUTS 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
The purpose of this memorandum is to summarize in a generally comprehensible form the most significant elements of the provisions of H.R. 3479, National Aviation Capacity Expansion Act ("Act"). This memorandum summarizes provisions of Section 3, "South Suburban Airport Federal Funding," of the Act. It presents a more secure and more permanent solution to Illinois' aviation crisis than the 1994 deal. This memorandum is written in a format that will be helpful to your staff in analyzing the provisions of the Act in more detail.

The memorandum will be of particular interest to your staff because it discusses provisions that have not been analyzed and discussed by the Chicago area's aviation community. The provisions discussed in this memorandum are the most significant and far-reaching provisions of the Act. The provisions discussed in this memorandum are also the most significant and far-reaching provisions of the 1994 deal.

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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 (e) states that the Administrator “shall construct” the runway redesign plan; however, there is no parallel language regarding the construction of the south runway in subsection (f). Subsection (e) results in an independent court, and 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 are governed by subsection (f) of this legislation, if enacted, may be subject to judicial review. Judicial review of agency activity or inactivity provides control over administration. 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 administrative guidelines for determining the proper court in which to seek relief. Some statutes provide specific review procedures for agency actions. Subsection (f) 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 in 28 U.S.C. 1611.

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—specifically 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—would 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—and in my opinion could be under this statute—to compel the Administrator to comply with the provisions contained in the bill.

STATEMENT OF U.S. REPRESENTATIVE JESSE L. JACKSON JR. BEFORE THE U.S. HOUSE AVIATION SUBCOMMITTEE ON 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 introduced H.R. 2107 in May 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 of the Young Membership. In fact, 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 allowed a local problem to escalate into a national crisis. Once 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 outside 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 and for years 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 projects that the City didn’t, didn’t, didn’t need new capacity, it continued to be consistent on the one thing—fighting to kill the third airport. Nonetheless, Congress, acting on its own, based on substantive issues—regional capacity, public safety or air travel efficiency. Instead it was rooted in protecting patronage, inside deals, and for the most part, Mayor Daley. 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 runway reconfiguration, thus requiring Chicago mayoral approval for any new regional airport; (2) Remove Peotone from the NPIAS list in 1997, after it emerged as the front runner. 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 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. H.R. 2107 strips Illinois Governor George Ryan of legitimate state power in an apparent violation of the “reserved powers” clause of the United States Constitution.

Under the 10th Amendment, Congress cannot command Illinois to affirmatively undertake, use or construe an 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 where Congress has the authority under the Constitution to regulate an activity, 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 its 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 Illinois’ sovereign power 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.

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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 at this stage 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 government representatives of 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 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 growth.

“The claimed benefits—including delay reductions, job increases, increased 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 constrained extension of the impossibility attempt by Daley and Ryan to stuff ten potatoes into a five-pound sack. Terminals would be updated, with an eye for matching their future 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 unoccupied homes and businesses, as under the Daley-Ryan plan.

The SOC plan also would increase competition in the Chicago area and provide cost savings. For example, SOC proposals to build a new hub airport midway between O'Hare and Midway would be used for a competitive makeover of O'Hare. SOC improvements to Western access and a bypass route would be built in the suburbs. Terminals would be updated, with an eye for matching their future 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 unoccupied homes and businesses, as under the Daley-Ryan plan.

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

Daley-Ryan O'Hare Plan Claims

Financial Claims Untether. Daley-Ryan O'Hare plan says there is plenty of federal and airline money to expand O'Hare and pay for it all. But $15 billion is a pipe dream.

Hiding the Data and Information. Daley-Ryan O'Hare Plan claims based on slick Power Point Slides—no backup information provided.

Monopoly Overcharge Problem. Daley-Ryan O'Hare plan makes no mention of monopoly overcharge problem at O'Hare—costing Chicago travelers hundreds of millions of dollars per year. As Governor-Elect George Ryan said, "The problem is not solved unless travelers are actually saved money as a result." Where is the Western Ring Road? Daley-Ryan O'Hare plan says western ring road is needed for O'Hare expansion, yet refuses to disclose location, cost, and impact on local jobs, industry, housing.

Where are the terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O'Hare Plan.

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.

Footnote: Jim Power, Daley-Ryan O'Hare plan makes no mention of monopoly air pollution yet Ryan said Governor Ryan should not be expanded because of toxic air pollution problem.

Benefits-Delayed-Compensation. Daley-Ryan O'Hare plan says it meets general benefit-cost analysis requirements—including requirement that federal government chose the alternative that produces greatest net benefits.

Increased Safety Hazards. Daley and Ryan claim their plan is safe.

Compliance With State Law. Daley and Ryan say that their plans comply with state law and that they are seeking federal permission of state law only to prevent upsetting Daley-Ryan deal by a future governor. $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 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.

Economic Equity and Justice for the South Side and South Suburbs. Daley-Ryan O'Hare plan offers little but empty rhetoric for black and other sub-racial ethnic development.

GRAVE CONCERNS NEAR O'HARE

(Per Robert C. Hergruth)

American Indians that were exhumed and moved 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.

'May 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 American Indian remains that were exhumed and moved for knocking out three runways, building a new airport terminal and planning the Western Ring Road. Daley-Ryan O'Hare plan will expand the airport to accommodate an estimated 100 million passengers a year. Daley and Ryan are focused on profit, not on the needs of the survivors.

'Where are all the terminals? Daley and Ryan say they have identified all the terminals needed for the Daley-Ryan O'Hare Plan.'

'Suburban aerial space, risky runway protection (crash zones) in occupied areas. 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.'

Daley-Ryan O'Hare plan makes major safety hazards including: increase in traffic incursions (collision risk), destruction of safest runways for bad weather winter storm conditions (4/4/s), high congestion in O'Hare area air space, risky runway protection (crash zones) in occupied areas.

Daley and Ryan both know that they (some future governor) have both violated state law by failing to meet the requirements of the Illinois Aerodromes Act; purpose of bill is to impose this legality.

Putting $15 or more billion dollars into the corrupt contract management system that infects Chicago public works projects—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.

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 taken over.

In February 1990, Illinois General Assembly passed the Chicago O'Hare Airport 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.

Rosemary Mulligan, State Representative 55th District, Des Plaines, IL, July 5, 2002.

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. This issue 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. As a result, we lack 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.

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. Governor Daley and Governor Ryan are listed below along with some other comments.

1. The Daley and Ryan plans both have a set of north/south 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 this would require 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), and noise abatement (schemes, but not 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 this 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.

2. The current Daley-Ryan runway plans, if built, will be publicized, will do little for capacity and/or will create serious safety issues. This simply cannot happen. The new 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.


Re: Key Points Why The Chicago Region Needs A New Airport—And Why New O’Hare Runways Are Contrary To The Region’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 and we are convinced that building 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, or 3) at Midway; or 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, or a combination of all of the above.

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.

We stand ready to further discuss these points with you and Secretary Mineta.

Hank O’Hare

Chairman of the Board

Chicago O’Hare Tower.
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 outcome as a white elephant and insure the expansion of the monopoly dominance of United and American Airlines in the Chicago market. The memorandum raises a series of related questions and a detailed list of suggestions that would ensure the rapid development of a 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, Congressmen 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 Non’s Aviation Best Interests

Date: January 31, 2001

This memorandum summarizes our views in the debate over the need for airport capacity expansion at the Midway Chicago airport. 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 the 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 had more than a decade privately known that the region needs new runway capacity while publicly proclaiming that new runway capacity is not needed—bi-partisan 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 runways 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 evidence suggests that the region has for several years been experiencing serious economic harm from the lack of new runway capacity.

The alternatives for new runway capacity in the region are straightforward: (1) build new runways at Midway, (2) build new runways at O’Hare, (3) build new runways at Midway, or (4) a combination of all of the above. Given these alternatives, the following points are of critical importance:

1. The new runways can be built faster at a new airport as opposed to O'Hare or Midway, supplying the region with much-needed additional capacity faster than it 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 or Midway. We acknowledge that additional space can be acquired at Midway or O’Hare by destroying densely populated surrounding residential communities to create enormous economic and environmental cost.

3. The new runways can be built at far less cost than expanding 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 could be at 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 region than would expansion of either Midway or O’Hare. Midway, and later O’Hare, were sited and built at a time when concerns over environmental and public health and safety issues were not as great as today. As a result, both existing airports have virtually no “environmental buffer” between the airports and the densely populated communities surrounding 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 and public health risk from the site. Indeed, prudence would suggest an even larger environmental buffer around the South Suburban site than that at O’Hare. 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 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 at O’Hare and Midway that the region has experienced at O’Hare for years. 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, 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 proposal for a multi-billion dollar expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that does 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.

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If the Region needs new runways and we want to explore the cost 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 expand O’Hare as the place to build the new runway 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.

These components are laid out in Chicago’s “Integrated Airport Plan” and include a new “quad runway” system for O’Hare and additional airport 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, the answer is yes. The major O’Hare airlines have advocated lifting of the “slot” restrictions at O’Hare and other major “slot” controlled airports, the Clinton Administration and the Commerce Department have been silent. Congressmen Jackson, and myself that the airport could stay 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—long with the transfer traffic—will continue to grow. This assumption ignores that the transfer traffic—stays at O’Hare. If that assumption is accepted, the airlines already know that demand growth for the traffic as already demonstrated that O’Hare will never be able to accommodate that traffic.

Second, this alternative destroys the economic justification for the new airport. With massive new capacity at O’Hare, there would be economy need for the new airport. If the Region needs new runway capacity, 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 proposal for a multi-billion dollar expansion makes no sense. We will be spending billions of dollars in taxpayer funds for a massive project that does 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 want to explore the cost 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 expand O’Hare as the place to build the new runway 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.

These components are laid out in Chicago’s “Integrated Airport Plan” and include a new “quad runway” system for O’Hare and additional airport 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.

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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 canceling and rescheduling unacceptably high numbers of flights. 

Like Cassandra, our prophecy was ignored. The Clinton Administration endorsed lifting the schedules and congestion.

But just because our warnings were ignored doesn’t mean that practical solutions should continue to be ignored. The delays and congestion, predictable and largely preventable—predicted based on delay/capacity analysis conducted by the FAA. Just as certain are the short term remedies.

Just as our coalition 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 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 warning lights put out by the FAA and other experts. The solution can be easily administered by the FAA and 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. The toxic pollution from O’Hare goes, what are the concentration of O’Hare toxic pollution when it reaches downwind residential communities, and what are the exposures of O’Hare passengers at the concentrations in those downwind communities.

Should not something be done to control and reduce the 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 be 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 Fortresses O’Hare and Midway? What is being done about it? We have already alluded to the factor of high monopoly fares as a consideration in choosing alternatives for the new runway cause. The Federal Aviation Administration of Fortresses 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 has the Bush Administration done 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 each year? When these questions were raised in the Subcommittee O’Hare Commission report, if you Build It They won’t fly: The Collective Re-Feasal Of The Major Airlines To Compete In The Chicago Air Travel Market, Chicago and the airlines responded with smoke and mirrors. Examination of the data shows that more than 70 airlines serve O’Hare. What they neglected to show was that United and American control over 80% of the hubbing either through O’Hare or its monopoly.

Similarly, the airlines and Chicago talked about the competitive low fares charged to passengers. However, there were low fares for reservations far in advance. The major business travel organization representing business travel managers report that business travelers predominantly use unrestricted coach fares since they have to respond on short notice to business needs. The domination of fares for unrestricted business travel from Chicago to major business markets shows that these routes are dominated by United and American and that their significant “competitive and safety” 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 of 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 O’Hare.

Where are the antitrust enforcers to break up these geographic cartels? Equally important, in addition to antitrust enforcement and regulation, the federal government must encourage a competitive lever to break up the routes through the funding approval process of the Airport Improvement Program (AIP) and the Airport Facilitation Program.

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 is 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 more, the Chicago and Illinois agencies have committed 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, de facto, Chicago refused 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 soundproofing. Yet billions of federal taxpayer funds go to United and American without so much as a raised eyebrow.

5. 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 hubbed airport. Competing airlines create hubbing operations wherever airport space is available. This means multiple hubbed airports in metro New York (JFK and Newark), Washington, D.C., London, and Paris.

2. The Lake Calumet Airport proposed by Mayor Daley would have been a second hub airport.

3. There is simply no reason—given the size of the business and other travel origin-destination market in metro Chicago—that a new hub competitor could not establish a major presence at a new south suburban airport.

How do we fund new airport construction?

The answer is simply and the same answer Mayor Daley had for the proposed Calumet Airport. Daley proposed using a mix of PFC and AIP funds to underwrite the new airport. Indeed, the entire justification for his urging the passage of PFC legislation was the desire to build 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, these are federal funds, and the 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.

Nowhere do the 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 posed some answers for the President’s and your administration. 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 wind O‘Hare.

But more than raising questions, we also have several concrete suggestions for addressing the region’s air transportation needs:

1. Let’s stop the paper shuffling and build the new airport. The program we outline is this letter is virtually identical to the proposal Mayor Daley for the 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 passing a new 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 asserting federal pre-emptory jurisdiction 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 address problems caused by existing levels of traffic.

5. Initiate a regulatory program to control and reduce air pollution at 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.

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 those questions.

We would appreciate the opportunity to discuss these matters with you and Secretary Mintz at your convenience.

HOUSE OF REPRESENTATIVES, Washington, DC.

FIVE REASONS TOOPPOSE THE NATIONAL AVIATION CAPACITY EXPANSION ACT (HR 3479)

Dear Colleagues:

This legislation attempts to superimpose what amounts to an 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 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 pollutant in the Chicago region. With expansion, noise and air pollution will be exacerbated.

3. UPROOT THOUSANDS OF FAMILIES:

This legislation will destroy the single largest concentration of low-income families in the nation’s most affluent counties. These are the homes 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 dollars will be 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’s capacity. 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.

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 of a major airport. For this reason, and for its great help with this legislation, I would also like to thank the gentleman from Illinois (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 says a dangerous precedent. Contrary to what 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 not compete in a 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 the environment and one that can expand as the future of our air traffic grows.

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.

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. I say that we have an expectation that this Congress will think of the human side of this, not just the economic side of it.
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, since the sign is not going to be stopped, will not have to sign,” 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

Hare layout. Merely the one played out quite directly south of the terminal; these runways are 1200 or more.

2. Both sets of parallel runways closest to the (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 will 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 on which another aircraft is landing or departing. They are caused by either a mistake or misunderstanding by the pilot or controller. Runway incursions that have occurred are ongoing and are listed on the FAA’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 taxing aircraft to cross active runways. Los Angeles International airport has lead the nation in runway incursions for several years. A large number of their incursions are 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 bad weather because of the location of them (they are wedged in between, or pointed at the other parallels). We would not

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,” he said softly, speaking in the consensual manner of a corporate director.

“The airport could simply purchase Resthaven and Re trash no more,” he said.

The second possibility, he said, would be to “functionally replace Resthaven” by building a “new Resthaven” elsewhere.

### 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 engineer hired to help with disinterment was accused of snatching limbs and yanking out teeth, supposedly for research, and later of hiding corpses to ensure thefirm 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.

The Loop attorney has dozens of relatives targeted for relocation, along with tiny coffins being accidentally pulverized by machinery during the long and delicate process get.

“My family has dozens of relatives buried at St. Johannes Cemetery, which is historical as bones.

Boyle and Chicago’s visitor at the cemetery, quizzed 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 later of hiding corpses to ensure the men in there to work,” he said.

The Loop attorney has dozens of relatives targeted for relocation, along with tiny coffins being accidentally pulverized by machinery during the long and delicate process.

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, city officials could shoulder costs, and if some families wanted relatives reburied elsewhere, that would be fine, too, he said.

Relatives could decide who “disinters and reinter the bodies,” 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.

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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, his workers work in teams to gauge the depth of the graves and directs a backhoe operator on how far to dig. “If the grave itself is 6 feet deep, you dig down around 4 1⁄2 feet, and then you add another 1 1⁄4 feet, and dig around,” 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 toll him what to dig in,” he said. “And then 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’s, whose firm relocated some of the bodies from St. Louis’ Washington Park, recalls some of the trouble there, but insists things used to be worse.

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 are 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 then he 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,” said. “They’re trespassing on private property,” he said.

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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) during our 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 and 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 more issues that need to be addressed. Amongst them are taxiway lay-outs, 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 other sorts of procedural type issues. These are just a few 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. 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 Terminal. 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 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 building.

These individuals, their descendants and an estimated 1600 other souls lie at rest at St. Johannes Cemetery, including some buried within the land that will be used for runways that 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 Potawatomi tribe. But, most importantly, we were parents, and fathers, grandmothers and grandfathers, brothers and sisters, and children. Although Governor Ryan’s and the Governor’s proposals have mentioned the relocation of homes and businesses, they curiously have failed to mention the treatment of the people. 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 deeply and desirably upset.

It is my understanding that, pursuant to Illinois law, an active cemetery may not be removed without 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 permit the removal of the cemeteries 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 will preempt the foregoing Illinois statutes, just as it seeks to preempt other Illinois statutes that stand in the way of the Chicago 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 who have available remedies to protect the sanctity of their hallowed ground. It may be that Representative Lipinski’s and Senator Durbin’s federal legislation will preempt the foregoing Illinois statutes, just as it seeks to preempt other Illinois statutes that stand in the way of the Chicago Plan. However, we would hope that they are not at the same time attempting to discard the fundamental religious protections offered by our Constitution.

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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 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 (Chicago) when the State has expressly limited its delegation of state power to construct airports explicitly and specifically subject to certain limits and conditions that the General Assembly must impose. The requirement that Chicago must first comply with all of the requirements of the Illinois Aeronautics Act—implying the requirement that Chicago (and only Chicago) must first obtain a state permit for the proposed runway redesign plan from the State of Illinois. The Illinois General Assembly has expressly provided that municipal construction or alteration of an airport (which is a state permit) is unlawful and ultra vires.

5. Similar problems articulated in New York and Printz fatally afflict Section 3(f) of the proposed Durbin-Lipinski legislation. That section (for whatever reason) construction of the “runway design plan” is not underway by July 1, 2004, then the FAA Administrator (a federal agency) shall declare the runway design plan” as a “Federal Project.” But, Section 3(f)(1) then provides that this “federal project” must obtain several agreements and undertakings that are controlled by state law, which limits Chicago’s authority to enter into such agreements or accept such undertakings under the state law (which confines 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 agreements with the FAA Administrator to have the runway redesign plan constructed by the federal government because Chicago has not received approval for the plan from the Illinois General Assembly. 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 (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 with both New York and Printz allow), the Durbin-Lipinski legislation seeks to regulate how the State regulates its airports (although both New York 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 parts 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, 526 U.S. 141 (2000) (federal rule prohibiting social security recipients from using the federal form to order mail at Post Office boxes if they do not apply solely to the State); South Carolina v. Baker, 485 U.S. 505 (1988) (state bond interest not immune from nondiscrimination in federal income tax). The San Antonio Metropolitan Transit Authority, 469 U.S. 528, (1985) (law of general applicability, binding on States and private parties, unconstitutionality, the limits 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 their instrumentalities as tools to implement federal policy. Here the Durbin-Lipinski legislation is doubtfully unconstitutional, because it does not impose obligations on 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 command-deering a state instrumentality of a single State (Chicago) against the 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. 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:

A. The Basic Legal Principles.

Cities are Creatures of the States and State Law—Not Instrumentalities of Federal Power. Normally, this controversy surrounds the question of whether 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 has granted them or the power to contract with 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 Chicago is a creature of state law, not federal law. Chicago is a political subdivision of the State of Illinois, not a federal instrumentality, and thus falls within the General Assembly's exclusive power to regulate commerce among the States. This legal principle has long been settled.

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 authorized 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 is unconstitutional because the federal laws essentially commandeered state law (absent compliance with the Illinois Aeronautics Act, including the state permitting requirements of section 47 of that Act) upon Chicago (a political creation and instrumentality of the State of Illinois) has no power to build airports without regard to the Illinois law. For the political subdivision 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 federal law to regulate how the State regula...
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 the State in controlling them. The principles have been established by them and have become settled doctrines of this Court, to be acted upon wherever they are applicable. Municipal corporations, like other partners in business, are created as convenient agencies for exercising such governmental powers of the state as may be [entrusted to them]. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies. Such actions effect the property of the corporation, and are a divestment of municipal property, all the powers of the corporation, and the power of the state to exercise it.

Hunter held that a State that simply takes property without compensation, may do as it will unrestrained by any provision of the Constitution of the United States. United States v. Hunter 24 F. Cas. 890 (1815), 95 U.S. 146 (1877).

The leading case, New York v. United States, held that the Commerce Clause does not give Congress the power to extinguish the property of municipalities without their consent. The power may not be exercised 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 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 the commerce clause. While Hunter was decided as 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 alter an airport unless it first obtains a permit, a “certificate of approval.” The language reprinted here.

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 regulating aeronautics that interferes 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 project, “including but not limited to the runway redesign project.” But Chicago must agree to construct the “runway redesign as a Federal Project,” and Chicago provides the necessary land, money, etc., “without cost to the United States.”

What this proposed legislation does is authorize the City of Chicago to implement an airport expansion project, approved by the National Transportation Safety Board, under the direction 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 has authority to regulate such commerce by the Commerce Clause and by the spending clause. The proposed law would preempt 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 Illinois Aeronautics Act provides that Chicago has no power to alter an airport unless it first obtains a permit, a “certificate of approval.” The federal law may not single out the State for special burdens, and Congress cannot exercise its Commerce Clause power to effect requirements that are discriminatory or take the place of the state law that creates 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.

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 to take ownership and control of O'Hare Airport. Instead, it seeks to use an instrumentality of state power (i.e., the state law 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 exercising a proprietary power 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 the Illinois Aeronautics Act. 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.

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Then the Court turned to the “take title” provisions and held (six to three) that they were unconstitutional. The “take title” provisions require a State to adopt 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 possesses the waste for all damage suffered by the generator or owner as a result of the State’s failure to promptly take possession.

New York invalidated the Durbin-Lipinski legislation. New York v. United States. The proposed law is very similar to the law that the Supreme Court invalidated a decade ago in New York v. United States. The Illinois Aeronautics Act provides that Chicago has no power to alter an airport unless it first obtains a permit, a “certificate of approval.” The federal law may not single out the State for special burdens, and Congress cannot exercise its Commerce Clause power to effect requirements that are discriminatory or take the place of the state law that creates 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.

In a nutshell, Congress cannot constitutionally commander the legislative or executive branches. The Court pointed out that this commandering is not only unconstitutional (because nothing in our Constitution authorizes Congress to do that) but also impossible (because federal commandering serves to muddy responsibility, undermine political accountability, and increase federal power). In 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 enter into this activity. The 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.... 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 any other form of choice in 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 sovereign rights reserved by the Tenth Amendment, the provision is inconsistent with the Federal structure of our Government established by the Constitution of the United States.

The proposed Durbin-Lipinski legislation is very much like the law that six justices invalidated in New York. The O'Hare Bill is no different. If the State of Illinois chooses, “it must follow the direction of Congress.” The State has “no option other
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than that of implementing legislation en-
acted by Congress.""

The Court in New York went on to explain
that there are legitimate ways that Congress
may subject the States to its federal legis-
lative program consistent with federal inter-
est. Two of these methods are of particular
relevance here.

The Court then discussed those two alter-
natives. First, there is the spending power,
with Congress attaching conditions to the receiv-
er of federal funds. The proposed Durbin-
Lipinski legislation rejects the spending
power alternative. Second, "where Congress
has the authority to regulate private activ-
ity under the Commerce Clause, we have rec-
ognized Congress' power to offer States the
choice of regulating that activity according
to federal standards or having state law pre-
empted by federal regulation." Congress
did not propose that Illinois have to com-
ply with the DPPA or the DMV's rules on
that Illinois could choose to regulate child
labor, whether a private company or a State
owns the coal mine and employs the work-
ers.

New York v. United States did not ques-
tion "the authority of Congress to subject
state governments to generally applicable
laws." But Congress cannot discriminate
towards States and place on them special
burdens. It cannot commandeer or command
state legislatures or executive branch offi-
cials via the federal regulatory power. Con-
temporary federal laws that regulate inter-
state commerce and States are not immune
from such regulation just because
they are States. For example, Congress
may 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 administra-
tive duties on local law enforcement offici-
als. The Violent Crime Control and
Law Enforcement Act, for a temporary period
of time, required local law enforcement
officials to use "reasonable efforts" to deter
criminal gun sales. [The] Court held that the
federal law also "commandeered" these local
officials to grapple with the federal law's
requirements. The local officials, the
Court ruled, could not constitutionally
enact laws or regulations. Unlike the
DMV information is an article of commerce
private parties could not buy it for those
purposes nor could they resell the informa-
tion 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 require
state officials to assist in enforcing federal
statutes regulating private parties. 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" fed-
eral law regulating commerce because it reg-
lates private individuals. This is important, and it
explains Reno v. Condon. In its decision, the
Court in Maryland v. Wirtz when the jus-
tices first considered this issue. That case
rejected the applicability of the Tenth Amend-
ment and held that it was constitutional for
Congress to regulate workplace safety
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 fed-
eralism." He objected that Congress, using
the broad commerce power, could "virtually
draw up each State's budget to avoid "disrup-
tive effect[s]" on interstate commerce. New
York v. United States, the Court held that
Congress exceeded its authority.

The "generally applicable" restriction is
important, and it explains Reno v. Condon.
Congress enacted the Drivers' Privacy Pro-
tection Act (DPPA), which limited the abili-
ity of the States to sell or disclose a driver's
personal information to third parties with-
out 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 "gen-
erally applicable."

Reno grew out of a congressional effort to protect drivers' personal informa-
tion. As a condition of obtaining a driver's license or registering a car, many States require driv-
ers to provide personal information, such as
name, address, social security number, med-
ical information, and a photograph. Some
States then sell this personal information
to businesses and individuals, generating sig-
nificant revenue. Related to these sales, Con-
tess enacted the DPPA, which governs any
state department of motor vehicles (DMV), or
state officer, employee, or contractor thereof,
who disseminates or discloses drivers' personal information by private per-
sons who obtain the information from a state
DMV. The Court concluded: "The DPPA serves to protect the privacy of
States." Private parties also could not buy
the information for certain prohibited pur-
poses.
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. LIPTON. Mr. Speaker, I yield 1% minutes to the gentleman from Indiana (Mr. VISLOCKY).

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

Mr. VISLOCKY. 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 improvements to 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 the role of Chicago as a major gateway to the world.

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 vote against this bill. This would be 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 revisits 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 in its current form. In fact, Mr. Speaker, the 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 Michael Boland 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 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 codified 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.

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. The Governor 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 and the 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 hour-and-a-half time that he has generously given me to speak on this extraordinarily important issue for 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 it is among the wonders of the world. It is simply failing to meet the capacity demands put on this airport by the extraordinary increase in air travel throughout the world, as well as throughout our own Nation.

Delays 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 that on over 50 percent of the flights, travelers 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 its role in its current configuration.

When I met with the mayor and the staff of 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.

The state 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.

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 of 2002 ensures that the operations at the airport will improve. It is predicted to more than double the facilities and customer service that are currently available at O'Hare Airport. 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 the 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 expansion. And 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 objection to the request of the gentleman for that addition.

There was no objection.

Mr. LIPINSKI. Mr. Speaker, I would like to make that 5 minutes for each.

The SPEAKER pro tempore. Without objection, side by side.

Mr. JACKSON of Illinois. Yes, 2 minutes for each.

Mr. LIPINSKI. Mr. Speaker, I would like to make that 5 minutes for each side.

The SPEAKER pro tempore. 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 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. 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. LIPINSKI. 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. OBERSTAR. 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 1960s, 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 by the States 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 requires only that 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 highest percentage of 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 small town, 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.

To the contrary, it would mean years of waiting for relief, expenditures far in excess of those projected, 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 is not a single Federal statute 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.

Furthermore, this legislation poses a threat to people who live near many 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. The gentleman from Illinois (Mr. CRANE) 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 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 unambiguous that the Commerce Clause estab. lished 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 claim- ing that the Congress acted 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 if the other claims of Congress are not available. 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 by building a large 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. LIPINSKI 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. JACKSON) has 3 minutes remaining.

Mr. HYDE. Reclaiming my time, I would like to present to this long 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 bustle of 13 flights does it 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, 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’s sad 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 and expeditious 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 as adjacent to it as possible can survive.

This is an answer to a real problem. Why do we not 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. 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 are concerned 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 has a conflict in that area 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 cornfield. 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 recognizing 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 battle fought 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. CYNDI). 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. WELLS) and I 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 a second airport is already at capacity. The gentleman from Illinois (Mr. WELLS) 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 aviation is 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 Montana (Mr. ÖBERSTAR), the ranking minority member; the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation; the gentleman from Illinois (Mr. LIFITZKI), 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

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 a hearing on 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 my Republican colleagues request for conference 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 the 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.

Hon. SHERWOOD 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 consideration over the bill. I also acknowledge your right to seek conference 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 conference 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 more interested 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 latest Department of Transportation’s systematic flight delays and cancellations is a crippling affect on our nation’s aviation system.

Many of us, and the flying public, have spent countless hours sitting in 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.
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 Chicago’s 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. 3479 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. 3479 represents an 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. 3479, 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. 3479 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. 3479.

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 passengers. By the addition of runways, and the expansion of O’Hare delay times will diminish and air travel at Chicago’s bustling O’Hare will undoubtedly improve for the consumer and the region.

I encourage my colleagues to support H.R. 3479.

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

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. 3479.

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.

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.
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 vote of the House was announced as above recorded.

A motion to reconsider was laid on the table.

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.

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 Clerk read the title of the bill.

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 4755.

The vote was taken by electronic device, and there were—yeas 389, nays 0, not voting 46, as follows:

[Roll No. 297]
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. The pending business is the question of suspending the rules and passing 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, Dan
Allen, E. G.
Andersen, William
Andrews, James
Armey, Robert
Baca, Ed
Baker, Thomas
Baldacci, Paul
Barton, Michael
Bass, Henry
Berenger, John
Berkeley, James
Berman, Howard
Bishop, C. A. (Drew)
Blagushevich, Adam
Blennerhassett, W. J.
Boehlert, Gary
Boehner, John
Bonilla, Henry
Boozman, Steve
Boschwitz, James
Bowser, Hal
Broy, Gregory
Brady (NJ), James
Brady (PA), James
Brown (NC), Jim
Brown (OH), Bob
Brown, Kirk
Brown (WI), Ron
Buckley, James
Buchanan, Thomas
Bullock, Fred
Burke, William
Burton, James
Caldwell, Steve
Calder, Tom
Campbell, Peter
Campbell, Tony
Cantor, John
Capps, G. K.
Cardona, Tony
Cardin (NY), Chuck
Cardin (MD), Ben
Clemen, John
Combest, Dave
Cooksey, Joe
Costello, Jerry
Cox, Joe
Cramer, John
Cunningham (GA), Jim
Cunningham (NY), Mike
Cutts, Ralph
Culigan, Michael
Dairy, Joe
Daley, Mark
DeMint, Tim

No votes recorded.

NO VOTING—45

Bachus, Randy
Bartlett, Bob
Becker, Bob
Wendell
Bernard, Pete
Black, Tom
Bloom, Jim
Bono, Ellen
Brown (NY), James
Bost, Joe
Bouyer, Mark
Boozman, Steve
Boucher, Frank
Bourgeois, John
Boyden, Robert
Boustany, incumbent
Brown (CA), Jon
Brown (IN), Heather
Browne, Frank
Brady (PA), Patrick
Brooks, Kevin
Brown (CT), Jim
Brown (OH), Bob
Brown (WI), Ron
Buckley, James
Buchanan, Thomas
Bullock, Fred
Burke, William
Burton, James
Caldwell, Steve
Calder, Tom
Campbell, Peter
Campbell, Tony
Cantor, John
Capps, G. K.
Cardona, Tony
Cardin (NY), Chuck
Cardin (MD), Ben
Clemen, John
Combest, Dave
Cooksey, Joe
Costello, Jerry
Cox, Joe
Cramer, John
Cunningham (GA), Jim
Cunningham (NY), Mike
Cutts, Ralph
Culigan, Michael
Dairy, Joe
Daley, Mark
DeMint, Tim

No votes recorded.

NAYS—143

Aderholt, Mo
Akin, Joe
Baldwin, James
Barr, Tom
Bilirakis, Ted
Blunt, Jason
Bono, Ellen
Brown (FL), Ric
Brown (OH), Bob
Burr, Jim
Campbell, Tom
Campbell, Tony
Chabot, Steve
Chad, Ben
Browne, Frank
Brady (PA), Patrick
Brooks, Kevin
Brown (CT), Jim
Brown (OH), Bob
Brown (WI), Ron
Buckley, James
Buchanan, Thomas
Bullock, Fred
Burke, William
Burton, James
Caldwell, Steve
Calder, Tom
Campbell, Peter
Campbell, Tony
Cantor, John
Capps, G. K.
Cardona, Tony
Cardin (NY), Chuck
Cardin (MD), Ben
Clemen, John
Combest, Dave
Cooksey, Joe
Costello, Jerry
Cox, Joe
Cramer, John
Cunningham (GA), Jim
Cunningham (NY), Mike
Cutts, Ralph
Culigan, Michael
Dairy, Joe
Daley, Mark
DeMint, Tim

No votes recorded.
Ms. 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. FİLNER. 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 onRules 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 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 of us 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 certainly 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.

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 of this country have a right to know. Certainly 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.

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. Mr. Speaker, I am privileged to address 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 I came here 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 other member, a Clinton holdover, 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.

The task is 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 is one of the most 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, perhaps he would be a great enforcer because he knows all the backroom tricks. One of the big problems we have was conflicts of interest 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 conflicts 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 promised 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 gentlewoman 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 gentlewoman 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 gentleman 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 strong 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 has routinely defrauded military retirees 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.

The Bush administration, 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 broken 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 action 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 them. The recruiters 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 action 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 of retired 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 full-fledged staff, 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 things that are heroes’ work every day. 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 gentlewoman 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 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 dumbfounded 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 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 as of today, they are paying the Medicare part A premium. I imagine 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. Folks who have a big retiree fund 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 after what the gentleman from Mississippi (Mr./showed, 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 I were to find that mythical lockbox, they would find that what is missing is a thousand times a thousand times a thousand times 540. $340 billion.

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 debt for almost 225 years 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 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 others who were talking about 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 majority leader. The gentleman from Maryland (Mr. BARTLETT) is recognized for 60 minutes as 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 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 hand 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 school papers, so I can easily remember 60 years.

There are three great lies about our Nation today, and they are the result 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. That idea is not new. That is not a history which 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 that God, who 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. 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 wondered if Mr. Speaker, are we not aware of 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 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 convention 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 our 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 that.

Our Founding Fathers were not certain that the promise of the Declaration of Independ 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 went 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 the Bill of Rights, 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.

That is that they really wanted most of the rights to reside with the people. Remember, they had come from monarchies 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 the primary aim of this Bill of Rights was to make sure that everybody understood what was implicit in the Constitution was explicit in these 10 amendments.
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 anyone.

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, one of the major architects of the right of the people to worship in their own way. This is a subject for an Amendment.

Amendment.

The establishment clause in the First Amendment was the establishment clause, and I am going to let our friends and note, that they wanted a wall of separation of church and state. This is a subject for an Amendment.

The establishment clause in the First Amendment was the establishment clause. So it was a Roman Catholic. For both of those churches, the Roman church. For both of those churches, it was a Roman Catholic who was a major architect of the establishment clause in the First Amendment. So 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, one of the major architects of the right of the people to worship in their own way. This is a subject for an 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 seven 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 the 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 these quotes.

The first is that not everyone will agree to the interpretation 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 why the 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 statute after statute and reading from original documents their quotes.

Another is the second major 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 they are 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 students in this country. He challenged 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 where 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 the history books 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 day of prayer in this chamber 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.

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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 cre-

ator, and I hope to the pure doctrine of the disciples of the doctrines of Jesus. I

say this not to be a deist, but to be a Christian. I say this not 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 containing 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.”

And note his words relative to slavery. See if this sounds like a deist. “Al-mighty God has created men’s minds free. Commerce between master and slave is despotism. I tremble for my country when I reflect that man factor that God is just, and his justice cannot sleep forever.” These are certainly not the words of a deist.

George Washington, called the Fa- ther of our Nation, listen to his heart on the Christian faith in his farewell speech September, 1796; the only Presi- dent, 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. This is his prayer:

“It is impossible to govern the world without God and the Bible. Of all the dispositions and habits that lead to po- litical prosperity, our religion and mo- rality are the indispensable supporters. Let us with caution indulge the suppo- sition 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 re- ligion? Was he a true Christian? Let me excerpt several lines from his personal prayer book: “Oh, eternal and ever- lasting 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, ob- tain the restoration justified unto eter- nal 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 be- lieves in me shall live, even if he dies.”

And you may wonder why as you tour Washington and go to our monuments that you see so many ref- erences to scripture. It is because that is the milieu in which these men lived.

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John Jay, our first Supreme Court Justice, stated that when we select our national leaders and preserve our Na- tion, we must select Christians. This is what he said, “Prudence has given to the countries of Europe and America 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 con- stitutions were also ratified in 1776. All required leaders to take an oath simi- lar to this oath in Delaware. This is the oath in Delaware: “Everyone ap- pointed 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 foreverymore. I do acknowl- edge the Holy Scriptures, both Old and New Testaments, which are given by devine inspiration.”

The time of our Nation’s bicentennial in 1776, 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 na- tions? What wisdom possessed these men to produce such an incredible doc- ument? Who did they turn to for inspi- ration?

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, 94 percent of all that is contained in 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 per- cent of all of the quotes in these 15,000 documents were direct quotes or refer- ences to the Bible.

So how did they produce a document that has withstood the test of time for government and growing Nation for 226 years now? The answer, they were steeped in the word of God. They un- derstood their need of its constant di- rection, and they established a Nation based on its unshakable 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 impor- tant function and a higher honor than being President of the United States. I remember that when the Con- gress 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. And you may wonder why as you tour 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 be- lieves in me shall live, even if he dies.”

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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 felons 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. That was the 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 cited 87 different 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 imagine that we would interpret that establishment clause of the First Amendment as requiring freedom from religion. They certainly meant it to assure religion, and not of education.

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. He 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 apropos. “They did not intend to spread all over the public authorities and the whole public action of the Nation the dead and revolting spec-

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 handbook, it said that students should know 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; 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.

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 59 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 19th 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 1,000 deliver a baby. 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, half of 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 race.
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 teach and dress like freaks, and pierce our noses, tongues and cheeks.
They’re 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 it is 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 voluntary 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 society and says 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 inappropriate to teach right from wrong; for praying in a public hall might offend the Bill of Rights.

We need to symbolically shout it from the housetop so that none can refuse to hear it. 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 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 of all of this aspect of the founding of our Nation. Abraham Lincoln said this to his countrymen in 1860, a nation that has no clue as to its true American heritage. They have not forgotten. They never knew.

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“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 thus 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.

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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 nation 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 there could be no group of people 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 I think it is important to highlight the fact that more and more of our 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 medicines they need. The pharmaceutical industry has been a boon to 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 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 drug coverage, 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 they would offer drug-only plans or medi- care, through the Federal Government and through the Medicare program.

So I have very much critical of the Republican proposal because it is not comprehensive. It does not provide for 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 in the hope that they would offer drug-only or medicine-only policies to seniors that the seniors would find affordable.

My position 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 this 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, 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 first $2,000 of their out-of-pocket expenses, they would get 50 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 Medicare, the Federal Government, the Federal Government 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 there, too. The Republicans, 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 as I have indicated, the health plan that they would offer 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 know the Republicans were not seeking to address the price issue. They want to put it in the bill 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 pretended 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 have a vested interest in having the Federal Government under Medicare, and 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 of that, that if they are exposed everybody under a universal program, they will be selling more medicine and they will make more money.

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 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 many new, 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 this 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 the drug 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 week, the Senate coming up and talking about the need for corporate responsibility; the need for companies, large corporations, to be responsible in their actions.

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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 Republican to a fundraiser 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 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 PLO’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 underline a TV ad campaign touting the GOP’s prescription drug plan. Pfister 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 between lawmakers and groups seeking influence.”

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 chance to cut the price of medicine 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 was a priority for the Republican Party, 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 earlier, 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 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.”

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 at all that has 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 continuing.

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 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 we suspect that 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 United Seniors Association, I hate to use the acronym USA for them, but United Seniors Association 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 victory Republican 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 who 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.

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 ar

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.

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it. And that is basically what is going on. Almost $10 million spent by the pharmaceutical industry in the last 15 months or so, $1.6 million in the last 2 months alone, thanking Republicans for supporting a bill that has no guaranteed premium, no guaranteed benefits, 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 we are stuck. This is fundamentally a question of values, and the other side is linked to the money, and particularly Republicans that are being spent on these ad campaigns 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 is 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 from New Jersey (Mr. Pallone) for his leadership on this issue.

Mr. Speaker, it has been 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 over the first 6 months of the administration, pounded over and again. It is 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 one theme repeated over and over and over and over again: It was simply, ‘It is not the government’s money, it is your money.’

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 more for seniors. It has lifted seniors out of the condition where a trip to the hospital meant a life sentence and 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. 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 disappeared. 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 losing their job. This is fundamentally a question about values.

Are we going to take our common problems and deal with them as common 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.
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 ethically right.

Mr. ALLEN. Mr. Speaker, we have to 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. And 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 spend a lot of money on blockbuster drugs. Some of those drugs are blockbuster drugs. 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 one 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 38 million or maybe half that, really, that is the number which is buying their prescription drugs from the pharmaceutical company, Pfizer, has offered 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 medicines, 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 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. PALLONE. Mr. Speaker, I see that 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 medicines, 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.

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Mr. ALLEN. Mr. Speaker, I am familiar 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 $25,000 a year, a discount today, they may take it if they are willing to provide it voluntarily. That is what we have been talking about 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 to say, you know, 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 whatever 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 and does it 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, many of whom may 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 talk to the generic manufacturers; and we’re back to standing down 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 45 minutes, and we certainly did not want to do that, they 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. As a result of the bill that we finally passed out of committee, 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 a person who has a prescription drug need of $400 a month; 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 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 them with the very best 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 Americans pay. 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, and the large drug companies, 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 just outrageous.

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. That is a fundamentally wrong statement. That is a 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 time here in the next month 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 voluntary, that is 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 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 patent law.

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 senators in my district take Prilosec. It is a good medication. It is the number one medication prescribed for seniors in New Jersey and New York, and it is a medication that treats 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 price of generic drugs is frequently charged more than $16 million per year; 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.

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 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.
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 problem of allowing the Secretary of Health and Human Services, 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, we address 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 I find it 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 interfering 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 administration 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 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, 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.

The gentleman could argue, and I do not agree with that, that they 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 they actually 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 talk about the competition. 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 benefit 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 accommodate 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 af-fron 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 the military, and we could talk about it, just wanted to take that and use it for seniors. They said no, no, we do not want that; we cannot do that for seniors. 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 a sugar beet was a three-cent sugar beet; but this is going to lower the price down.

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, but we cannot get 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? 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 for the same medications? 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 in corporate 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 and say you are 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 appointed 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 and want to 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 by 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 interest by the way of other. 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 one 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 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.
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 bomed 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 has a ton of executive mileage. It is a lot 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 manuscripts fly or flying 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, but I 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 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 small while they are small. 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. Let us look at the checks and balances system. A corporation consists of shareholders. Those people are in this country, a lot of people who have no idea that they own shares in a corporation or are actually shareholders probably think that they put 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 Electric, the General Motors, the car manufacturers like Ford and Chrysler and people like that, they are shareholders that own that.

What they do is the shareholders get together and they elect people to represent them in the corporation, and that is what the money is called, put the capital, the money that is called the corporation. 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.

Now, we can buy stock in the corporation. Now the board of directors are very, very important, very important people. They are the trustees of the corporation, so to speak. They are fiduciary duty, not only to the shareholders of the corporation but also to the employees. They carry out on behalf of 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 representatives of the shareholders, to represent the shareholders, to represent the shareholders, because of the fact that they were induced for self-enrichment, to represent the shareholders, because of the fact that 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 have a fiduciary duty to represent the shareholders, to represent the shareholders. And WorldCom bombed and Scott Sullivan and his boss, Bernie Ebbers, who got in bed with the president. They have a lot of trust. These employees now have a lot of trust in that board of directors. A lot of trust in that board of directors, and they went on.

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 that is the 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 the word that describes all of that, and that 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
littie 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, so he art, sales taxes. You can imagine how much he has paid, 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 my 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 CEO 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 attorneys 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, go 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 hundred 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 or concealed numbers or concealed information 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 they were buying 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 them, that the 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 in that corporate structure were focused on self-enrichment, broke or breached their fiduciary duties to their employees, broke or breached their fiduciary duties 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 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 to the corporation and say if they do a week after they get the loans? Forgiven. In other words, you do not have to pay me back.

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 with their bonuses.

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, the guy who is running the company, 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 $400 million? What do you mean you are not going to pay back what you are borrowing? 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 audit 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 at Andersen, they bought 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 are 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, hours before it collapsed, the day before, hours before it collapsed. What about the poor suckers that bought that? What about the employees of these corporations? What about 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 political.

What is happening is I am not so concerned about Scott Sullivan’s $20 million home in Florida or Gary Winnick’s house out there in California, $90 million. I am concerned about why the system did not catch them earlier, why is it that the system did not catch them earlier.

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. This 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 political. 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. It is not what we are talking about here. It has not been 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 there 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 those 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 colleagues, we have chatted about it, on agriculture, 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.

This Washington Post opinion piece 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: “Twenty years ago, gnashing of teeth 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, we were 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 emergency payments 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.

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. 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 the 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 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 again in Nebraska, the ages between 60 and 64 declined. And actually, it was essentially the farmers who no longer could keep going. Most of them left because of financial reasons.

The question we might ask ourselves is, well, why do we need a farm bill? People often wonder, well, the person who eats the food, the person who is shopping down at Main Street, the person who has an implement dealership or a clothing store has no guarantees. 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 that farmers and farm workers, the people who live 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. 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 totally 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 under the preceding 4 years have been published. 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 20 or 30 people have gone together and maybe the people have received $1 million in 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 $20,000 loan 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 eats the food, the person who is shopping down at Main Street, the person who has an implement dealership or a clothing store has no guarantees. 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.
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 demand 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 fashions. 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, it 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 cost to keep the fleet in the Gulf and Gulf War, as we begin to consider what we think about our oil industry, our national security. Most of the western States are heavily affected. We have 15 percent of the country in a drought situation. In an average year, 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.

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 that agriculture has been extremely 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 that 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 pasture. Cattlemen are very independent people. They 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 down way. 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 Nebraska (Mr. OSBORNE) and 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.
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.

Measures Reported:

Report to accompany S. 2487, to provide for global pathogen surveillance and response. (S. Rept. No. 107–210)

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.

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 S6797–6801

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

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.

**Nominations Confirmed:** Senate confirmed the following nomination:

Lavenski R. Smith, of Arkansas, to be United States Circuit Judge for the Eighth Circuit.

**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 Weters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

**Messages From the House:**

**Measures Placed on Calendar:**

**Measures Read First Time:**

**Executive Communications:**

**Additional Cosponsors:**

**Additional Statements:**

**Notices of Hearings/Meetings:**

**Privilege of the Floor:**

**Record Votes:** Four record votes were taken today. (Total—177)

**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.

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**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.

**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 un conveyed 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


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

President's 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 yea 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 yea 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 yea 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


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.

HOME LAND SECURITY ACT

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.


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 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.


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. 3953, 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.


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.


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

Consideration of H.R. 5093, FY 2003 Department of Interior Appropriations (open rule, one hour of debate).