

TO PERMIT AIR CARRIERS TO MEET AND DISCUSS THEIR SCHEDULES IN
ORDER TO REDUCE FLIGHT DELAYS, AND FOR OTHER PURPOSES

—————
JUNE 28, 2001.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 1407]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1407) to amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AIR CARRIER DISCUSSIONS RELATING TO FLIGHT SCHEDULING TO REDUCE DELAYS.

(a) **REQUEST.**—An air carrier may file with the Attorney General a request for authority to discuss with one or more other air carriers or foreign air carriers agreements or cooperative arrangements relating to limiting flights at an airport during a time period that the Attorney General determines that scheduled air transportation exceeds the capacity of the airport. The purpose of the discussion shall be to reduce delays at the airport during such time period.

(b) **APPROVAL.**—Notwithstanding the antitrust laws, the Attorney General shall approve a request filed under this section if the Attorney General finds that the discussions requested will facilitate voluntary adjustments in air carrier schedules that could lead to a substantial reduction in travel delays and improvement of air transportation service to the public and will not substantially lessen competition or tend to create a monopoly. The Attorney General may impose such terms and conditions to an approval under this section as the Attorney General determines are necessary to protect the public interest and to carry out the objectives of this section.

(c) **NOTICE.**—Before a discussion may be held under this section, the Attorney General shall provide at least 3 days notice of the proposed discussion to all air carriers and foreign air carriers that are providing service or seeking to provide service to the airport that will be the subject of such discussion.

(d) **MONITORING.**—The Attorney General or a representative of the Attorney General shall attend and monitor any discussion or other effort to enter into an agreement or cooperative arrangement under this section.

(e) **DISCUSSIONS OPEN TO PUBLIC.**—A discussion held under this section shall be open to the public.

SEC. 2. AIR CARRIER AGREEMENTS RELATING TO FLIGHT SCHEDULING.

(a) **REQUEST.**—An air carrier may file with the Attorney General a request for approval of an agreement or cooperative arrangement relating to interstate air transportation, and any modification of such an agreement or arrangement, reached as a result of a discussion held under section 1.

(b) **APPROVAL.**—Notwithstanding the antitrust laws, and subject to subsection (c), the Attorney General shall approve an agreement, arrangement, or modification for which a request is filed under this section if the Attorney General finds that the agreement, arrangement, or modification is not adverse to the public interest, is necessary to reduce air travel delays, and will not substantially lessen competition or tend to create a monopoly and that a substantial reduction in such delays cannot be achieved by any other immediately available means.

(c) **UNANIMOUS AGREEMENT AMONG CARRIERS REQUIRED.**—The Attorney General may approve an agreement, arrangement, or modification for which a request is filed under this section only if the Attorney General finds that each air carrier and foreign air carrier providing service or seeking to provide service to the airport that is the subject of the agreement, arrangement, or modification has agreed to the agreement, arrangement, or modification.

(d) **TERMS AND CONDITIONS.**—The Attorney General may impose such terms and conditions on an agreement, arrangement, or modification for which a request is filed under this section as the Attorney General determines are necessary to protect the public interest and air service to an airport that has less than .25 percent of the total annual boardings in the United States.

SEC. 3. LIMITATIONS.

(a) **RATES, FARES, CHARGES, AND IN-FLIGHT SERVICES.**—The participants in a discussion approved under section 1 may not discuss or enter into an agreement or cooperative arrangement regarding rates, fares, charges, or in-flight services.

(b) **CITY PAIRS.**—The participants in a discussion approved under section 1 may not discuss particular city pairs or submit to another air carrier or foreign air carrier information concerning their proposed service or schedules in a fashion that indicates the city pairs involved.

SEC. 4. CONSULTATION WITH SECRETARY OF TRANSPORTATION.

In making a determination whether to approve a request under section 1, or an agreement, arrangement, or modification under section 2, the Attorney General shall consider any comments of the Secretary of Transportation.

SEC. 5. DEFINITIONS.

In this Act, the following definitions apply:

(1) **AIR CARRIER, AIRPORT, AIR TRANSPORTATION, FOREIGN AIR CARRIER, AND INTERSTATE AIR TRANSPORTATION.**—The terms “air carrier”, “airport”, “air trans-

portation”, “foreign air carrier”, and “interstate air transportation” have the meanings such terms have under section 40102 of title 49, United States Code.

(2) ANTITRUST LAWS.—The term “antitrust laws” has the meaning such term has under section 41308(a) of title 49, United States Code.

SEC. 6. TERMINATION.

(a) APPROVAL OF AGREEMENTS.—The Attorney General may not approve an agreement, arrangement, or modification under section 2 after October 26, 2003.

(b) EXPIRATION OF AGREEMENTS.—An agreement, arrangement, or modification approved by the Attorney General under section 2 may continue in effect until October 26, 2004, or an earlier date determined by the Attorney General.

Amend the title so as to read:

A bill to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1407, as reported by the Committee on the Judiciary, provides an antitrust exemption to airlines to conduct joint discussions for the purpose of limiting flights to reduce congestion and delay. Such discussions may only be conducted with close Department of Justice scrutiny, and any agreements must receive Department of Justice approval.

BACKGROUND AND NEED FOR THE LEGISLATION

A. BACKGROUND

Everyone who flies regularly knows the frustration of airline delays and cancellations. Demand for flights has exploded while the capacity of airports and the air traffic control system has remained largely stagnant. Thus, the growing number of flights that consumers demand increasingly strains the system thereby causing delays and cancellations. We will continue to face that strain, particularly on bad weather days, until we increase the capacity of the system. Despite that unalterable fact, some believe that a temporary antitrust immunity can provide short term relief. The Committee believes that if such discussions are to be attempted, they must be carefully monitored by the Antitrust Division of the Department of Justice.

The idea is not a new one, and it does not have a track record of great success. Efforts to provide antitrust immunity for airlines to discuss scheduling date back to at least 1968. In that year, airline congestion had reached crisis proportions, particularly in the so-called “Golden Triangle” between Washington, New York, and Chicago. Acting under its authority to grant antitrust immunity to airline agreements, the Civil Aeronautics Board authorized discussions among the airlines to reduce this congestion. CAB Orders 68–7–138 and 68–8–30. See also Federal Aviation Act of 1958, Pub. L. No. 85–726, §§ 412, 414, 72 Stat. 731, 770 (1958) (granting authority to CAB to confer antitrust immunity on airline agreements).

These talks led to two developments. First, the airlines agreed to create a voluntary scheduling agreement. The CAB approved the agreement and gave it antitrust immunity. CAB Order 68–12–11. Second, the Federal Aviation Administration created the high-density or slot rule which limited the number of flights per hour at four major airports: Washington’s Ronald Reagan National, New York’s LaGuardia and JFK, and Chicago’s O’Hare. 33 Fed. Reg. 17896. See 14 C.F.R. § 93.121. Under their voluntary scheduling

agreement, the airlines agreed how they would allocate the slots at these airports.

As an aside, it should be noted that last year's AIR 21 Act phases out the slot rule over time. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, §231, 114 Stat. 61, 106 (2000). It is ironic that many of the same observers who last year wanted to eliminate the slot rule now seek to reinstate it through private discussions.

Returning to the situation in the late 1960's and the 1970's, from the perspective of the airlines, the airlines' voluntary agreement as to how to allocate slots worked fairly well for several years. Then, in 1978, Congress deregulated the airline industry. Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (1978). Deregulation led to a large number of new competitors, many of whom were demanding slots thereby putting increasing stress on the voluntary scheduling agreement. Finally, the situation came to a head in 1980 when New York Air wanted to begin shuttle service between Washington and New York. It demanded 20 slots at peak hours to offer the service. The voluntary agreement was not able to accommodate this demand, and the process fell apart.

In 1984, the CAB tried to reinstitute the process by granting Eastern Airlines's request for authority to conduct discussions. CAB Order 84-8-129. Those efforts made limited progress. The Civil Aeronautics Board ceased to exist on January 1, 1985. Its antitrust immunity authority was transferred to the Department of Transportation to expire on January 1, 1989. See Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, §3, 98 Stat. 1703 (1984).

After the 1984 effort, the FAA decided to allow airlines to buy and sell slots issuing that rule in December 1985. 50 Fed. Reg. 52180 (December 20, 1985). That system remains in effect today although as noted above the slot system is being phased out under the AIR 21 Act. With its new antitrust authority, the Department made one last attempt to grant immunity in 1987. DOT Orders 87-1-54, 87-3-39, and 87-5-82. The antitrust immunity expired in 1989, and no further attempts have been made to revive these discussions.

All agree that our airline delay problems can only be solved by increasing the capacity of the system. Airlines schedule flights at particular times because their customers want to fly at those times. Indeed, the Committee understands that although the airlines are not opposed to this bill, they did not seek it either. This bill is, at best, going to provide minimal short term relief. Its proponents do not argue otherwise. On the other hand, the bill has a number of safeguards in it to prevent any competitive harm. With the Committee's insertion of the Justice Department as the watchdog over these discussions, these safeguards are now sufficient. The Committee believes the bill is likely to have little effect, but also likely to cause little harm.

B. THE SENSENBRENNER AMENDMENT

At the markup, Chairman Sensenbrenner offered an amendment which made several relatively minor amendments to the bill. First, the bill as reported by the Transportation Committee provides that a representative from the Department of Transportation would

have to monitor airline discussions. The Sensenbrenner amendment provides for a Department of Justice monitor as well.

Second, the bill as reported by the Transportation Committee provides that notice of a meeting would be sent to all airlines currently providing service to an airport. The Sensenbrenner amendment also requires that notice be sent to airlines that are seeking to provide service at an airport so that new entrants are not squeezed out.

Third, the bill as reported by the Transportation Committee provides that the Department of Transportation may not approve an agreement unless it meets several standards. The Sensenbrenner amendment adds the requirement that any agreement be unanimous among all of the airlines providing service or seeking to provide service to an airport. Again, this will prevent smaller or new entrant airlines from being squeezed out.

Fourth, the bill as reported by the Transportation Committee provides that the authority of the bill will expire on September 30, 2003 and that agreements reached can continue after that time at the discretion of the Secretary. At the Transportation Committee hearing, the Air Transport Association suggested that this date be moved to October 26, 2003—the date on which the country switches from daylight saving time to standard time—because that is when the airlines make their major seasonal schedule change. The Sensenbrenner amendment provides for the October 26 expiration date and puts a 1-year limit on the continuation of agreements after the expiration date.

The Committee adopted the Sensenbrenner amendment by voice vote.

C. THE FIRST CONYERS AMENDMENT

At the markup, Ranking Member Conyers offered two amendments. The first Conyers amendment struck all references to title 49 and made the bill a freestanding new law. This amendment struck out the antitrust exemption because it was part of title 49. Pursuant to the staff's authority to make technical and conforming changes, certain terms that are defined in title 49 and would have applied absent this change were added to the freestanding law. The Committee adopted the first Conyers amendment by voice vote.

D. THE SECOND CONYERS AMENDMENT

The second Conyers amendment made several important substantive changes to the bill. First, it struck all references to the Secretary of Transportation and inserted in lieu thereof the Attorney General. Second, it added new language requiring the Attorney General to consult with the Secretary of Transportation concerning decisions to approve discussions or agreements. Third, it added back the antitrust exemption that was struck in the first Conyers amendment by inserting the phrase “[n]otwithstanding the antitrust laws” in the appropriate places. Finally, it added an antitrust standard—“will not substantially lessen competition or tend to create a monopoly”—to the other standards that the Attorney General considers when deciding whether to allow discussions and to approve agreements. The Committee adopted the second Conyers amendment on a voice vote.

E. JURISDICTIONAL ISSUES

The Committee also wishes to note that it strongly disagrees with the Speaker's decision to refer this bill solely to the Committee on Transportation and Infrastructure at introduction. Chairman Sensenbrenner believes that the bill should have been referred primarily to this Committee with a secondary referral to the Committee on Transportation and Infrastructure. He set forth these views at length in a May 9, 2001 letter to Speaker Hastert, and they are summarized briefly here.

First, based on the specific provisions of H.R. 1407, Chairman Sensenbrenner believes that the fundamental purpose of this bill is to provide the antitrust exemption. The conduct that the bill authorizes represents a classic *per se* violation of the antitrust laws—competitors joining together to limit supply. Without the antitrust exemption, none of the airlines would engage in these discussions. Thus, the antitrust exemption could stand alone without the regulatory provisions, but the regulatory provisions could not stand alone without the antitrust exemption. In other words, the antitrust exemption is a condition precedent for any airline meetings regulated by the bill.

Second, Chairman Sensenbrenner believes that the most relevant historical precedents are the recent efforts to repeal the antitrust exemption for ocean carriers, H.R. 3138 in the 106th Congress and H.R. 1253 in the 107th Congress. These bills are the opposite of this bill. Rather than creating an antitrust exemption that is specific to a particular industry, they repeal one. Both were referred to the Committee on the Judiciary primarily and the Committee on Transportation and Infrastructure secondarily. Chairman Sensenbrenner believes that for jurisdictional purposes the two cases are the same. For these reasons and the others set forth in his letter to the Speaker, he believes that H.R. 1407 should have been referred primarily to this Committee at introduction.

HEARINGS

The Committee held no hearings on H.R. 1407 because it is a relatively simple bill and because the Committee received a sequential referral with a short time limit.

COMMITTEE CONSIDERATION

On June 20, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 1407 with an amendment by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

During the Committee's consideration of H.R. 1407, it took no rollcall votes. The Sensenbrenner amendment, the first Conyers amendment, and the second Conyers amendment passed on voice votes. The Sensenbrenner motion to order the bill reported favorably with an amendment passed by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1407 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1407, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1407, a bill to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 1407—A bill to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

H.R. 1407 would exempt air carriers from antitrust laws through October 26, 2004, under certain conditions. Under the bill, air carriers could cooperate to limit flights at airports where scheduled flights exceed capacity if the Attorney General determines that such agreements would reduce travel delays and improve service to the public without lessening competition or tending to create a monopoly. H.R. 1407 would require that a representative of the Department of Justice (DOJ) monitor discussions among airlines for this purpose, and that any discussions be open to the public. The bill would not allow air carriers to discuss fares, services, or the

city pairs involved with such flights. Finally, the bill would require the Attorney General to consider comments of the Secretary of Transportation before approving an agreement.

Based on information from DOJ and the Department of Transportation, CBO estimates that the annual cost of monitoring discussions between air carriers would be negligible and subject to the availability of appropriated funds. H.R. 1407 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. H.R. 1407 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

On May 18, 2001, CBO transmitted a cost estimate for H.R. 1407, as ordered reported by the House Committee on Transportation and Infrastructure on May 16, 2001. That version of the bill would require representatives of the Department of Transportation to monitor discussions among airlines and also would result in negligible costs.

The CBO staff contact for this estimate is Mark Hadley, who can be reached at 226-2860. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section by section analysis describes H.R. 1407 as reported by the Committee on the Judiciary.

Section 1. Air Carrier Discussions Relating to Flight Scheduling to Reduce Delays. Subsection 1(a) allows air carriers to file a request with the Attorney General to discuss with other air carriers and foreign air carriers agreements to limit flights at airports during time periods when the Secretary determines that flights exceed the capacity of the airport. Subsection 1(b) requires that, notwithstanding the antitrust laws, the Attorney General shall approve a request under § 1(a) if he finds that the discussions will facilitate voluntary adjustments that could lead to a substantial reduction in travel delays and improvement of service to the public. The Attorney General may impose conditions on the approval. Subsection 1(c) provides that the Attorney General shall provide 3 days notice of the proposed discussion to all air carriers and foreign air carriers that are providing service or seeking to provide service to the airport that will be the subject of the discussion. Subsection 1(d) provides that the Attorney General or his representative shall attend and monitor a discussion under this subsection. Subsection 1(e) provides that any discussions held under this section shall be open to the public.

Section 2. Air Carrier Agreements Relating to Flight Scheduling. Subsection 2(a) provides that an air carrier may file with the Attorney General a request to approve an agreement, arrangement, or modification reached as a result of a discussion under § 1. Subsection 2(b) provides that, notwithstanding the antitrust laws, the Attorney General shall approve a request under subsection 2(a) if

he finds that the agreement or modification is not adverse to the public interest; is necessary to reduce air travel delays; and will not substantially lessen competition or tend to create a monopoly; and that a substantial reduction in such delays cannot be achieved by any other immediately available means.

Subsection 2(c) provides that the Attorney General may approve an agreement, arrangement, or modification under § 2 only if there is unanimous consent among each air carrier or foreign air carrier providing service or seeking to provide service to the affected airport.

Subsection 2(d) provides that the Attorney General may impose conditions on approval of a request under § 2 to protect the public interest and to protect air service to small airports.

Section 3. Limitations. Subsection 3(a) provides that the participants in a discussion under § 1 may not discuss or agree on rates, fares, charges, or in-flight services.

Subsection 3(b) provides that the participants in a discussion under § 1 may not discuss particular city pairs or discuss schedules in a fashion that indicates the city pairs involved.

Section 4. Consultation with Secretary of Transportation. Section 4 provides that in making a determination whether to approve a request to conduct discussions under § 1 or a request for approval of an agreement, arrangement, or modification under § 2, the Attorney General shall consider any comments of the Secretary of Transportation.

Section 5. Definitions. Pursuant to the staff authority to make technical and conforming changes, § 5 was added to reinsert certain title 49 definitions that were lost when the first Conyers amendment deleted the references to title 49. Subsection 5(1) provides that the terms “air carrier,” “airport,” “air transportation,” “foreign air carrier,” and “interstate air transportation” have the meanings such terms have under 49 U.S.C. § 40102. Subsection 5(2) provides that the term “antitrust laws” has the meaning that such term has under 49 U.S.C. § 41308(a).

Section 6. Termination. Subsection 6(a) provides that the Attorney General may not approve an agreement, arrangement, or modification under § 2 after October 26, 2003. Subsection 6(b) provides that an agreement, arrangement, or modification approved under § 2 may remain in effect until October 26, 2004 or an earlier date determined by the Attorney General.

Title. The title of the bill is amended to read as follows: “A bill to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.”

The following section by section analysis describes H.R. 1407 as reported by the Committee on Transportation and Infrastructure.

Section 1. Scheduling Committees, Discussions, and Agreements. Subsection 1(a) of H.R. 1407 creates a new section § 40129 of title 49 of the U.S. Code. Subsection (a)(1) of the new § 40129 allows air carriers to file a request with the Secretary of Transportation to discuss with other air carriers and foreign air carriers agreements to limit flights at airports during time periods when the Secretary determines that flights exceed the capacity of the airport.

Subsection (a)(2) of the new § 40129 requires the Secretary to approve a request under (a)(1) if he finds that the discussions will facilitate voluntary adjustments that could lead to a substantial re-

duction in travel delays and improvement of service to the public. The Secretary may impose conditions on the approval.

Subsection (a)(3) of the new § 40129 provides that the Secretary shall provide 3 days notice of the proposed discussion to all air carriers and foreign air carriers that are providing service to the airport that will be the subject of the discussion.

Subsection (a)(4) of the new § 40129 provides that the Secretary or his representative shall attend and monitor a discussion under this subsection.

Subsection (a)(5) of the new § 40129 provides that any discussions held under this section shall be open to the public.

Subsection (b)(1) of the new § 40129 provides that an air carrier may file with the Secretary a request to approve an agreement or a modification of an agreement reached as a result of a discussion under subsection (a).

Subsection (b)(2) of the new § 40129 provides that the Secretary shall approve a request under subsection (b)(1) if he finds that the agreement or modification is not adverse to the public interest; is necessary to reduce air travel delays; and that a substantial reduction in such delays cannot be achieved by any other immediately available means.

Subsection (b)(3) of the new § 40129 provides that the Secretary may impose conditions on approval of a request under subsection (b)(1) to protect the public interest and to protect air service to small airports.

Subsection (c)(1) of the new § 40129 provides that the participants in a discussion under this section may not discuss or agree on rates, fares, charges, or in-flight services.

Subsection (c)(2) of the new § 40129 provides that the participants in a discussion under this section may not discuss particular city pairs or discuss schedules in a fashion that indicates the city pairs involved.

Subsection (d) of the new § 40129 provides that the section shall cease to be in effect after September 30, 2003, but that existing agreements on that date may remain in force at the discretion of the Secretary.

Subsection 1(b) of H.R. 1407 contains a conforming amendment to amend the table of contents of the code to reflect the new § 40129.

Section 2. Limited Exemption from the Antitrust Laws. Section 2 of H.R. 1407 inserts the new § 40129 into the list of sections included in an existing antitrust exemption in 49 U.S.C. § 41308. Under § 41308(b), the Secretary may grant antitrust immunity for some agreements. Under § 41308(c), he is required to grant antitrust immunity if he makes certain findings. Section 40129 is inserted into both provisions. Thus, under § 41308(c), the Secretary must grant antitrust immunity to a § 40129 agreement if he finds that it “is not adverse to the public interest and is necessary to reduce air travel delays and that a substantial reduction in such delays cannot be achieved by any other immediately available means” as provided in new § 40129(b)(2). Because the Secretary “shall” approve any agreement if he makes these findings and there is no other mechanism for approval, the operation of § 41308(c) will require him to grant antitrust immunity to any

agreement that he approves. In short, every agreement reached and approved under this bill will receive antitrust immunity.

AGENCY VIEWS

The Committee received the following information about H.R. 1407 from the Department of Justice:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 19, 2001.

Hon. F. JAMES SENSENBRENNER, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter provides the views of the Department of Justice on H.R. 1407 as reported by the Committee on Transportation and Infrastructure.

This legislation would grant antitrust immunity to competing airlines to permit them to coordinate scheduled flight arrivals and departures. While the Department understands the concerns over airport congestion and flight delays, we have concerns about this legislation in its current form.

In the face of strong public concern about competitive problems in the airline industry, this legislation is likely to exacerbate those problems, resulting in diminished service and higher prices for the traveling public. Indeed, the proposed exemption would cover conduct that is considered so harmful to competition as to likely be deemed per se unlawful under the antitrust laws.

Scheduling is a critical element of competition among air carriers. Carriers compete to offer flights at convenient times, especially for business passengers who pay significantly higher fares. For 1-day trips, business passengers prefer early-morning outbound flights and end-of-day return flights. They also prefer carriers with a substantial number of flight frequencies in the city-pair market, to give them flexibility to change flights on short notice when necessary. Both these factors can lead to airport congestion during peak travel times.

If legislation is enacted permitting carriers to coordinate reductions in output, they will predictably endeavor to do so in the manner most profitable to themselves. It should be expected that each carrier will hold out for agreements that maximize its ability to obtain, exert, or protect its market power in its "home" or "hub" airports—and they would have little incentive to do otherwise. By their nature, output-limiting agreements among competitors result in inflated prices. In the current hub-and-spoke system, where most hub airports are dominated by a few carriers at most and a particular city-pair market is often more important to one carrier than to another, carriers will have a strong incentive to make anti-competitive "trades" where each agrees to reduce service in markets important to the others. And they can accomplish this without overtly doing so.

Experience shows that this concern is well-founded. Almost 10 years ago, the Department sued the major airlines for using their electronic tariff publishing system to negotiate similar "trades" on fares. That is, one carrier proposed fare increases in markets important to another carrier, in exchange for the other carrier making

fare increases in markets important to the first carrier. Having condemned such coordinated fare increases, it would be ironic to permit coordinated output reductions, which can be just as harmful to consumers.

Further, once the exemption is created it will be difficult to avoid “spill-over” cartel effects. And if carriers do begin to collaborate on other factors on which they should be competing, the antitrust immunity will make it more difficult for the Department to prosecute such conduct. Thus, the proposed exemption could effectively immunize a broad range of harmful anticompetitive conduct even beyond the legislation’s intended focus.

Although the bill’s authors have included provisions attempting to protect the public against anticompetitive abuse, we believe these provisions will prove an inadequate substitute for the antitrust laws. Merely prohibiting discussions of fares or specific city pairs cannot begin to capture all the complex ways carriers can potentially interact to achieve anticompetitive ends behind the shield of an antitrust exemption. And subjecting these agreements to approval by Secretary of Transportation would simply turn us back in the dangerous direction of fare and route regulation reminiscent of the regime Congress wisely rejected two decades ago—due to its inherent difficulty, uncertainty, and costs to the economy—in favor of relying on competition.

In short, this legislation, as currently drafted, could result in anticompetitive behavior. We believe that there may be available to Congress remedies that do not conflict with the enforcement of the antitrust laws.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,

DANIEL J. BRYANT, *Assistant Attorney General*.

cc: The Honorable John Conyers, Jr.
The Honorable Don Young
The Honorable James L. Oberstar

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill, as reported by this committee, does not make any changes to existing law. The bill, as reported by the Committee on Transportation and Infrastructure, does make changes to existing law, which are shown in the report filed on the bill by that committee (Rept. 107–77, Part 1).

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JUNE 20, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:07 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [Chairman of the Committee] presiding.

Next on the agenda, pursuant to notice, I now call up the bill H.R. 1407, as reported by the Committee on Transportation and Infrastructure for purposes of markup, and move its favorable recommendation to the House.

[H.R. 1407 follows:]

[COMMITTEE PRINT]

JUNE 15, 2001

**[Showing H.R. 1407 As Reported by the Committee on
Transportation and Infrastructure]**

107TH CONGRESS
1ST SESSION

H. R. 1407

To amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. YOUNG of Alaska (for himself, Mr. OBERSTAR, Mr. MICA, Mr. LIPINSKI, Mr. HUTCHINSON, Mr. DEFazio, Mr. HORN, Ms. MILLENDER-McDONALD, Mr. QUINN, Ms. NORTON, Mr. EILERS, Mr. BACHUS, Mr. BAKER, Mr. COOKSEY, Mr. LoBionDO, Mr. ISAKSON, Mr. HAYES, Mr. JOHNSON of Illinois, Mr. KENNEDY of Minnesota, and Mr. KIRK) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

[Strike out all after the enacting clause and insert the part printed in roman]

A BILL

To amend title 49, United States Code, to permit air carriers to meet and discuss their schedules in order to reduce flight delays, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SCHEDULING COMMITTEES, DISCUSSIONS, AND**
2 **AGREEMENTS.**

3 (a) IN GENERAL.—Chapter 401 of title 49, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 40129. Air carrier discussions and agreements re-**
7 **lating to flight scheduling**

8 “(a) DISCUSSIONS TO REDUCE DELAYS.—

9 “(1) REQUEST.—An air carrier may file with
10 the Secretary of Transportation a request for au-
11 thority to discuss with one or more other air carriers
12 or foreign air carriers agreements or cooperative ar-
13 rangements relating to limiting flights at an airport
14 during a time period that the Secretary determines
15 that scheduled air transportation exceeds the capac-
16 ity of the airport. The purpose of the discussion
17 shall be to reduce delays at the airport during such
18 time period.

19 “(2) APPROVAL.—The Secretary shall approve
20 a request filed under this subsection if the Secretary
21 finds that the discussions requested will facilitate
22 voluntary adjustments in air carrier schedules that
23 could lead to a substantial reduction in travel delays
24 and improvement of air transportation service to the
25 public. The Secretary may impose such terms and
26 conditions to an approval under this subsection as

1 the Secretary determines are necessary to protect
2 the public interest and to carry out the objectives of
3 this subsection.

4 “(3) NOTICE.—Before a discussion may be held
5 under this subsection, the Secretary shall provide at
6 least 3 days notice of the proposed discussion to all
7 air carriers and foreign air carriers that are pro-
8 viding service to the airport that will be the subject
9 of such discussion.

10 “(4) MONITORING.—The Secretary or a rep-
11 resentative of the Secretary shall attend and monitor
12 any discussion or other effort to enter into an agree-
13 ment or cooperative arrangement under this sub-
14 section.

15 “(5) DISCUSSIONS OPEN TO PUBLIC.—A discus-
16 sion held under this subsection shall be open to the
17 public.

18 “(b) AGREEMENTS.—

19 “(1) REQUEST.—An air carrier may file with
20 the Secretary a request for approval of an agree-
21 ment or cooperative arrangement relating to inter-
22 state air transportation, and any modification of
23 such an agreement or arrangement, reached as a re-
24 sult of a discussion held under subsection (a).

1 “(2) APPROVAL.—The Secretary shall approve
2 an agreement, arrangement, or modification for
3 which a request is filed under this subsection if the
4 Secretary finds that the agreement, arrangement, or
5 modification is not adverse to the public interest and
6 is necessary to reduce air travel delays and that a
7 substantial reduction in such delays cannot be
8 achieved by any other immediately available means.

9 “(3) SECRETARIAL IMPOSED TERMS AND CON-
10 DITIONS.—The Secretary may impose such terms
11 and conditions on an agreement, arrangement, or
12 modification for which a request is filed under this
13 subsection as the Secretary determines are necessary
14 to protect the public interest and air service to an
15 airport that has less than .25 percent of the total
16 annual boardings in the United States.

17 “(c) LIMITATIONS.—

18 “(1) RATES, FARES, CHARGES, AND IN-FLIGHT
19 SERVICES.—The participants in a discussion ap-
20 proved under subsection (a) may not discuss or
21 enter into an agreement or cooperative arrangement
22 regarding rates, fares, charges, or in-flight services.

23 “(2) CITY PAIRS.—The participants in a discus-
24 sion approved under subsection (a) may not discuss
25 particular city pairs or submit to another air carrier

1 or foreign air carrier information concerning their
2 proposed service or schedules in a fashion that indi-
3 cates the city pairs involved.

4 “(d) **TERMINATION.**—This section shall cease to be
5 in effect after September 30, 2003; except that an agree-
6 ment, cooperative arrangement, or modification approved
7 by the Secretary in accordance with this section may con-
8 tinue in effect after such date at the discretion of the Sec-
9 retary.”.

10 (b) **CONFORMING AMENDMENT.**—The analysis for
11 such chapter is amended by adding at the end the fol-
12 lowing:

“40129. Air carrier discussions and agreements relating to flight scheduling.”.

13 **SEC. 2. LIMITED EXEMPTION FROM ANTITRUST LAWS.**

14 Section 41308 of title 49, United States Code, is
15 amended—

16 (1) in subsection (b) by striking “41309” and
17 inserting “40129, 41309,”; and

18 (2) in subsection (c)—

19 (A) by inserting “40129 or” before
20 “41309” the first place it appears; and

21 (B) by striking “41309(b)(1),” and insert-
22 ing “40129(b) or “41309(b)(1), as the case
23 may be.”.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. The Chair recognizes himself for 5 minutes.

H.R. 1407 provides an antitrust exemption to the airlines to allow them to conduct joint discussions to limit flights and reduce delays and cancellations. Like everyone else who flies, I would like to reduce delays and cancellations. However, I believe the solution is to provide more airport capacity. I am skeptical that this bill will work, but I believe that it has enough safeguards so that it is unlikely to do much harm either. I do have an amendment that makes some minor tweaks to the bill and will have more to say on that in a moment.

At this time, I recognize the gentleman from Michigan, Mr. Conyers, for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman, for your accommodations based on my schedule, and I also want to thank you for protecting the Committee's jurisdiction in connection with H.R. 1407, the "Airline Delay Reduction Act," something which probably every citizen in the country would support the title of, but the problem is that the matter was referred solely to the Transportation Committee, despite the fact that it provides for an exemption to antitrust laws. And you have worked tirelessly to secure a sequential referral and are doing everything possible to restore the Committee's jurisdiction as the bill moves along.

Now, I have certain reluctances about a new antitrust exemption for the airline industry. It's not that I don't trust them, but here we are confronted with a situation that would be administered, an antitrust exemption to be administered by the Department of Transportation, which at last observation, I haven't noticed much antitrust expertise over there, and it's—it's the impression of my staff working with me on this that the bill misses the real problem and focuses on a solution that may lead to fewer flights and higher fares.

Now, the last thing the airline industry needs is less competition, which is another thing it seems that this bill would move toward. And so, as things currently stand, the competitive balance of the industry is in a state of dysfunction.

Now, since the deregulation took place 20 years ago, we have gone from a highly competitive structure to an oligopoly. Most of this has occurred under the watch of the Department of Transportation, as scores of airline mergers, too numerous to mention, have been hastily approved. The three top airlines—United, American, and Delta—control nearly 60 percent of the United States' air traffic, and experts predict that that could rise to as high as 90 percent in the near future. This is a speculation.

Now, consumers, as usual, have been left out in the cold. Delays are on the increase, service is on the decline, and prices are as high as ever. Fares are particularly outrageous from the so-called hub airports, at which I've had some experience, where consumers pay an average of 41 percent higher fares than nonhub airports. And so in this context, it's hard to believe that an antitrust exemption, which allows the airlines to come together to reduce flights, will lead to the inevitable increase in prices. And even if it didn't, I'm not sure if I would be happy about them being given permission to meet about anything at this point.

I would submit that what consumers need is more vigorous anti-trust enforcement not new antitrust exemptions. And, to my surprise, the Bush Department of Justice appears to agree with me, opposing this measure because it is likely to lead to diminished service and higher prices.

I also have some reluctances about the measure because it will do little to deal with the problem of flight delays. The vice president of the Air Transport Association, James Casey, has admitted that only 11 percent of all delays were attributable to terminal area volume. What it means is that, at best, this bill won't even touch the real cause of 90 percent of the delays.

If we want to do something about airline delays, and I'm sure everyone does, we need to authorize more funds for airport improvements and airport infrastructure. We need to improve and enhance the Federal Aviation Administration, which has been reeling ever since the Government laid off all of the air traffic controllers in 1981. I suggest to the Transportation Committee that they might look at making changes to the transportation law before they result to the antitrust law for solutions.

And I thank the Chairman, and I yield to——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. CONYERS. Okay.

Chairman SENSENBRENNER. Without objection, all Members may place opening statements in the record at this point.

Chairman SENSENBRENNER. And the Chair has an amendment at the desk, and the clerk will report the amendment.

The CLERK. Amendment to the Committee Print to H.R. 1407 offered by Mr. Sensenbrenner.

Chairman SENSENBRENNER. Would you pull the mike up closer, please.

The CLERK. Amendment to the Committee Print to H.R. 1407 offered by Mr. Sensenbrenner. Page 3——

Chairman SENSENBRENNER. And without objection, the amendment is considered as read and open for amendment at any point.

[The amendment follows:]

**AMENDMENT TO THE COMMITTEE PRINT
To H.R. 1407
OFFERED BY MR. SENSENBRENNER**

Page 3, lines 7 and 8, after “providing service” insert “or seeking to provide service”.

Page 3, strike lines 10 through 14 and insert the following:

1 “(4) MONITORING.—The Secretary (or a rep-
2 representative of the Secretary) and the Attorney Gen-
3 eral (or a representative of the Attorney General)
4 shall attend and monitor any discussion or other ef-
5 fort to enter into an agreement or cooperative ar-
6 rangement under this subsection.

Page 4, line 1, strike “The Secretary” and insert
“Subject to paragraph (3), the Secretary”.

Page 4, after line 8, insert the following:

7 “(3) UNANIMOUS AGREEMENT AMONG CAR-
8 RIERS REQUIRED.—The Secretary may approve an
9 agreement, arrangement, or modification for which a
10 request is filed under this subsection only if the Sec-
11 retary finds that each air carrier and foreign air car-
12 rier providing service or seeking to provide service to
13 the airport that is the subject of the agreement, ar-

1 arrangement, or modification has agreed to the agree-
2 ment, arrangement, or modification.

Page 4, line 9, strike “(3)” and insert “(4)”.

Page 5, strike lines 4 through 9 and insert the fol-
lowing:

3 “(d) TERMINATION.—
4 “(1) APPROVAL OF AGREEMENTS.—The Sec-
5 retary may not approve an agreement, arrangement,
6 or modification under this section after October 26,
7 2003.
8 “(2) EXPIRATION OF AGREEMENTS.—An agree-
9 ment, arrangement, or modification approved by the
10 Secretary under this section may continue in effect
11 until October 26, 2004, or an earlier date deter-
12 mined by the Secretary.”.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes, and won't use it.

My amendment makes several minor changes to the bill that I believe will provide even more protection against potential harms to competition.

First, the bill currently provides that a representative from the Department of Transportation would have to monitor the airline discussions, and my amendment would provide for a Department of Justice monitor as well.

Second, the bill currently provides that notice of a meeting would be sent to all airlines currently providing service to an airport. My amendment would also require that this notice also be sent to airlines that are seeking to provide service to that airport so that new entrants are not squeezed out.

Third, the bill currently provides that the DOT may not approve an agreement unless it meets several standards. My amendment would add the requirement that any agreement be unanimous among all airlines providing service or seeking to provide service

to an airport. Again, this will prevent smaller or new-entrant airlines from being squeezed out, and my fear is, is that without this feature, the big ones would get together and eat up the competition that was provided by the smaller ones and the new starts.

Fourth, and finally, the bill currently provides that the authority of this bill will expire on September 30, 2003, and that agreements reached can continue after that time, at the discretion of the Secretary. At the Transportation Committee hearing, the Air Transport Association suggested that this date be moved to October 26, 2003, the date on which the country changes from daylight savings time to standard time in the fall because that's when the airlines make their major seasonal schedule change. This, to me, seems to be a reasonable accommodation.

Finally, my amendment puts a 1-year limit on the continuation of agreements after the expiration date, whereas, the Transportation Committee bill makes them unlimited.

So, in sum, none of these changes are major, but I do think they add to the competitive protections of the bill.

[The prepared statement of Chairman Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

H.R. 1407 provides an antitrust exemption to the airlines to allow them to conduct joint discussions to limit flights and reduce delays and cancellations. Like everyone else who flies, I would like to reduce delays and cancellations. However, I believe the solution is to provide more airport capacity. I am skeptical that this bill will work, but I believe that it has enough safeguards so that it is unlikely to do much harm either. I do have an amendment that makes some minor tweaks to the bill, and I will have more to say on that in a moment.

My amendment makes several minor changes to the bill that I believe will provide even more protection against potential harms to competition.

First, the bill currently provides that a representative from the Department of Transportation would have to monitor airline discussions, and my amendment would provide for a Department of Justice monitor as well.

Second, the bill currently provides that notice of a meeting would be sent to all airlines currently providing service to an airport. My amendment would also require that notice be sent to airlines that are seeking to provide service at an airport so that new entrants are not squeezed out.

Third, the bill currently provides that the Department of Transportation may not approve an agreement unless it meets several standards. My amendment would add the requirement that any agreement be unanimous among all of the airlines providing service or seeking to provide service to an airport. Again, this will prevent smaller or new entrant airlines from being squeezed out.

Fourth, the bill currently provides that the authority of the bill will expire on September 30, 2003 and that agreements reached can continue after that time at the discretion of the Secretary. At the Transportation Committee hearing, the Air Transport Association suggested that this date be moved to October 26, 2003—the date on which we switch from daylight saving time to standard time—because that is when the airlines make their major seasonal schedule change. That seems to me a reasonable accommodation. Finally, my amendment puts a one-year limit on the continuation of agreements after the expiration date.

So, in sum, none of these changes are major, but I do think that they add to the competitive protections in the bill.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. I yield to the gentleman from Michigan.

Mr. CONYERS. I'm pleased to support the amendment.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN

At the outset, I want to thank the Chairman and his staff for their diligent work in protecting our committee's jurisdiction on this matter. When this bill was introduced, it was referred solely to the Transportation Committee, despite the fact that it provides for an exemption from the antitrust laws.

This was clearly and utterly erroneous, and Chairman Sensenbrenner informed the Parliamentarian of that fact in no uncertain terms. The Chairman secured a sequential referral, and I am hopeful that we will fully restore the Committee's jurisdiction as this bill moves along.

It should come as no surprise to the Members that I vigorously oppose a new antitrust exemption for the airline industry, particularly one that is administered by the Department of Transportation, which has no antitrust expertise. This bill misses the real problem and instead focuses on a phony solution that will lead to fewer flights and higher fares.

The last thing the airline industry needs is less competition, which is what this bill would clearly lead to. As things currently stand, the competitive balance of the industry is in a state of total dysfunction.

Since deregulation first took effect 20 years ago, we have gone from a highly competitive structure to an oligopoly. Most of this has occurred under the Department of Transportation's watch, as scores of airline mergers were hastily approved. The top three airlines—United, American, and Delta—control almost 60% of U.S. air traffic, and experts predict that could rise to near 90% in the near future.

Consumers have been left totally out in the cold. Delays are on the increase, service is in decline, and prices are higher than ever. Fares are particularly outrageous from so-called "hub airports," where consumers pay an average of 41% higher fares than non-hub airports.

In this context, does any one seriously believe that an antitrust exemption which allows the airlines to come together to reduce flights will do anything but further increase prices? I would submit that what consumers need is more vigorous antitrust enforcement, not new antitrust exemptions.

And guess what—the Bush Justice Department agrees with me, opposing this bill because it is likely to lead to "diminished service" and "higher prices."

I also oppose the bill because it will do little to deal with the problem of flight delays. James Casey, the Vice President of the Air Transport Association has admitted, and I quote, "only 11 percent of all delays were attributable to terminal area volume." That means that at best this bill won't even touch the real cause of the delays in 90% of the cases.

If we want to really do something about airline delays we need to authorize more funds for airport improvements and airport infrastructure. We need to improve and enhance the Federal Aeronautics Administration, which has been reeling ever since our government laid off all of the air traffic controllers in 1981. I would suggest to the Transportation Committee that they ought to look at making changes to the transportation law before they resort to the antitrust law for solutions.

I was pleased to learn that the Department of Justice had done the right thing and opposed this bill. I hope this Committee will join the Department in either fixing this bill, or voting it down.

Chairman SENSENBRENNER. If there are further—I yield back the balance of my time.

The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I don't object to what's in the amendment—

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK.—but I did want to respond, particularly in your opening statement when you said you thought, in addition to expressing your very thoughtful skepticism about this particular approach, you said there were other approaches, and you, Mr. Chairman, said airport runway construction was your preferred mode. I think that's undoubtedly a reasonable thing to do in some places. I do not think it is in the major metropolitan area that I represent.

And I want to say we should have on the record, and my—part of my problem with this bill is that it approaches this very difficult problem of congestion, exacerbated by the congenital refusal of air-

lines to ever tell anybody the truth about anything. I have never met a profession so addicted to lying. Every one of us has had a situation of arriving, being told by their equipment that the plane is about to take off, only to learn later that it is not.

And apparently they have made technological advances which they don't own up to. They have autonomous equipment. They have self-programming boards. Apparently, the boards that tell you what time the planes are leaving program themselves. No human being is ever involved in putting these false times up there. They apparently just auto-generate themselves, and it is a very clever form of technology, which I wish they would put to more social uses.

But there are a couple of other things they could be doing that they're not doing. One, they could tell the truth. I think what we need is a Passenger's Bill of Rights. We need to get the information. Many of the troubles are not their fault, but it is their fault that they are not more honest about it, and that complicates people's lives unfairly.

Secondly, I believe that we should be requiring them to engage in better scheduling through the pricing policies of the airports. Airports can do a great deal. The notion that the biggest plane in the world and the smallest plane in the world should have equal access at all times of day or with only slight differentials, I think causes a lot of the problem. So I believe that there are some very significant approaches that should be taken, both for the protection of consumer rights and to encourage the use of the market mechanism of pricing to better deal with congestion. And my skepticism about this bill is based, in part, on the bill itself, but also on the notion that with all of the things that could be done to improve airline travel, the only one we do is to give an antitrust exemption to the airlines. This is not the fault of this Committee because the other issues are not within our jurisdiction, but I am very, very unhappy at the notion that our—this Congress's sole response will be to make their lives a little bit easier with an airline antitrust exemption, which the Justice Department, as the gentleman from Michigan has pointed out, appears not to want to see happen and not to address either the Passengers' Bill of Rights or the very important issue of how to use the market mechanism to compel a more rational scheduling.

Thank you, Mr. Chairman.

Ms. WATERS. Mr. Chairman—

Chairman SENSENBRENNER. The question is on the amendment—

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER.—that the Chair has offered.

The gentleman from New York?

Mr. NADLER. Thank you, Mr. Chairman. I have a question to you, a real concern about this amendment. I thoroughly—I thoroughly approve of what you're trying to do, but I'm just wondering if one of the provisions here will work or will work backwards.

We, obviously, the point of the bill is to facilitate an agreement among air carriers so that one carrier doesn't hog, you know, so that they don't schedule 50 flights for a time period when they can only accommodate physically 25 flights, and that makes sense.

You are concerned, and properly so, that this exemption from the antitrust doesn't—isn't used to shut out the smaller airlines or new

entrants, and I agree with you. My question is with your amendment, where you say any such time agreement would have to be agreed to by every airline. Couldn't that, assuming we enacted that, what would stop the big guy, Continental, that dominates a given airport from blocking an agreement that might help the smaller guys? I mean, why—why do you think it would work to the advantage of the smaller guys, as opposed to both ways, depending on—

Chairman SENSENBRENNER. If the gentleman would yield, if there is a huge plug-up in an airport, such as Continental dominating the Newark Airport, it is to the advantage of Continental's competitive situation to get their planes out on time because any time there are huge delays at any hub airport, it has a domino effect, you know, and the consequence is spread out all throughout the country, where these planes are supposed to fly to. So Continental, at the Newark Airport, if they want to avail themselves of this, has, you know, a great incentive to be able to get the other airlines to have an agreement.

The flip side of that is that it's usually the smaller airlines that are the low-cost airlines. And once they enter a market, like Southwest entering a market, you know, they drive down the fares to all of the places that they fly if you're flying on a big carrier. And without giving what essentially is a veto power for the smaller and generally low-cost airlines, the biggies could get together and say, "Well, you're, you're running a small-cost airline, Mr. Nadler. We've got a great time slot for you at 2 a.m., you know, and good luck getting enough people to go buy tickets so that you'd be able to make a profit for coming in there."

Mr. NADLER. Reclaiming my time now, aren't these—don't these agreements, in order to be binding on the little guy, have to be agreed to by the little guy under the terms of the bill?

Chairman SENSENBRENNER. The answer to the question is, no, because under the Transportation Committee bill, the three big guys, you know, could get together, you know, and divide up the time slots and then use their, you know, marketing power to be able to browbeat whichever governmental entity owns the airport to say, "Okay. You know, give us the good time slot and give them the bad ones."

Mr. NADLER. Reclaiming my time. The Chairman is very persuasive, and logical, and has convinced me.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. I'll quit while I'm ahead. [Laughter.]

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from—the gentlewoman from California, Ms. Waters—

Ms. WATERS. Strike the last word.

Chairman SENSENBRENNER. Recognized for 5 minutes.

Ms. WATERS. Thank you very much.

I am going to support your amendment for a number of reasons. First of all, I think it's very important for us to understand that we must be a bit more assertive in dealing with the problems of the airlines. Whether it is delays or air quality or service, we have really got to get more involved because the travelers and the citizens of this country are being almost victimized by the practices of many of these airlines.

Mr. Chairman, I support this, and I'm not concerned about any discussions of antitrust concerns that some people have identified as possible problems with the bill, but, Mr. Chairman, I have an amendment that's going to come up. I'm not going to talk about it now except to say this is not simply a problem of airlines getting together to discuss scheduling so that they can arrange the best schedules to accommodate all of the carriers. This is about capacity of many of these airports. They simply can't do any better because the airports are overused. We need to have more regional responses to the problems of overcrowding, to the problems of delays.

And just as you're moving here in a small way to force them to have to get together and talk about their schedules, we're going to have to do that, and forcing the airports to get together to talk about regional responses to some of these problems. So I'm pleased that you're moving in this direction. I support it, and I'm going to have an amendment that's somewhat similar to this coming up a little bit later.

I would yield back the balance of my time.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the other gentlewoman from California seek the—

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I was interested to find the letter from the Department of Justice, dated June 19th. You know, the prior administration used to annoy the heck out of me because they'd always get their letters in at the last minute, and it's good to see that that tradition carries on under the new administration.

But I will say that, although I had been very interested in the bill earlier, the points made by the Department of Justice are persuasive ones, and I appreciate getting their letter and getting their analysis. The question I have for the Chairman is whether the Department of Justice has had an opportunity to review his amendment and whether, in their judgment, the amendment resolves the issue which—

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. LOFGREN. I certainly would yield.

Chairman SENSENBRENNER. I am informed by my staff that there have been staff discussions with the Department of Justice, but that the Department of Justice has not expressed an opinion on my amendment.

You know, let me say that, you know, I agree with, you know, all of these concerns that this bill misses the mark. And as you know, there was not a joint referral to this Committee. We had to argue with the parliamentarian to get it here because of the anti-trust exemption. You know, it seems to me that here you are preaching to the choir, but in the Rules Committee and on the floor, you might be preaching to the heathen. [Laughter.]

Ms. LOFGREN. Reclaiming my time, if I may, the—I do very much appreciate the vigorous advocacy that the Chairman has displayed over the rightful jurisdiction of this Committee, and I think all of the Members on both sides of the aisle have that appreciation and support the effort, but the question is as to the content. On page 2, the Department of Justice talks about the issue of trades and

the development of cartels that would be permitted under the underlying bill.

And looking at the amendment, and I credit the Chairman for trying to address these issues, and I do not assign any improper or unhealthy or unuseful motives to the amendment, but I'm not sure that the amendment actually will prevent the spillover cartel effects outlined by the Department of Justice in their letter. And I just wanted to raise this question: If the Chairman thinks that the amendment would prevent that adverse result, in what way would it prevent that adverse result?

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. LOFGREN. I certainly would.

Chairman SENSENBRENNER. The answer to your question is, no, I don't think it would prevent the spillover cartels. You know, I am just trying to improve what I believe is a very flawed bill—

Ms. LOFGREN. Right.

Chairman SENSENBRENNER.—in a way that is germane and in a way that we will not continue the jurisdictional hissy fit that the parliamentarian's omission has caused. I think that the gentlewoman's concerns are very valid ones. I would just urge her to allow us to send this bill over to the Rules Committee with a minor stamp on it that is very clearly germane, and we can then fight the good fight and try to make it a little bit more relevant and effective later on.

Mr. FRANK. Would the gentlelady yield?

Ms. LOFGREN. I certainly will.

Mr. FRANK. I think you're strategically correct. Since, as he puts it, we will have to go to the floor and preach to the heathens, maybe we could get a grant from the faith-based initiative to enhance our activity. [Laughter.]

Chairman SENSENBRENNER. If the gentleman can yield, he can send his application to the White House, where I'm sure it will be favorably considered.

Ms. LOFGREN. I'm sure it will. And having understood that we will be making that application, I yield back the balance of my time.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. I just would move to strike the last word, for the purpose of asking—

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER.—you, Mr. Chairman, a question.

First of all, let me just echo what some have said here. I think that the efforts that the Chairman has made to ensure the jurisdiction of the Committee are most appreciated and laudable.

I'm a little bit concerned about the element of the substitute that requires unanimous consent for any of these scheduling changes to be approved. And what I would be concerned about is a small, in my district, at LaGuardia, a small airline that wants to, for example, get additional access to gates or is concerned about the way their parking is being assigned or essentially wants to be deleterious in some way will be able to throw a wrench into any negotiations by simply exercising their right to object under this.

Is there—now, it seems to me that there might be some small airlines or there might be a bigger airline who just has a bone to pick over the past negotiations and says, “Forget it. We’re just going to bollix up the work on everything.” Is there any way, I mean, I guess you’ve obviously given a great deal of thought to this, do you have some reservations that that might be the effect of the unanimous consent requirement?

Chairman SENSENBRENNER. If the gentleman would yield—

Mr. WEINER. I would gladly yield.

Chairman SENSENBRENNER. The answer is, no, I don’t. And probably the most successful small airline that came about in the first wave of deregulation is the Wisconsin airline called Midwest Express that flies into LaGuardia several times a day. You know, I’ll be honest, I have talked to the CEO of Midwest Express, and he is concerned that without the unanimous consent agreement, you know, the biggies can stick them at 2 a.m. time slots and take away any leverage he has in preventing his gates, you know, from being, you know, a 3-mile hike out to the end of the pier, to the detriment of the passengers that wish to buy tickets on that plane.

So I think that the way this is drafted is that it gives a bigger advantage to the big airlines—or to the small airlines, when the big airlines need to do something to prevent the domino effect of a meltdown from rippling out all throughout their system as the planes that are flying out of an airline or an airport that has had one of these gridlocks has on the planes that they are planning on sending out all throughout the country.

Mr. WEINER. Well, if I could just reclaim my time.

Chairman SENSENBRENNER. Yes.

Mr. WEINER. In fact, under the bill, U.S. Air, for example, and United can have negotiations about their own timing of slots. It would not impact Northwest at all, theoretically, but theoretically they could—

Chairman SENSENBRENNER. Well, if the gentleman would yield, at an airport like LaGuardia, where there are—where it is slotted, and there are few airports around the country—very few airports around the country, LaGuardia is one of them, without the unanimous consent, the biggies could grab all of the good time slots and leave the little ones, including the cut-rate carriers, with the times that are not conducive to selling tickets. And once the little ones get into those types of time slots, then the impact of cut-rate airlines reducing the biggies fares is reduced significantly.

Mr. WEINER. Well, just reclaiming the last moments of my time, but the way I understand the base bill, if U.S. Air has an 8:05 and United has an 8:05, they can negotiate to have one go 8:00 and one go 8:15. It doesn’t impact on Northwest’s 2 o’clock in any way. Like they can’t force Northwest to go at 9:00 if they’re not part of those negotiations. That’s the way I understand the base bill.

Chairman SENSENBRENNER. Well, and, you know, why would Northwest or anybody else object to having a spread-out of 15 minutes between the United flight and the U.S. Air flight?

Mr. WEINER. Well, we’re going to, I mean, under the—and I’m inclined to vote in favor of this, I mean, my concern would be, well, Midwest Express says, “I have a 3 o’clock that I sell based on the idea that people never leave on time at 8 o’clock. I fill that flight.

I do very well with that flight because I prey on the weaknesses of the other guys. Why do I want them to fix their weaknesses?"

All of that being said, I mean, I think it's something that will play out in the wash, but I think it's some cause for concern, but I yield back my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I want to join others who applaud the Chairman for insisting on the Committee's prerogatives to review this bill and to express support for the Chairman's amendment, but very severe concerns that the amendment seems to be kind of grabbing a hold to a runaway train and doesn't go anywhere near addressing a number of the problems with the bill.

Let me ask a question about the first part of the Chairman's amendment, Mr. Chairman, if I may. The monitoring part, is there some precedent for this kind of language in any other situation?

Chairman SENSENBRENNER. If the gentleman would yield—

Mr. WATT. I'd be happy to yield.

Chairman SENSENBRENNER.—the answer is, not to my knowledge. But the base bill has a representative of DOT monitoring these negotiations. If we're dealing with antitrust, it seems to me we ought to have somebody who knows something about antitrust, and that's the DOJ—

Mr. WATT. I absolutely agree with the Chairman, but I'm just—I guess the concern I have is we have the regulators, the reviewers or anybody from the Federal Government in the room monitoring discussions that could be very easily inappropriate discussions—

Chairman SENSENBRENNER. Well, if the gentleman will yield further, where this bill will have an impact, if any—I'll qualify that—is at airports where the FAA controls slots right now because there is so much demand to fly in there. I'm talking about airports like Washington National, like LaGuardia, O'Hare, L.A. So the FAA has got its finger on the slots to begin with, and—

Mr. WATT. Why wouldn't it have implications in Charlotte, where there's not slotting? I mean, we have a major problem with managing flight arrivals and departures. Why wouldn't this bill have the same kind of—

Chairman SENSENBRENNER. Sir, isn't Charlotte kind of a one-carrier town?

Mr. WATT. It is, but there are several other carriers who are trying to get in, and they are subject to the same kind of discussions that this bill would provide for.

Chairman SENSENBRENNER. The answer is that this bill would be very helpful to the other carriers because, with the amendment, they have a seat at the table, even if they aren't in there yet because they're applying to get in there. Whereas, with the Transportation Committee bill, if an airline is not going into Charlotte, they don't get a seat at the table until they actually have their plane land on the ground there.

Mr. WATT. Let me just ask the Chairman a more direct question. Is the Chairman concerned about—and this is not a second-guessing of the Chairman's amendment, understand I support the Chair-

man's amendment. I think my concerns are about the base bill—is the Chairman concerned about the Department of Justice's concerns expressed at the bottom of page 1 and the top of page 2 of this letter?

I mean, it seems to me that airlines, even in the absence of this sanctioning that we are giving them to talk, have used, according to the first full paragraph on page 2 of the Department of Justice's letter, "the Department sued the major airlines for using their electronic tariff publishing system to negotiate" and advantage themselves on fares——

Chairman SENSENBRENNER. Would the gentleman further yield?

Mr. WATT. Yes.

Chairman SENSENBRENNER. Of course, the Chairman is concerned about that. However, the Chairman plays with the cards that he is dealt, and the cards that we were dealt on this one aren't very good cards. I would, also——

Mr. WATT. So the gentleman would understand if I voted for his amendment and against the bill then.

Chairman SENSENBRENNER. I would not be upset with you at all on that. The point I would like to make is that if you read Congress Daily, as I do upon occasion, 2 weeks ago, right after we got this sequential, the Chairman of the Transportation Subcommittee of the Appropriations Committee chastised us for not dealing with this very important issue and said if we didn't do it, he would stick this, the unamended version, in the Transportation Appropriations bill and get it protected by the rules.

Mr. WATT. Sounds like I was right, that the Chairman has a way—has a hold to a runaway train.

Chairman SENSENBRENNER. No, it's a runaway plane.

Mr. WATT. Plane, I'm sorry. [Laughter.]

Mr. WATT. That's even worse, I guess. I yield back.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the adoption of the amendment offered by the chair.

Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it, and the ayes have it, and the amendment is agreed to.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Michigan seek recognition?

Mr. CONYERS. I have a, well, now two amendments at the desk, and I'd like to call up the first one, please.

Chairman SENSENBRENNER. The clerk will report the first amendment.

The CLERK. Amendment to the Committee Print to H.R. 1407 offered by Mr. Conyers.

Mr. CONYERS. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

**AMENDMENT TO THE COMMITTEE PRINT TO H.R. 1407
OFFERED BY MR. CONYERS**

1. Page 2, strike lines 3 through 7. Strike the initial quotation marks each place they appear in the bill. Page 5, strike lines 10 through 23.

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you.

The first amendment that I am now offering merely strikes at page 2, lines 3 through 7, to make this bill a freestanding amendment rather than an amendment to the transportation laws. Now, why?

First of all, it helps establish our jurisdiction by pointedly bringing to the parliamentarian's attention that this is not something that automatically goes to the Transportation Committee. It sends a message to other Committees that we will protect the integrity of antitrust proposals and not allow them to be amended—

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. CONYERS. Of course.

Chairman SENSENBRENNER. I support the amendment. I think the gentleman from Michigan makes a very good point, and this may help the parliamentarian not to forget about us when the Transportation Committee deals with this issue again.

Mr. CONYERS. And so I urge the Members to support this first amendment. I return my time.

Chairman SENSENBRENNER. Is there further discussion on the Conyers No. 1?

Hearing none, all of those in favor of agreeing to the amendment will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Michigan seek recognition?

Mr. CONYERS. Mr. Chairman, my second amendment I'd like to call up now.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the Committee Print to H.R. 1407 offered by Mr. Conyers, page 2, strikes lines 3 through 7. Strike the initial quotation marks each place they appear in the bill.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

**AMENDMENT TO THE COMMITTEE PRINT TO H.R. 1407
OFFERED BY MR. CONYERS**

1. Page 2, strike lines 3 through 7. Strike the initial quotation marks each place they appear in the bill. Page 5, strike lines 10 through 23.

2. Strike "Secretary of Transportation" and "Secretary" each place it appears in the bill and insert "Attorney General". Add the following new subsection:

"(e) Consultation with the Secretary of Transportation.-- In making a determination whether to approve a request under subsection (a)(2), or an agreement, arrangement, or modification under subsection (b)(2), the Attorney General shall consider any comments of the Secretary of Transportation."

3. Page 2, line 19, and page 4, line 1, strike "The" and insert "Notwithstanding the antitrust laws, the". Page 2, line 25, and page 4, line 8, strike the period and insert the following: "and will not substantially lessen competition or tend to create a monopoly."

Chairman SENSENBRENNER. And the gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

Originally, I start by asking unanimous consent to strike clause 1 of this amendment, which is the measure we have just taken care of.

Chairman SENSENBRENNER. Without objection, the modification is agreed to.

Mr. CONYERS. Now, what we do in this provision, ladies and gentlemen, is to substitute the Attorney General for the Secretary of Transportation in each place of the existing bill. The Justice Department, not the Transportation Department, is the authority on competition and antitrust laws, and the Justice Department already has the authority to rule on airline mergers and other transportation antitrust disputes. And so I'm confident that the Anti-trust Division will have no problem ruling on competition issues, as they relate to airline congestion.

To the extent any specific air transportation expertise is needed to consider these issues, my amendment does provide the Secretary of Transportation with a consultative role. This is similar to the role that the Secretary now plays in airline mergers.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. CONYERS. Yes, sir.

Chairman SENSENBRENNER. I'm happy to support this part of the amendment, too, and would urge that it be adopted.

Mr. CONYERS. I am surprised, and delighted, and pleased.

In other words, what we're doing, Members of the Committee, is making a bill that may be unacceptable to most of us. We're giving—we're making it work, and I thank the Chairman for his support, and I ask that the rest of my statement be put in the record—

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. And I return my time.

[The statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN

My amendment makes three straightforward changes.

First, the amendment makes the bill a freestanding law, rather than an amendment to the Transportation laws. This sends a message to other committees that we will protect the integrity of the antitrust laws and not allow them to be amended in unrelated vehicles. It will also help insure that any future changes or modifications to the law are referred to this committee, rather than tucked away in obscure reaches of the U.S. Code which are not readily apparent to the Parliamentarian. I believe that is the reason the Parliamentarian made a mistake on the initial referral.

Second, we substitute the Attorney General for the Secretary of Transportation in each place in the bill. The Justice Department, not the Department of Transportation is the authority on competition and the antitrust laws. The Justice Department already has the authority to rule on airline mergers and other transportation antitrust disputes, and I am confident the antitrust division will have no problem ruling on competition issues as they relate to airline congestion. To the extent any specific air transportation expertise is needed to consider these issues, my amendment provides the Secretary of Transportation with a consultive role. This is similar to the role the Secretary now plays in airline mergers.

Third, my amendment specifies an antitrust test for granting the exemption, rather than the more amorphous public interest standard in the underlying bill. The test in my amendment—"substantially lessen competition or tend to create a monopoly" is drawn verbatim from the Clayton Act, and should not present any new or difficult interpretational issues for Antitrust Division. The proponents of this measure claim it will not harm consumers. There is only one way to make sure that is the case is to require a competitive antitrust review. Otherwise there will be risk that the consumer's interest in lower prices will be trumped by the airlines argument for less flights.

My amendment is modest and straightforward and builds on the very worthwhile changes made in the Chairman's amendment. It restores the Committee's jurisdiction over the antitrust modifications. It restores the role of the Attorney General, and it provides an real antitrust test. I urge the Members to vote for protecting the consumers and protecting competition.

Chairman SENSENBRENNER. Is there further discussion on the second Conyers amendment?

Hearing none, all of those in favor of the amendment signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the second Conyers amendment is agreed to.

For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. Mr. Chairman, I have an amendment at the desk.
[The amendment follows:]

**AMENDMENT TO H.R. 1407, AS REPORTED
BY THE COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
OFFERED BY MS. WATERS**

At the end of the bill, add the following:

1 SEC. 3. LOS ANGELES INTERNATIONAL AIRPORT.

2 (a) PROHIBITION ON EXPANSION.—The Secretary of
3 Transportation shall prohibit the construction of any
4 project for expansion of the capacity of the Los Angeles
5 International Airport above the level approved by the Fed-
6 eral Aviation Administration.

7 (b) DIVERSION OF AIR TRAFFIC.—Notwithstanding
8 any other provision of law, the Secretary may make avail-
9 able Federal assistance for the Los Angeles International
10 Airport in fiscal year 2002 only if the operator of the air-
11 port agrees to work with regional airports to divert some
12 air traffic from the Los Angeles International Airport.

Mr. SMITH OF TEXAS. Mr. Chairman, may I reserve a point of order?

Chairman SENSENBRENNER. A point of order by the gentleman from Texas, Mr. Smith, is reserved, and the gentlewoman from California is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman and Members.

Today I offer an amendment to H.R. 1407 to deal with what I consider one of the most serious problems we have in the Los Angeles area with a severe impact on my district. We're all aware of the increase in passenger flights in recent years. Part of this is due to an increase in competition, which offers passengers more options and which also will drive down, perhaps, prices. However, many airports are more greatly affected by this increased passenger de-

mand than are other airports. And when we rush to make flights available to more and more people, we must not forget the great effects those flights have on our passengers and our communities, everything from delays—which we're attempting to deal with today, Mr. Chairman, with your amendment—congestion, pollution, and disruption to the communities surrounding these airports.

I'm offering an amendment out of strong concern with what's happening at the airport in my district. The Los Angeles World airports, the organization that controls Los Angeles International Airport, has proposed an expansion of that airport. And while I am well-aware of the benefits of new flights, I'm strongly opposed to any expansion of this land-locked LAX.

This attempted expansion is simply an expansion that is trying to squeeze into LAX a new runway to be able to accommodate more flights, despite the fact we don't have any more land there, we don't have any more capacity there. As a matter of fact, the disruption and the negative impact on the surrounding communities has become very severe. The schools under the flight path must stop many times during the day because they cannot hear, and they cannot discuss their lessons because of the noise that's produced by the ever-unending flights coming over those schools going right into the airport. The traffic congestion in some of the smaller cities around the airport is just unconscionable and cannot—cannot be supported any longer.

I am asking that this amendment be adopted that would simply say—and, first, let me just say this: Currently, we are accommodating 68 million—we're at 68 million capacity, and they want to go to 80 million. They can go to 80 million. They're allowed by the Feds to go to 80 million, but they want to expand up to 90 million. As far back as 1998—and I don't have the most recent figures—we were accommodating like almost 3,000 flights a day.

The Environmental Impact Study is out, and it absolutely identifies that the communities near and around the airport will bear a higher burden of the impacts of the airport expansion. LAX is an environmental monster. It is already the single largest producer of smog-inducing pollution in Los Angeles County. Air quality in the area surrounding LAX will decrease as emissions from the airport increase with the growth in these activities.

Every elected official in and around that airport is opposed to this expansion. Most of the Southern California elected officials, both Democrat and Republican, are opposed to this expansion.

We are trying to force all of our airports to get together similar to the way you're talking about the airlines getting together to deal with delays, to talk about a regional response. We're not trying to stop air traffic. We're not trying to limit growth. We're just trying to rearrange it so that the region is involved in the polling rather than trying to simply squeeze more flights into this very land-locked area.

So I am presenting this amendment that would simply say that LAX would not be able to expand beyond the allowable capacity that could take it from 68 million up to 80 million, but the expansion that is being requested to take it to 90 million should not take place, and they should be encouraged by my amendment—

Chairman SENSENBRENNER. The time has expired.

Does the gentleman from Texas insist upon his point of order?

Mr. SMITH OF TEXAS. Yes, I do, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. SMITH OF TEXAS. Mr. Chairman——

Chairman SENSENBRENNER. Please use the mike so the reporter can——

Mr. SMITH OF TEXAS. Mr. Chairman, I believe that the gentleman from California's amendment is nongermane, and I'll stand on my point of order.

Chairman SENSENBRENNER. Does anybody wish to speak on the point of order?

[No response.]

Chairman SENSENBRENNER. The Chair is prepared to rule. One of the——

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts?

Mr. DELAHUNT. Yeah, I move to strike the last word.

Chairman SENSENBRENNER. The question is confined to a discussion of the point of order. Does anybody wish to speak on the point of order?

Ms. WATERS. Yes, Mr. Chairman, I wish to speak on the point of order.

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. WATERS. Mr. Chairman, I think that if the gentleman from Texas is going to insist on this point of order, he owes it to this Committee and the people from California, to me, and people from Southern California to at least discuss with us why he has better knowledge and understanding from Texas about what is happening in Los Angeles. What is the point of order?

Chairman SENSENBRENNER. Well, the question is, is that the—— the gentleman from Texas makes a point of order that the amendment offered by the gentlewoman from California is not germane to the bill. One of the tests of germaneness is the jurisdiction of the Committee where the amendment would go to should it be a freestanding bill. This is clearly within the jurisdiction of the Committee on Transportation and Infrastructure, not of the Committee on the Judiciary, consequently, the Chair sustains the point of order.

Are there further amendments to the bill?

[No response.]

Chairman SENSENBRENNER. Hearing none, the question is on reporting favorably the bill, as amended.

Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to, and the Chair notes the presence of a reporting quorum.

Without objection, the bill will be reported in the form of a single amendment in the nature of a substitute, reflecting the amendments agreed to by the Committee here today.

Without objection, the staff will be authorized to make technical and conforming changes.

Without objection, the Chair is authorized to go to conference, pursuant to House rules, and all Members will be given 2 days in which to file dissenting additional supplemental or minority views.

