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HOUSE OF REPRESENTATIVES

REPT. 109–600
Part 2

WRIGHT AMENDMENT REFORM ACT

SEPTEMBER 15, 2006.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 5830]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5830) to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wright Amendment Reform Act".

SEC. 2. MODIFICATION OF PROVISIONS REGARDING FLIGHTS TO AND FROM LOVE FIELD, TEXAS.

(a) EXPANDED SERVICE.—Section 29(c) of the International Air Transportation Competition Act of 1979 (Public Law 96–192; 94 Stat. 35) is amended by striking "carrier, if (1)" and all that follows and inserting the following: "carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.".

(b) REPEAL.—Section 29 of the International Air Transportation Competition Act of 1979 (94 Stat. 35), as amended by subsection (a), is repealed on the date that is 8 years after the date of enactment of this Act.

SEC. 3. TREATMENT OF INTERNATIONAL NONSTOP FLIGHTS TO AND FROM LOVE FIELD, TEXAS.

No person shall provide, or offer to provide, air transportation of passengers for compensation or hire between Love Field, Texas, and any point or points outside the 50 States or the District of Columbia on a nonstop basis, and no official or employee of the Federal Government may take any action to make or designate Love Field as an initial point of entry into the United States or a last point of departure from the United States.

49–006

SEC. 4. CHARTER FLIGHTS AT LOVE FIELD, TEXAS.

(a) IN GENERAL.—Charter flights (as defined in section 212.2 of title 14, Code of Federal Regulations) at Love Field, Texas, shall be limited to—

(1) destinations within the 50 States and the District of Columbia, and

(2) no more than 10 per month per air carrier for charter flights beyond the States of Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.

(b) CARRIERS WHO LEASE GATES.—Except for any flights operated by any agency of the Federal Government or by any air carrier under contract with any agency of the Federal Government and except in irregular operations described in the agreement referred to in section 5(a), all flights operated to or from Love Field by air carriers that lease terminal gate space at Love Field shall depart from and arrive at one of those leased gates.

(c) CARRIERS WHO DO NOT LEASE GATES.—Charter flights from Love Field, Texas, operated by air carriers that do not lease terminal space at Love Field may operate from nonterminal facilities or one of the terminal gates at Love Field.

SEC. 5. AGREEMENT OF THE PARTIES.

(a) IN GENERAL.—Any action taken by the city of Dallas, the city of Fort Worth, Southwest Airlines, American Airlines, and the Dallas–Fort Worth International Airport Board (referred to in this section as the "parties") that is reasonably necessary to implement the provisions of the agreement dated July 11, 2006, and entitled "CONTRACT AMONG THE CITY OF DALLAS, THE CITY OF FORT WORTH, SOUTHWEST AIRLINES CO., AMERICAN AIRLINES, INC., AND DFW INTERNATIONAL AIRPORT BOARD INCORPORATING THE SUBSTANCE OF THE TERMS OF THE JUNE 15, 2006 JOINT STATEMENT BETWEEN THE PARTIES TO RESOLVE THE 'WRIGHT AMENDMENT' ISSUES", and the agreement, shall be deemed to comply in all respects with the parties' obligations under title 49, United States Code.

(b) LOVE FIELD GATES.—

(1) IN GENERAL.—The city of Dallas, Texas, shall reduce, as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates. Thereafter, the number of gates available for such service shall not exceed a maximum of 20 gates.

(2) PERMISSIBLE AIRPORT COSTS.—Costs associated with reduction of gates under paragraph (1) are permissible airport costs and shall not be considered as revenue diversion.

(c) GENERAL AVIATION.—Nothing in the agreement referred to in subsection (a) and this Act shall affect general aviation service at Love Field, including flights to or from Love Field by general aviation aircraft for air taxi service, private or sport flying, aerial photography, crop dusting, corporate aviation, medical evacuation, flight training, police or fire fighting, and similar general aviation purposes, or by aircraft operated by any agency of the Federal Government or by any air carrier under contract to any agency of the Federal Government.

(d) ENFORCEMENT.—Notwithstanding any other provision of law, the Secretary of Transportation and the Administrator of the Federal Aviation Administration may not make findings or determinations, issue orders or rules, withhold airport improvement grants or approvals thereof, deny passenger facility charge applications, or take any other action, either self-initiated or on behalf of third parties, that is inconsistent with the provisions of the agreement referred to in subsection (a) or that challenges the legality of any of its provisions.

(e) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this Act shall be construed—

(A) to limit the obligations of the parties under the programs of the Department of Transportation and the Federal Aviation Administration relating to aviation safety, labor, environmental, national historic preservation, civil rights, small business concerns (including disadvantaged business enterprise), veteran's preference, disability access, and revenue diversion;

(B) to limit the authority of the Department of Transportation or the Federal Aviation Administration to enforce the obligations of the parties under the programs described in subparagraph (A);

(C) to limit the obligations of the parties under the aviation security programs of the Department of Homeland Security and the Transportation Security Administration at Love Field, Texas;

(D) to authorize the parties to offer marketing incentives that are in violation of Federal law, rules, orders, agreements, and other requirements; or

(E) to limit the authority of the Federal Aviation Administration or any other Federal agency to enforce requirements of law and grant assurances (including subsections (a)(1), (a)(4), and (s) of section 47107 of title 49,

United States Code) that impose obligations on Love Field to make its facilities available on a reasonable and nondiscriminatory basis to air carriers seeking to use such facilities, or to withhold grants or deny applications to applicants violating such obligations with respect to Love Field.

(2) FACILITIES.—Paragraph (1)(E)—

(A) shall only apply with respect to facilities that remain at Love Field after implementation of subsection (b); and

(B) shall not be construed to require the city of Dallas, Texas—

(i) to construct additional gates beyond the 20 gates referred to in subsection (b); or

(ii) to modify or eliminate preferential leases with air carriers in order to allocate gate capacity to new entrants or to create common use gates, unless such modification or elimination is implemented on a nationwide basis.

SEC. 6. DEPARTMENT OF TRANSPORTATION REVIEW.

The Department of Transportation shall have exclusive authority to review actions taken under this Act (including the agreement referred to in section 5(a)), and actions taken to implement the agreement, with respect to all provisions of title 49, United States Code.

SEC. 7. APPLICABILITY.

(a) LIMITATION.—The provisions of this Act shall apply only to actions taken by the parties to the agreement referred to in section 5(a) of this Act at Love Field, Texas, and shall have no application to any other airport (other than an airport owned or operated by the city of Dallas or the city of Fort Worth, Texas, or both).

(b) PRESERVATION OF ANTITRUST LAWS.—Nothing in this Act, or any amendment made by this Act, shall modify, impair, or supersede the operation of the antitrust laws.

SEC. 8. EFFECTIVE DATE.

Sections 1 through 7 and the amendments made by such sections shall take effect on the date that the Administrator of the Federal Aviation Administration notifies Congress that aviation operations in the airspace serving Love Field and the Dallas–Fort Worth area, Texas, occurring as a result of the agreement referred to in section 5(a) and this Act can be accommodated in full compliance with Federal Aviation Administration safety standards in accordance with section 40101 of title 49, United States Code, and, based on current expectations, without adverse effect on use of airspace in such area.

PURPOSE AND SUMMARY

H.R. 5830 was introduced on July 18, 2006. The legislation was referred to the Committee on Transportation and Infrastructure and reported by that Committee on July 26, 2006. The legislation would implement a compromise agreement reached by: the City of Dallas, Texas; the City of Fort Worth, Texas; American Airlines; Southwest Airlines; and Dallas–Fort Worth International Airport (DFW) on July 11, 2006, regarding air service at Dallas Love Field. The Judiciary Committee sought and received a sequential referral of the legislation pursuant to its rule XI(1)(1)(16) jurisdiction over the "protection of trade and commerce against unlawful restraints and monopolies."

As introduced, section 5 of the legislation provides that the agreement shall be deemed to comply in all respects with the parties obligations under title 49 United States Code, and any competition laws." While not explicitly defined in the legislation, "competition laws" encompass those related to the protections of trade against unlawful restraints, price discrimination, price fixing, abuse of market for anticompetitive purposes, and monopolies. Principle competition laws in the United States include the Sherman Act of 1890, Clayton Act of 1914, and Federal Trade Commission Act. Competition-related aspects of the agreement to which section 5(a) of this legislation pertains are presently being litigated

in Federal district court.[1] As introduced, section 6 of the legislation provides the Department of Transportation exclusive authority to review actions taken to implement the agreement "with respect to any Federal competition laws * * * that may otherwise apply." This provision would have stripped authority from Federal antitrust enforcement agencies (Department of Justice and Federal Trade Commission) to review competitive aspects of the agreement.

To ensure that this agreement is not exempt from antitrust scrutiny, the Committee adopted by voice vote an amendment offered by Chairman Sensenbrenner (with the support of Ranking Member Conyers) to strike the antitrust exemption contained in section 5. The amendment also strikes language in section 6 of the underlying bill providing the Department of Transportation exclusive authority to review or enforce competition-related aspects of the agreement. Finally, the amendment adopted by the Committee contained a clear savings clause to preserve an antitrust remedy for competitive violations stemming from the July 11, 2006 agreement and the implementation of this legislation. It is the view of the Committee that competitive aspects of the July 11, 2006 agreement must be assessed in accordance with Federal antitrust law and established antitrust principles, and that any perceived or actual conflict between the July 11, 2006 and the antitrust laws must be resolved in favor of the antitrust laws.

BACKGROUND AND NEED FOR THE LEGISLATION

GENESIS OF THE "WRIGHT AMENDMENT"

During the 1960s, the cities of Dallas and Fort Worth engaged in a protracted airport rivalry, which resulted from the operation of separate airports just 12 miles from each other.[2] In 1964, Federal regulators ordered the cities to build a single regional airport that served both cities, and the resulting agreement to construct Dallas–Forth Worth International Airport (DFW) included a joint bond ordinance providing for the project's financing and for the eventual phase-out of commercial passenger flights at competing airports in the area, including Dallas' Love Field.[3]

The bond ordinance was adopted in 1968, and in 1970, the eight airlines then servicing the region signed agreements to move their operations to DFW. Southwest Airlines, which then served intrastate destinations originating from Love Field, refused to move its operations to DFW, and was sued by the cities of Dallas and Fort Worth, which alleged that permitting Southwest to operate at Love Field threatened the financial security of DFW. However, the court held in favor of Southwest Airlines, and the Fifth Circuit affirmed the decision in two separate opinions.[4]

In 1978, Congress passed the Airline Deregulation Act to foster airline competition. Shortly thereafter, Southwest Airlines applied for the right to start a Love Field-to-New Orleans route, which the Civil Aeronautics Board granted. In order to prevent Southwest

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[1] *See Love Terminal Partnership, L.P. and Virginia Aerospace* v. *City of Dallas, et. al, Federal District Court for the Northern District of Texas* (306–CV1279–D).

[2] *See City of Dallas* v. *S.W. Airlines Co.*, 371 F. Supp. 1015, 1019 (N.D. Tex. 1973).

[3] *See generally, Jennifer Wang, Time for Congress to Spread Love in the Air: Why the Wright Amendment, and Why it Deserves Repeal Today,* Journ. of Air Law and Comm., (Spring 2005).

[4] *See City of Dallas* v. *S.W. Airlines Co.*, 494 F.2d 773, 775 (5th Cir. 1974) and *S.W. Airlines Co.* v. *Tex. Int'l Airlines, Inc.*, 546 F.2d 84, 103 (5th Cir. 1977).

from expanding service from Love Field, former House Speaker Jim Wright, attached the "Wright Amendment" to the International Air Transportation Competition Act of 1979. The law, often called a "compromise" between the parties, contains a general prohibition on interstate commercial aviation to or from Love Field in Dallas, Texas, with four exceptions. The Wright Amendment:

- Permits ten interstate charter flights each month to and from Love Field;
- Allows flights by "commuter airlines operating aircraft with a passenger capacity of 56 passengers or less;"
- Specifically grandfathers in the existing interstate service that Southwest was providing between Love Field and New Orleans, and;
- Allows "turnaround service" from Love Field to one or more points within the States of Louisiana, Arkansas, Oklahoma, and New Mexico, provided that the carrier does not offer through or connecting service with any other air carrier outside the listed States.

In 1997, Congress passed the Shelby Amendment, which added Kansas, Alabama and Mississippi to the list of states that airlines could serve directly from Love Field.[5] In 2005, the Senate passed H.R. 3058, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies: FY2006 Appropriations Act. The legislation prohibits funds from being used to enforce the Wright Amendment with respect to flights between Love Field, Texas, and one or more points within the State of Missouri, thereby adding Missouri to the list of exempted states.

LEGAL CHALLENGES TO THE WRIGHT AMENDMENT

In 1989, the Wright Amendment was challenged in Federal court on the grounds that it violated the right to interstate travel and violated the First Amendment by limiting information passengers could receive from airlines at Love Field. The Fifth Circuit found that a law violates the right to interstate travel only if it actually deters such travel and upheld the restriction on commercial speech because it advanced the government's substantial interest in providing "a fair and equitable settlement for [the] dispute" between Dallas and Fort Worth.[6] The State of Kansas also challenged the constitutionality of the Wright Amendment asserting similar violations. However, these claims were rejected.[7]

AIRLINE DEREGULATION, COMPETITION AND THE WRIGHT AMENDMENT

When enacting the Airline Deregulation Act (ADA), Congress sought "maximum reliance on competitive market forces, and on actual and potential competition," to bring "efficiency, innovation, and low prices," to the air travel industry.[8] Through the ADA, Congress aimed to provide better transportation services to consumers

[5] Department of Transportation & Related Agencies Appropriations Act of 1998, Pub. L. No. 105–66, § 337, 111 Stat. 1425.
[6] *Cramer* v. *Skinner*, 931 F.2d 1020, 1022 (5th Cir. 1991).
[7] *Kansas* v. *United States*, 16 F.3d 436 (D.C. Cir. 1994).
[8] 49 U.S.C. § 40101(a).

by strengthening "competition among air carriers [and] * * * to prevent unreasonable concentration in the air carrier industry."[9]

The Wright Amendment expressly protects DFW from competition from Love Field and establishes a monopoly on long-haul air travel at DFW, dominated by American Airlines. DFW has grown into the third-busiest airport in the world, with American Airlines controlling 82 percent of outgoing flights. Consequently, the Wright Amendment may be viewed as inconsistent with the pro-competitive goals of the Airline Deregulation Act, which was enacted to prevent "unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation."[10] In addition, the entry of low cost carriers, such as Southwest, has been found to reduce average prices in a market by as much as 54 percent, and can stimulate traffic by as much as 174 percent.[11]

CURRENT MARKET FEATURES OF DALLAS–FORTH WORTH AIR TRANSPORTATION MARKETPLACE

The Dallas–Fort Worth region is served by one large hub airport, DFW, and one medium hub airport, Love Field.[12] The airports rank 3rd and 56th nationally in total passengers. Between April 2005 and March 2006, the most recent period for which data is available from the Bureau of Transportation Statistics (BTS), DFW enplaned 51.5 million passengers while enplanements at Love Field were about 5.99 million.

According to the BTS, American is the nation's largest airline having an almost 15 percent share of the U.S. market in the year running from April 2005 to March 2006. Southwest, which controls about 10.9 percent of the U.S. market, is the nation's most profitable airline and is one of a very small number of airlines that has remained profitable throughout the post-September 11th period. American is clearly the dominant air carrier at DFW. According to the BTS, between April 2005 and March 2006, approximately 85 percent of all passengers at DFW boarded American and American regional air carrier flights. Delta Airlines accounts for about 2.78 percent and the next largest air carrier share is United Airlines at about 2 percent. Southwest is clearly the dominant air carrier at Love Field. According to the BTS, between April 2005 and March 2006, Southwest had a 95 percent market share at Love Field. Continental Express accounted for roughly 4.5 percent of the passengers. American, which leases three gates at the main terminal, accounted for 0.5 percent of the passengers.[13] This data demonstrates considerable market power by American Airlines at DFW and Southwest Airlines at Love Field.

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[9] *See id.* at § 40101(f).
[10] 49 U.S.C.A. § 40101(a)(10).
[11] *See* Entry and Competition in the U.S. Airline Industry: Issues and Opportunities, Transportation Research Board, Special Report 255, (1999), p. 52.
[12] *See* H.R. Rep. No. 109–600 Part 1.
[13] *See supra,* note 2.

"AGREEMENT AMONG CITIES OF DALLAS, FORT WORTH, SOUTHWEST AIRLINES, AMERICAN AIRLINES, AND THE DALLAS–FORT WORTH INTERNATIONAL AIRPORT BOARD"

On June 15, 2006, the mayors of Dallas and Fort Worth and other officials held a press conference to announce that the cities, the DFW Airport Board, Southwest Airlines, and American Airlines had reached an agreement on a future configuration of Love Field (DAL) that contains the following provisions.

Love Field capacity

• Repeals the Wright Amendment in 2015 by lifting all existing domestic flight restrictions at Love Field; until 2015, existing domestic flight restrictions will remain at Love Field (direct flights will be limited to: Missouri, Alabama, Mississippi, Kansas, Louisiana, New Mexico, Arkansas, and Oklahoma).

• Immediately reduces the number of gates at Love Field from 32 to 20, with Southwest receiving 16 of the remaining gates (it has 21 now), American Airlines two (it has three now), and Continental Airlines two (same as today). Six unused gates in a secondary terminal would be demolished.

• Immediately allows through-ticketing from Love Field. Southwest, American and Continental may also market connecting service from Love Field to cities outside the Wright Amendment's geographic area. Previously, in what is known as the "Wright two-step", a passenger who wanted to fly from Love Field to an airport outside the Amendment's geographic area would have to purchase a second ticket from that city to a city within the Amendment's geographic area.

• Limits all future commercial passenger service out of Love Field to domestic operations.

• Commits the City of Dallas to invest up to $200 million in airport improvements at Love Field, including development of new main terminal; and immediately raises landing fees to help pay for new terminal and other infrastructure improvements.

Penalties

• If Congress expands the Wright Amendment's geographic area between now and 2015 and Southwest Airlines begins service to points outside the geographic area in response to such action, Southwest would lose eight gates at Love Field.

• If Southwest or American choose to operate from another airport within an 80–mile radius of Love Field (excluding DFW for American), each airline would surrender an equivalent number of gates at Love Field (which would be made available to other airlines).

Effective date

• The agreement must be codified by Congress.

• The agreement is null and void if Congress fails to codify the agreement by December 31, 2006, unless the parties agree otherwise.

ANTITRUST ASPECTS OF THE AGREEMENT

On July 17, 2006, an antitrust suit was filed by Love Terminal Partners against the parties to the agreement (see *Love Terminal Partnership, L.P. and Virginia Aerospace* v. *City of Dallas, et. al, Federal District Court for the Northern District of Texas* (306–CV1279–D). The suit asserts that the agreement represents an illegal restraint of trade expressly intended to allocate geographic markets between American Airlines and Southwest Airlines, to limit competition by other competitors, and to destroy a privately-owned terminal that competes directly with facilities owned by the "conspiring parties." The suit further alleges that this illegal combination in restraint of trade will significantly reduce competition and produce immediate harm to consumers. It also alleges that the agreement would significantly reduce competition by prohibiting Southwest from competing with American Airlines in the provision of non-stop long haul flights for another eight years. Finally, the complaint states that Southwest Airlines agreed to this limitation in return for the City of Dallas' commitment to limit gate capacity at Love Field, a restriction that would protect Southwest Airlines' dominant position at Love Field for the next 22 years and award it a monopoly over long-haul flights in and out of Love Field beginning in eight years.

Proponents of H.R. 5830 assert that the legislation provides congressional approval to an agreement that pertains to a "local issue," but the agreement has national consequences. Specifically, the agreement directly impacts all airlines that would otherwise compete from Love Field, and has a direct impact on all airline passengers who might utilize Dallas–Forth Worth Airport or Love Field for flights throughout the United States. Moreover, any effort to undermine the Federal antitrust law is an inherently national exercise. The agreement contained in H.R. 5830 provides that the number of gates at Love Field would be immediately and permanently reduced from 32 to 20. In order to accomplish this end, existing gate facilities would be physically demolished. Southwest would control 16 of these remaining gates, while American and Continental would get two each. No international flights to or from Love Field would be permitted. The agreement also prohibits Southwest Airlines from providing air passenger service from DFW for nearly two decades. These restrictions raise clear competitive considerations.

To ensure that this agreement is not exempt from antitrust scrutiny, the Committee adopted by voice vote an amendment offered by Chairman Sensenbrenner (with the support of Ranking Member Conyers) to strike the antitrust exemption contained in section 5 of the legislation and to strike language in section 6 of the underlying bill that would have provided the Department of Transportation exclusive authority to review or enforce competition-related aspects of the agreement. In addition, the amendment offered by Chairman Sensenbrenner adopted by the Committee by voice vote contained a clear savings clause to preserve an antitrust remedy for competitive violations stemming from the July 11, 2006 agreement contained in H.R. 5830.

The antitrust saving clause states: "Nothing in this Act, or any amendment made by this Act, shall modify, impair, or supersede

the operation of the antitrust laws." It is the view of the Committee that competitive aspects of the July 11, 2006 agreement must be assessed in accordance with Federal antitrust law and established antitrust principles, and that any perceived or actual conflict between the July 11, 2006 agreement, this legislation, and the antitrust laws be resolved in favor of the operation and application of the antitrust laws.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 5830.

COMMITTEE CONSIDERATION

On September 13, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 5830, as amended, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 5830.

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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives 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. 2679, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 14, 2006.

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. 5830, the Wright Amendment Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5830—Wright Amendment Reform Act

H.R. 5830 would amend provisions of federal law that set certain restrictions on commercial air transportation to and from Love Field, an airport located near the cities of Dallas and Forth Worth, Texas. Based on information from the Department of Transportation, CBO estimates that enacting H.R. 5830 would have no significant impact on the federal budget. The bill would not affect direct spending or revenues.

H.R. 5830 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would make the necessary changes in federal law to implement an agreement among the cities of Dallas and Forth Worth and American and Southwest Airlines. Any costs to those cities of the state of Texas would be incurred voluntarily.

On July 21, 2006, CBO transmitted a cost estimate for S. 3661, a bill to amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 19, 2006. On July 24, 2006, CBO transmitted a cost estimate for H.R. 5830 as ordered reported by the House Committee on Transportation and Infrastructure on July 19, 2006. S. 3661 and the two versions of H.R. 5830 are similar, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll.

This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5830 will provide congressional approval of an agreement among the City of Dallas, Texas; the City of Fort Worth, Texas; American Airlines; Southwest Airlines; and Dallas–Fort Worth International Airport (DFW) on July 11, 2006, regarding air service at Dallas Love Field.

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

Sec. 1. Short title

This title provides that the short title of the legislation is the "Wright Amendment Reform Act."

Sec. 2. Modification of provisions regarding flights to and from Love Field, Texas

Subsection (a) amends section 29 of the International Air Transportation Competition Act of 1979 (the 'Wright Amendment') to allow air carriers serving Love Field to offer for sale and provide through service and ticketing to or from Love Field and any United States or foreign destination, through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri and Alabama.

Subsection (b) repeals section 29 of the International Air Transportation Competition Act of 1979 on the date that is eight years after the date of enactment of this Act.

Sec. 3. Treatment of international nonstop flights to and from Love Field, Texas

This section prohibits nonstop commercial air service between Love Field and any foreign destination.

Sec. 4. Charter flights at Love Field, Texas

Subsection (a) limits charter flights at Love Field to destinations within the United States. Subsection (b) limits charter flights at Love Field beyond the States of Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri and Alabama to no more than 10 per month per air carrier. Subsection (c) requires that charter flights operated by air carriers leasing gates at Love Field depart from and arrive at a leased gate.

Sec. 5. Agreement of the parties

As introduced, this section provides that any action taken by the parties that is reasonably necessary to implement the provisions of the July 11, 2006 agreement, and the agreement itself, is deemed to comply in all respects with the parties obligations under title 49, United States Code, and any "competition laws." The Committee adopted by voice an amendment offered by Chairman Sensenbrenner to strike the reference to competition laws. The amendment struck this provision to ensure that the July 11, 2006 agreement be assessed in accordance with all applicable antitrust laws.

This section also requires the City of Dallas to reduce, as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates. Provides that costs associated with reduction of gates are permissible airport costs and not to be considered revenue diversion. Subsection (c) of this section assures that nothing in the July 11, 2006 agreement or the legislation affects general aviation service at Love Field. Subsection (d) provides that no action is to be taken by DOT or FAA that is inconsistent with the local agreement or that challenges its legality. Subsection (e) clarifies the scope of legal protection afforded under Section 5(a).

Sec. 6. Department of Transportation review

As introduced, this section would have provided the Department of Transportation with exclusive authority to review actions taken under the legislation and the July 11, 2007 agreement, and action to implement the agreement with respect to any Federal competition laws not included in title 49, United States Code. The Com-

mittee adopted by voice vote an amendment offered by Chairman Sensenbrenner to strike "competition laws" from this section of the legislation. The Committee took this action to preserve the enforcement authority of Federal antitrust agencies—including the Department of Justice and Federal Trade Commission—over competitive aspects of the July 11, 2006 agreement.

Sec. 7. Applicability

This section limits applicability of the legislation to actions taken by the parties to the July 11 agreement at Love Field and any airport owned or operated by the City of Dallas or the City of Fort Worth. The amendment offered by Chairman Sensenbrenner and adopted by the Committee by voice vote added an antitrust saving clause to this section. The amendment provides: "Nothing in this Act, or any amendment made by this Act, shall modify, impair, or supersede the operation of the antitrust laws." It is the view of the Committee that Any perceived or actual conflict between this legislation or the July 11, 2006 agreement and the antitrust laws shall be resolved in favor of the operation and application of the antitrust laws.

Sec. 8. Effective date

This section provides that the legislation takes effect on the date FAA notifies Congress that aviation operations in the airspace serving Love Field and the Dallas–Fort Worth area can be accommodated in full compliance with FAA safety standards and without adverse effect on use of airspace in the area. The Committee expects that FAA will complete the evaluations required for this one-time notification as soon as practicable.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT OF 1979

* * * * * * *

SEC. 29. (a) * * *

* * * * * * *

(c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, Alabama, Mississippi, Missouri, and Texas by an air [carrier, if (1) such air carrier does not offer or provide any through service or ticketing with another air carrier or foreign air carrier, and (2) such air carrier does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside any such State. Nothing in this subsection shall be construed to give authority not otherwise provided by law to the Secretary of Transportation, the

Civil Aeronautics Board, any other officer or employee of the United States, or any other person.] *carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.*

* * * * * * *

[Effective on the last day of the 8 year period beginning on the date of the enactment of this Act (Wright Amendment Reform Act), section 29 of the International Air Transportation Competition Act of 1979, as amended by section 2(a) of such Act, is repealed, shown below.]

[SEC. 29. (a) Except as provided in subsection (c), notwithstanding any other provision of law, neither the Secretary of Transportation, the Civil Aeronautics Board, nor any other officer or employee of the United States shall issue, reissue, amend, revise, or otherwise modify (either by action or inaction) any certificate or other authority to permit or otherwise authorize any person to provide the transportation of individuals, by air, as a common carrier for compensation or hire between Love Field, Texas, and one or more points outside the State of Texas, except (1) charter air transportation not to exceed ten flights per month, and (2) air transportation provided by commuter airlines operating aircraft with a passenger capacity of 56 passengers or less.

[(b) Except as provided in subsections (a) and (c), notwithstanding any other provision of law, or any certificate or other authority heretofore or hereafter issued thereunder, no person shall provide or offer to provide the transportation of individuals, by air, for compensation or hire as a common carrier between Love Field, Texas, and one or more points outside the State of Texas, except that a person providing service to a point outside of Texas from Love Field on November 1, 1979, may continue to provide service to such a point.

[(c) Subsections (a) and (b) shall not apply with respect to, and it is found consistent with the public convenience and necessity to authorize, transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, Alabama, Mississippi, Missouri, and Texas by an air carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.

[(d) This section shall not take effect if enacted after the enactment of the Aviation Safety and Noise Abatement Act of 1979.]

COMMITTEE JURISDICTIONAL LETTERS

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

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ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

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ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

July 24, 2006

The Honorable J. Dennis Hastert
Speaker of the House
H-313 The Capitol
Washington, DC 20515

Dear Mr. Speaker:

I write to request a sequential referral of H.R. 5830, the "Wright Amendment Reform Act." As reported by the Committee on Transportation and Infrastructure on July 19, the legislation contains substantial subject matter within the rule X jurisdiction of the Committee on the Judiciary.

Section 3 of the legislation provides that "no person shall provide, or offer to provide, air transportation of passengers for compensation for hire between Love Field, Texas, and any point or points outside the 50 States of the District of Columbia on a nonstop basis . . . . Section 5 of the legislation provides that an agreement among the city of Dallas, Forth Worth, Southwest Airlines, American Airlines, and the Dallas-Fort Worth International Airport Board "shall be deemed to comply in all respects with the parties obligations under title 49 United States Code, and any competition laws." While not explicitly defined in the legislation, "competition laws" encompass those related to the protections of trade against unlawful restraints, price discrimination, price fixing, abuse of market for anti-competitive purposes, and monopolies. Principle competition laws in the United States include the Sherman Act of 1890, Clayton Act of 1914, and Federal Trade Commission Act.

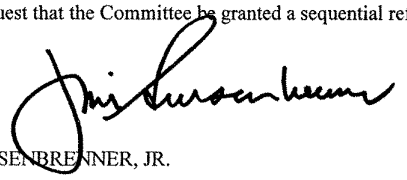
Competition-related aspects of the agreement to which section 5(a) of this legislation pertains are presently being litigated in Federal district court (*see* Love Terminal Partnership, L.P. and Virginia Aerospace v. City of Dallas, et. al, Federal District Court for the Northern District of Texas (306-CV1279-D). In addition to depriving litigants from seeking judicial relief for anti-competitive claims, section 5 further deprives legal relief for other injuries stemming from title 49 of the United States Code. This section implicates the jurisdiction of the Committee on the Judiciary under rule X(1)(l)(1)(1)("The judiciary and judicial proceedings, civil and criminal" & (16) "Protection of trade and commerce against unlawful restraints and monopolies").

The Honorable J. Dennis Hastert
July 24, 2006

Section 5(d) of this legislation provides that "notwithstanding any other provision of law, the Secretary of Transporation and the Administrator the Federal Aviation Administration may not make findings or determinations, issue order or rules . . . or take any other action . . . that is inconsistent with the provision of the agreement referred to in subsection (a) or that challenges the legality of any of its provisions." This broad grant of authority to extinguish legal rights presently accorded in United States law implicates the Committee on the Judiciary's jurisdiction under rule X(1)(l)(1)((1)("The judiciary and judicial proceedings, civil and criminal.")

Given the substantial jurisdictional interest of the Committee on the Judiciary in H.R. 5830, I respectfully request that the Committee be granted a sequential referral of this legislation.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman

The Honorable J. Dennis Hastert
The Honorable John Conyers
The Honorable John Boehner
The Honorable Don Young
The Honorable James Oberstar

FJS/rt

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, SEPTEMBER 13, 2006

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

The Committee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill, H.R. 5830, the "Wright Amendment Reform Act," for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 5830, follows:]

I

109TH CONGRESS
2D SESSION

H. R. 5830

To amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2006

Mr. YOUNG of Alaska (for himself, Mr. OBERSTAR, Mr. MICA, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MARCHANT, Ms. GRANGER, Mr. BARTON of Texas, Mr. BURGESS, Mr. EDWARDS, Mr. GOHMERT, Mr. HALL, Mr. SAM JOHNSON of Texas, and Mr. SESSIONS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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A BILL

To amend section 29 of the International Air Transportation Competition Act of 1979 relating to air transportation to and from Love Field, Texas.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Wright Amendment
5 Reform Act".

SEC. 2. MODIFICATION OF PROVISIONS REGARDING FLIGHTS TO AND FROM LOVE FIELD, TEXAS.

(a) EXPANDED SERVICE.—Section 29(c) of the International Air Transportation Competition Act of 1979 (Public Law 96–192; 94 Stat. 35) is amended by striking "carrier, if (1)" and all that follows and inserting the following: "carrier. Air carriers and, with regard to foreign air transportation, foreign air carriers, may offer for sale and provide through service and ticketing to or from Love Field, Texas, and any United States or foreign destination through any point within Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri, and Alabama.".

(b) REPEAL.—Section 29 of the International Air Transportation Competition Act of 1979 (94 Stat. 35), as amended by subsection (a), is repealed on the date that is 8 years after the date of enactment of this Act.

SEC. 3. TREATMENT OF INTERNATIONAL NONSTOP FLIGHTS TO AND FROM LOVE FIELD, TEXAS.

No person shall provide, or offer to provide, air transportation of passengers for compensation or hire between Love Field, Texas, and any point or points outside the 50 States or the District of Columbia on a nonstop basis, and no official or employee of the Federal Government may take any action to make or designate Love Field as

1 an initial point of entry into the United States or a last
2 point of departure from the United States.

3 **SEC. 4. CHARTER FLIGHTS AT LOVE FIELD, TEXAS.**

4 (a) IN GENERAL.—Charter flights (as defined in sec-
5 tion 212.2 of title 14, Code of Federal Regulations) at
6 Love Field, Texas, shall be limited to—

7 (1) destinations within the 50 States and the
8 District of Columbia, and

9 (2) no more than 10 per month per air carrier
10 for charter flights beyond the States of Texas, New
11 Mexico, Oklahoma, Kansas, Arkansas, Louisiana,
12 Mississippi, Missouri, and Alabama.

13 (b) CARRIERS WHO LEASE GATES.—Except for any
14 flights operated by any agency of the Federal Government
15 or by any air carrier under contract with any agency of
16 the Federal Government and except in irregular oper-
17 ations described in the agreement referred to in section
18 5(a), all flights operated to or from Love Field by air car-
19 riers that lease terminal gate space at Love Field shall
20 depart from and arrive at one of those leased gates.

21 (c) CARRIERS WHO DO NOT LEASE GATES.—Char-
22 ter flights from Love Field, Texas, operated by air carriers
23 that do not lease terminal space at Love Field may operate
24 from nonterminal facilities or one of the terminal gates
25 at Love Field.

SEC. 5. AGREEMENT OF THE PARTIES.

(a) IN GENERAL.—Any action taken by the city of Dallas, the city of Fort Worth, Southwest Airlines, American Airlines, and the Dallas-Fort Worth International Airport Board (referred to in this section as the "parties") that is reasonably necessary to implement the provisions of the agreement dated July 11, 2006, and entitled "CONTRACT AMONG THE CITY OF DALLAS, THE CITY OF FORT WORTH, SOUTHWEST AIRLINES CO., AMERICAN AIRLINES, INC., AND DFW INTERNATIONAL AIRPORT BOARD INCORPORATING THE SUBSTANCE OF THE TERMS OF THE JUNE 15, 2006 JOINT STATEMENT BETWEEN THE PARTIES TO RESOLVE THE 'WRIGHT AMENDMENT' ISSUES", and the agreement, shall be deemed to comply in all respects with the parties' obligations under title 49, United States Code, and any competition laws.

(b) LOVE FIELD GATES.—

(1) IN GENERAL.—The city of Dallas, Texas, shall reduce, as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates. Thereafter, the number of gates available for such service shall not exceed a maximum of 20 gates.

(2) PERMISSIBLE AIRPORT COSTS.—Costs associated with reduction of gates under paragraph (1)

1 are permissible airport costs and shall not be consid-
2 ered as revenue diversion.
3 (c) GENERAL AVIATION.—Nothing in the agreement
4 referred to in subsection (a) and this Act shall affect gen-
5 eral aviation service at Love Field, including flights to or
6 from Love Field by general aviation aircraft for air taxi
7 service, private or sport flying, aerial photography, crop
8 dusting, corporate aviation, medical evacuation, flight
9 training, police or fire fighting, and similar general avia-
10 tion purposes, or by aircraft operated by any agency of
11 the Federal Government or by any air carrier under con-
12 tract to any agency of the Federal Government.
13 (d) ENFORCEMENT.—Notwithstanding any other
14 provision of law, the Secretary of Transportation and the
15 Administrator of the Federal Aviation Administration may
16 not make findings or determinations, issue orders or rules,
17 withhold airport improvement grants or approvals thereof,
18 deny passenger facility charge applications, or take any
19 other action, either self-initiated or on behalf of third par-
20 ties, that is inconsistent with the provisions of the agree-
21 ment referred to in subsection (a) or that challenges the
22 legality of any of its provisions.
23 (e) LIMITATIONS ON STATUTORY CONSTRUCTION.—
24 (1) IN GENERAL.—Nothing in this Act shall be
25 construed—

(A) to limit the obligations of the parties under the programs of the Department of Transportation and the Federal Aviation Administration relating to aviation safety, labor, environmental, national historic preservation, civil rights, small business concerns (including disadvantaged business enterprise), veteran's preference, disability access, and revenue diversion;

(B) to limit the authority of the Department of Transportation or the Federal Aviation Administration to enforce the obligations of the parties under the programs described in subparagraph (A);

(C) to limit the obligations of the parties under the aviation security programs of the Department of Homeland Security and the Transportation Security Administration at Love Field, Texas;

(D) to authorize the parties to offer marketing incentives that are in violation of Federal law, rules, orders, agreements, and other requirements; or

(E) to limit the authority of the Federal Aviation Administration or any other Federal

1 agency to enforce requirements of law and
2 grant assurances (including subsections (a)(1),
3 (a)(4), and (s) of section 47107 of title 49,
4 United States Code) that impose obligations on
5 Love Field to make its facilities available on a
6 reasonable and nondiscriminatory basis to air
7 carriers seeking to use such facilities, or to
8 withhold grants or deny applications to appli-
9 cants violating such obligations with respect to
10 Love Field.
11 (2) FACILITIES.—Paragraph (1)(E)—
12 (A) shall only apply with respect to facili-
13 ties that remain at Love Field after implemen-
14 tation of subsection (b); and
15 (B) shall not be construed to require the
16 city of Dallas, Texas—
17 (i) to construct additional gates be-
18 yond the 20 gates referred to in subsection
19 (b); or
20 (ii) to modify or eliminate preferential
21 leases with air carriers in order to allocate
22 gate capacity to new entrants or to create
23 common use gates, unless such modifica-
24 tion or elimination is implemented on a na-
25 tionwide basis.

SEC. 6. DEPARTMENT OF TRANSPORTATION REVIEW.

The Department of Transportation shall have exclusive authority to review actions taken under this Act (including the agreement referred to in section 5(a)), and actions taken to implement the agreement, with respect to all provisions of title 49, United States Code, and with respect to any Federal competition laws not included in such title that may otherwise apply.

SEC. 7. APPLICABILITY.

The provisions of this Act shall apply only to actions taken by the parties to the agreement referred to in section 5(a) of this Act at Love Field, Texas, and shall have no application to any other airport (other than an airport owned or operated by the city of Dallas or the city of Fort Worth, Texas, or both).

SEC. 8. EFFECTIVE DATE.

Sections 1 through 7 and the amendments made by such sections shall take effect on the date that the Administrator of the Federal Aviation Administration notifies Congress that aviation operations in the airspace serving Love Field and the Dallas-Fort Worth area, Texas, occurring as a result of the agreement referred to in section 5(a) and this Act can be accommodated in full compliance with Federal Aviation Administration safety standards in accordance with section 40101 of title 49, United States

1 Code, and, based on current expectations, without adverse
2 effect on use of airspace in such area.

○

Chairman SENSENBRENNER. The text as reported by the Committee on Transportation and Infrastructure, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

The Chair recognizes himself for 5 minutes to explain the bill.

H.R. 5830, the "Wright Amendment Reform Act," was introduced on July 8, 2006 and reported from the Committee on Transportation and Infrastructure 8 days later. House Rule 11(1)(1)(16), provides the Committee on the Judiciary with jurisdiction over the protection of trade and commerce against unlawful restraints and monopoly.

As Chairman of this Committee, I have sought to forcefully assert the Committee's mandate to ensure that antitrust laws continue to serve the pro-competitive purposes for which they were established. That is why the Judiciary Committee sought and received a sequential referral of this legislation, which expires on Friday of this week.

The Wright Amendment has a long and colored history. It was enacted into law in the late 1970's and is named after its primary House backer, former Speaker Jim Wright. The amendment generally prohibits interstate and international commercial flights to and from Love Field, Texas, with certain exceptions.

Specifically, the amendment permits commuter airlines operating with a passenger capacity of 56 passengers or less to operate out of Love Field, and presently allows passenger interstate air service between Love Field and Louisiana, Arkansas, Oklahoma and New Mexico. In 1997, Alabama, Kansas and Mississippi were added to this list, and Missouri was effectively added last year.

According to the Bureau of Transportation statistics, between April, 2005 and March, 2006, approximately 85 percent of all passengers at Dallas–Fort Worth Airport boarded American Airlines flights, while Southwest had a 95 percent market share at Love Field. On June 15, 2006, the cities of Dallas and Fort Worth, the Airport Board, Southwest Airlines and American Airlines reached an agreement that would preserve current limitations on flights from Love Field under 2015, while requiring the immediate elimination of 12 gates at Love Field, thus reducing the number of gates from 32 to 20.

Under the agreement, Southwest would control 16 of the remaining gates, while American and Continental would get two each. No international flights to or from Love Field would be permitted. The agreement would be nullified if Congress fails to codify it by December 31, 2006. The legislation we consider today would codify the agreement.

Section 5 of the bill creates an antitrust exemption that provides that the agreement "shall be deemed to comply in all respects with any competition laws." In addition to depriving all private and public litigants from seeking judicial relief for anti-competitive claims stemming from the agreement, section 6 of the legislation provides the Department of Transportation with "exclusive authority to review actions taken under this act with respect to any Federal competition laws not included in such title that might otherwise apply."

These matters clearly affect the jurisdiction of this Committee, and at the appropriate time I will be offering an amendment with Ranking Member Conyers to address the antitrust immunity created by the legislation.

I yield back the balance of my time and recognize the gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

This bill, the codification of a private agreement between private parties, contains language explicitly designed to shield it from any challenge under antitrust laws. This agreement preserves the Wright Amendment for 8 more years, restricts the number of gates at Love Field from 32 to 20, and creates a shield from any antitrust scrutiny.

Both sides of those interested in the bill have made arguments about the relative pro-competitive and anti-competitive aspects of the agreement. Those in favor argue that through ticketing provisions will greatly benefit consumers by eliminating the existing requirement that passengers must purchase two separate tickets to get to Dallas Love Field.

But at the same time, some consumer groups, as well as a coalition that consists of business groups, minority interest groups, elected officials and taxpayers, argue that there are countervailing anti-competitive aspects of the agreement that outweigh any pro-competitive benefits.

For example, many believe that by eliminating 12 gates at Love Field, the agreement severely restricts the ability of competitors to provide service, either now or 8 years from now, when the Wright Amendment is abolished completely. I am not here to day whether or not this agreement is pro-competitive or anti-competitive. It is my jobs to make sure that the Congress doesn't pass legislation that harms the integrity of antitrust laws.

Legislation codifying a private agreement between parties that provides a blanket immunity from any antitrust challenges is exactly the kind of legislation I am talking about. Vigorous enforcement of our antitrust laws is a cornerstone of preserving our free market economy. For over a century, the antitrust laws have provided the ground rules for fair competition, our economic bill of rights, if you will.

Antitrust principles are necessary to preserve competition and to prevent monopolies from stifling innovation. Competition produces better products and lower prices, all to the benefit of consumers.

I urge we give careful consideration to H.R. 5830, and I return any unused time, Mr. Chairman.

Ms. LOFGREN. Mr. Chairman?

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

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, I move to strike the last word. I support H.R. 5830, the Wright Amendment Reform Act. This legislation implements a locally achieved compromise resolving the longstanding controversy over the 1979 Wright Amendment, which imposed federal restrictions on commercial airline service to and from Dallas Love Field. An identical bill, S.3661, is pending in the Senate.

I note Mr. Chairman that all of the key stakeholders—Southwest Airlines, Fort Worth, DFW Airport, American Airlines, and the City of Dallas—support the locally achieved Wright Amendment compromise and urge Congress to approve this legislation. But as Southwest CEO, Herb Kelleher, states: *"The only victor, the only sure fire winner from this locally achieved agreement, is the public*—the public citizens who will find it easier and far less expensive to travel to and from North Texas for business and personal reasons; the citizens who will reap vast economic benefits in their communities from enhanced travel and tourism, at a lower cost."

A key component of the compromise is the change in federal law embodied in the legislation allowing Southwest Airlines to immediately begin selling "through tickets" for travel to and from Dallas Love Field. This change will enable Love Field customers to travel on a one-stop basis to and from cities within our nationwide system which are outside the limited number of states Southwest currently is allowed to serve under the terms of the Wright Amendment.

A recent study indicates that through ticketing at Dallas Love Field will increase passengers traveling to and from North Texas by 2 million annually and produce $259 million per year in fare savings. Additionally, the study found that through ticketing will generate over $2 billion annually in spending and related economic activity for North Texas and for many communities outside the current Wright Amendment perimeter.

Because of through ticketing, the local compromise will have a very significant and widespread economic impact from the beginning. Further, the local compromise calls for the Wright Amendment to be repealed in its entirety in eight years, allowing airlines serving Love Field to fly nonstop to any domestic destination—generating substantial additional economic benefits for consumers nationwide.

Approval of this legislation by the Congress will bring to a close a dispute that preoccupied the Dallas Metroplex for nearly 30 years all the while negatively impacting the rest of the nation. I applaud Congresswoman Eddie Bernice Johnson and other members of the Texas congressional delegation for their yeoman work in bringing this saga to a happy conclusion. I also ask unanimous consent that a letter dated September 11, 2006 from Congresswoman Eddie Bernice Johnson of Texas to me in support of the Wright Amendment be made part of the record.

I ask my colleagues to join me in supporting this legislation. I ask you to vote for H.R. 5830.

Thank you Mr. Chairman. I yield back the balance of my time.

[Additional material submitted by Ms. Jackson Lee follows:]

SENIOR DEMOCRATIC WHIP

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
RANKING MEMBER, SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON RAILROADS

COMMITTEE ON SCIENCE
SUBCOMMITTEE ON RESEARCH
SUBCOMMITTEE ON ENERGY

DEMOCRATIC STEERING AND POLICY COMMITTEE

CHAIR, TEXAS DEMOCRATIC DELEGATION

CONGRESSIONAL BLACK CAUCUS
CHAIR, 107TH CONGRESS

Eddie Bernice Johnson
Congress of the United States
30th District, Texas

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(214) 922-8885

☐ SOUTH/EAST DALLAS OFFICE:
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DALLAS, TX 75228
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WWW.HOUSE.GOV/EBJOHNSON/

September 11, 2006

Honorable Sheila Jackson-Lee
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Jackson-Lee:

It is my understanding the Judiciary Committee will consider H.R. 5830, The Wright Amendment Reform Act of 2006, at its next markup. As a co-author of the aforementioned bill, I write to you today to urge your strong support and passage of the underlying bill without amendment. The fundamental objective of H.R. 5830 is to open the North Texas market to more competition in air transportation, not to further restrict it.

In June of this year the City of Dallas, the City of Fort Worth, Southwest Airlines, American Airlines, and D/FW International Airport reached a tentative agreement to resolve long-standing issues regarding the Wright Amendment. As you aware, the 1979 law imposes long-haul flight restrictions to and from Dallas Love Field Airport located within the heart of my congressional district. The agreement marks an important milestone, as efforts to repeal the restrictions over the past decades have served as a major point of contention amongst North Texas stakeholders. Over the past decades this issue has created consternation, robust litigation and often times flat out distrust amongst the cities of Dallas and Fort Worth. To have all of the principal stakeholders in solidarity behind an agreement that ultimately lifts long-haul flight restrictions at Dallas Love Field is nothing short of amazing.

Because the Wright Amendment is a federal law, the locally achieved compromise is dependent on the passage of federal legislation for implementation. Again, I strongly support H.R. 5830 in its current form and respectfully ask for your assistance in ensuring the underlying bill is passed without amendment. With your help the North Texas region can move one step closer to bringing an end to one of aviation's most storied stand-offs.

Thank you in advance for your time and consideration regarding this very important matter to my congressional district. Should you have questions or require any additional information please do not hesitate to contact me personally.

Sincerely,

Eddie Bernice Johnson
Member of Congress

PRINTED ON RECYCLED PAPER

Chairman SENSENBRENNER. Are there amendments?

The Chair has an amendment, and the clerk will report that amendment.

The CLERK. "Amendment to H.R. 5830, offered by Mr. Sensenbrenner and Mr. Conyers. Page 4, line 17, strike 'and any competition laws'"——

[The amendment offererd by Mr. Sensenbrenner and Mr. Conyers follows:]

H.L.C.

AMENDMENT TO H.R. 5830

OFFERED BY MR. SENSENBRENNER / CONYERS

Page 4, line 17, strike ", and any competition laws".

Page 8, beginning on line 6, strike ", and with respect to any Federal competition laws not included in such title that may otherwise apply".

Page 8, line 10, insert "(a) LIMITATION.__" before "The".

Page 8, after line 15, insert the following:

1 (b) PRESERVATION OF ANTITRUST LAWS.—Nothing
2 in this Act, or any amendment made by this Act, shall
3 modify, impair, or supersede the operation of the antitrust
4 laws.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The Chair recognizes himself for 5 minutes.

This amendment, which I offer with the support of Ranking Member Conyers, strikes the antitrust exemption contained in section 5 of the legislation. It also amends the legislation to preserve the authority of the antitrust enforcement agencies to monitor competitive aspects of the agreement.

When enacting the Airline Deregulation Act of 1978, Congress sought "maximum reliance on competitive market forces to bring efficiency, innovation and low prices" and to prevent "unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier to unreasonably increase prices, reduce services, or exclude competition in air services."

With limited exceptions, the Wright Amendment expressly insulates Dallas–Fort Worth from interstate and international air passenger competition from Dallas Love Field. The legislation we consider today codifies an agreement among private and local government parties that raises serious competitive concerns. Specifically, the agreement would require the demolition of existing gates at Love Field that might be utilized by airlines to offer additional air passenger services to points across the United States.

The agreement would also prohibit Southwest Airlines, a low-cost carrier that has brought robust competition to cities throughout the country, from offering service from DFW until the year 2025. As a result, the agreement directly limits the ability of all airlines to offer service from Love Field and directly impacts consumers throughout the country who fly to, from or through the Dallas airports.

These restrictions clearly implicate the antitrust laws, and legislative efforts to defeat the antitrust laws are of national significance. I urge Members to support this amendment and to assure that this agreement is not immunized from the antitrust scrutiny it deserves.

The Chair yields back the balance of his time and recognizes the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I rise in support of this amendment, after a good deal of reflection and discussion with my colleagues. I believe that by striking the language creating a shield from any challenges under antitrust law, or other competition laws, this amendment preserves the agreement made by the parties, while at the same time protecting the integrity of the antitrust laws themselves.

This agreement is touted as being good for consumers and procompetitive. I believe that. If this is indeed the case, then shielding it from any challenges under the antitrust laws is unnecessary. This Committee seldom blesses requests for antitrust exemptions. I see no reason for that to happen now.

I urge my colleagues to support this amendment, and I yield back the time.

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. Of course.

Ms. LOFGREN. I appreciate the gentleman for yielding.

I just want to raise a concern. I know this is probably surprising to some because I have been historically such an advocate for anti-

trust, but I do note that this Committee has supported much broader exemptions in other arenas, for example baseball and football. While I am a cosponsor of the bill that would repeal the Wright Amendment completely, my concern is this, that if we do not support the agreement that has been made, we will fail in opening up this market at all.

That is detrimental to consumers. Southwest has I think unfairly been precluded from this market. Although ordinarily I would be sympathetic to the amendment, from a practical matter I fear that if this amendment passes we may in fact see the situation that currently exists continue, which is a much worse constraint on consumer rights and on trade.

It is on that basis that I do not support the amendment, but I do appreciate the gentleman's courtesy in yielding to me. I yield back.

Chairman SENSENBRENNER. Will the gentleman from Michigan yield to me?

Mr. CONYERS. Yes. I hope you don't shock me like the gentlelady from California did.

[Laughter.]

Chairman SENSENBRENNER. The Chair knows that Mr. Conyers knows that in 5½ years I have minimized the number of surprises to him. This will not be a surprise.

What this amendment does is simply state that the antitrust aspects will be litigated. Rather than taking to the Committee the issue of whether there is an antitrust violation, it ought to be taken to the judge. So I guess what we are saying is that the antitrust laws are there for a purpose. They are working and there should not be a legislative determination of what is or is not anticompetitive. The standard antitrust standards that have been applied to commercial arrangements for over 100 years should be applied to this one as well.

I thank the gentleman from Michigan for giving me the time.

Mr. CONYERS. May I close by pointing out that the baseball exemption was given by the courts. I have not supported any of these antitrust exemptions. I think the Consumer Federation of America letter to us describes the circumstance. I think the Chairman is correct that this will be litigated and determined in the courts of this coming to pass.

But I ask unanimous consent to put the Consumer Federation of America letter in the record.

Chairman SENSENBRENNER. Without objection.

[The letter follows:]

Consumer Federation of America

September 6, 2006

The Honorable Arlen Specter, Chairman
Committee on the Judiciary
United States Senate
711 Hart Building
Washington, DC 20510

The Honorable Patrick J. Leahy, Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Bldg.
Washington, DC 20510

The Honorable F. James Sensenbrenner, Jr., Chairman
Committee on the Judiciary
United States House of Representatives
2449 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr, Ranking Member
Committee on the Judiciary
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Dear Honorable Sirs:

We understand that your respective committees may soon consider the merits of S. 3661 and H.R. 5830 relating to the so-called "Wright Amendment."

On behalf of the Consumer Federation of America and Consumers Union, we believe the "agreement" offered by the cities of Dallas and Fort Worth, American Airlines, Southwest Airlines and Dallas-Fort Worth International Airport is anti-competitive and anti-consumer.

Over two decades ago, consumer advocates first began working for the repeal of the anti-competitive Wright amendment. Never would we have imagined that the dominant carriers in Dallas-Fort Worth would work out a deal that could repeal the

amendment in a manner that would undermine competition and seek to immunize the deal from antitrust scrutiny.

The proposal to reduce gates and limit direct long-haul flights to and from Dallas Love Field airport will deprive consumers of the benefits that true competition could have produced and lead to higher ticket prices, and fewer travel options for consumers. This activity is no doubt designed to protect market share for American and Southwest Airlines at Dallas-Fort Worth International Airport and Dallas Love Field Airport, respectively. While these carriers will benefit from this division of the market and elimination of competition, their gains will come directly at the expense of consumers. Further, immunity provisions in the legislation offers the parties to the agreement protection from any anti-competitive behavior or violation of existing antitrust laws. As the Justice Department has said, reducing the number of gates at Love Field airport from 31 to 20 "is the very kind of collusive output reduction that the antitrust laws are designed to prevent."

Clearly this legislation dramatically fails consumers and is a violation of antitrust laws. We urge you to reject this legislation.

Thank you for considering our views.

Sincerely,

Gene Kimmelman
Vice President
Federal and International Relations
Consumers Union

Mark Cooper
Federal Research Director
Consumer Federation of America

Mr. CONYERS. I return my time.

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus, for what purpose do you seek recognition?

Mr. BACHUS. Mr. Chairman, just to clarify.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Mr. Chairman, I agree with a lot of what you say philosophically, but as a practical matter, it is the Wright Amendment which is anti-consumer and anti-competition. What we have here is we have an agreement in this legislation that we are considering is an agreement that a lot of us encouraged the airlines and the city of Dallas and the local folks to come up with a consensus.

What their agreement does is, and I think it is in 2015, does away with the Wright Amendment. That is really what all our goals ought to be.

Chairman SENSENBRENNER. Would the gentleman yield?

There are certain parts of this agreement that go on until 2025.

Mr. BACHUS. Well, I will say this, as a practical matter, I think what you said is absolutely true. If we adopt this amendment, we will litigate this thing for the next 10 or 15 years. It will be tied up in court. If we pass this legislation, the citizens of Dallas and North Texas and people that are flying in and out of that area, will immediately see some relief from the Wright Amendment.

Now, my State already is exempted from this agreement, so we already get a lot of benefit. But I think that benefit ought to be extended to the others. I think about eight or nine States are exempted. It ought to be extended to all 50 States. I understand philosophically where you are coming from, but we ought to encourage local folks to work things out. The agreement that Southwest and American Airlines and the city of Dallas have made, the estimates are it is going to save the people of that area of Dallas–Fort Worth, it is going to save them hundreds of millions of dollars in lower tickets and lower fares.

We all know that when you put in, and what the Chairman says is absolutely right. This amendment is going to put it in the courts for the next 10 years and tie it up. It is basically going to do away with an agreement that I didn't think would ever be made, that the airlines and the city have gotten together with the local folks, and done what they think is best. For us to intervene and sort of pose a legal technicality and put that in their way, I think is to handicap a good agreement that the cities made, an agreement that is going to benefit consumers.

What this amendment does unwittingly is it allows the Wright Amendment to stay on the books as is, while it is litigated for the next 10 or 15 years. So I am going to oppose the amendment.

Mr. BERMAN. Will the gentleman yield for one sentence?

Mr. BACHUS. I think my time is up.

Chairman SENSENBRENNER. No, it isn't, but if you yield back, I will recognize the gentleman from Texas.

Mr. BACHUS. I will yield to Mr. Gohmert.

Mr. GOHMERT. Just one comment. I would agree with the gentleman. I didn't think an agreement between these diverse airlines, the people of these cities that have been warring over this issue for

so long, was possible. But them coming to an agreement has given me hope for the Middle East.

Mr. SCOTT. Mr. Chairman, I missed the profound comment by the gentleman. I just couldn't hear him.

Mr. GOHMERT. All these diverse parties, the two airlines, American and Southwest, the people of Dallas, the surrounding communities that have been at war over this issue, the fact that they could come together with an agreement at all gives me great hope for the Middle East.

Mr. BACHUS. I would yield to the gentleman, but I think the gentleman, I would like his assessment of if this is put in the courts, his assessment of how long it will take the courts to litigate this thing and come to an agreement.

Mr. BERMAN. Would the gentleman yield on that issue?

Mr. BACHUS. Yes.

Mr. BERMAN. I don't understand. The Wright Amendment passes. It does not have a shield.

Mr. BACHUS. The Wright Amendment is law today.

Mr. BERMAN. Yes.

Mr. BACHUS. The Wright Amendment is anti-consumer. It costs the traveling public.

Mr. BERMAN. In some Congresses, only Mr. Lungren and I are——

Mr. BACHUS. And this begins to do away with it.

Mr. BERMAN. The Wright Amendment passes. It doesn't have a shield. It has been litigated for years and it is in effect. If we take the shield out of this bill, and this bill passes, the bill will go into effect and maybe it will be litigated for years, but it won't be the Wright Amendment that will be litigated, it will be this law.

Mr. BACHUS. No, we will just change what we are litigating.

Mr. BERMAN. Well, but I don't understand.

Mr. BACHUS. The bottom line will be——

Chairman SENSENBRENNER. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from Michigan and the Chair.

Those in favor will say "aye."

Opposed, "no."

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

Are there further amendments?

If there are no further amendments, a reporting quorum is present. The question occurs on the motion to report the bill, H.R. 5830.

Excuse me. Without objection, the version of the bill reported by the Committee on Transportation and Infrastructure and laid down as the base text is adopted as amended.

A reporting quorum is present. The question occurs on the motion to report the bill, H.R. 5830, favorably as amended.

All in favor will say "aye."

Opposed, "no."

The ayes appear to have it. The ayes have it. The motion to report the bill favorably as amended is adopted.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days, as provided by the House rules, in which to submit additional, dissenting, supplemental or minority views.

[Intervening business.]

The purpose for this markup having been completed, without objection, the Committee stands adjourned.

[Whereupon, at 10:46 a.m., the Committee was adjourned.]

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