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Chairman Lee, Ranking Member Booker, and Members of the Subcommittee:

Thank you for the opportunity to testify on the state of competition in the airline industry.

My name is Ganesh Sitaraman, and I am a professor of law at Vanderbilt University, where I hold the New York Alumni Chancellor's Chair in Law and am the director of the Vanderbilt Policy Accelerator for Political Economy and Regulation. I am co-author of a textbook, *Networks, Platforms, and Utilities: Law and Policy*,[1] which includes chapters on the transportation sector, and the author of a general audience book, *Why Flying is Miserable: And How to Fix It*,[2] which offers a history of airline regulation and deregulation. I have also co-authored two white papers on air transportation policy.[3] My testimony today draws on this scholarship, and it represents my personal opinions, not the views of Vanderbilt University.

Air travel is one of humanity's extraordinary achievements, and it has become essential to modern life, commerce, and national security. The people who work in the industry—from baggage handlers and customer service representatives to air traffic controllers, flight attendants, and pilots—do us all a great service in making air travel possible. I believe it is essential that we have an air transportation system that is resilient and competitive, and that serves the public interest as successfully as possible. Regrettably, I do not think we are meeting that standard.

My message to the Subcommittee is this: the airline industry is not resilient enough. It is not competitive enough. And it is not serving the public or national interest well enough. We have cycles of boom and bust, repeated bankruptcies and bailouts, reduced competition and rising concentration, too few daily domestic flights, and a steadily worsening experience for passengers—particularly in rural areas and small and midsize cities, where service has eroded and in some cases been eliminated.

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[1] MORGAN RICKS, GANESH SITARAMAN, SHELLEY WELTON & LEV MENAND, NETWORKS, PLATFORMS, AND UTILITIES: LAW AND POLICY (2022).
[2] GANESH SITARAMAN, WHY FLYING IS MISERABLE: AND HOW TO FIX IT (2023).
[3] William J. McGee & Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, Am. Econ. Liberty Project & Vand. Pol'y Accelerator (Jan. 2024); Ganesh Sitaraman & Anirudh Jonnavithula, *Policy Blueprint: Improving the Airline Passenger Experience*, Vand. Pol'y Accelerator (Nov. 2024).

But the good news is that Congress can fix flying. There are policies that could enhance competition, stabilize the industry and make it more resilient, expand access to smaller communities, and improve the passenger experience. Addressing the problems in the sector will require understanding how we got here and thinking creatively about the solutions.

In this testimony, I first describe the history of airline regulation and deregulation and outline some of the challenges facing the sector today. The key lesson from this history is that without pro-competitive, pro-resilience, pro-growth, and pro-passenger rules, this industry will never meet the high standard for critical infrastructure that our country needs.

I end by offering some ideas for how policymakers can address these problems. As with all policy choices, there are benefits, costs, and tradeoffs to all of these ideas. But given the vital importance of this industry to our society, economy, and national security, I believe Congress should consider significant policy reforms, and I thank this Subcommittee for leading that conversation. We need fresh, new ideas, so we can ultimately achieve an airline industry that is thriving, stable, and competitive, and that meets our needs as a nation.

I. Airlines and the American Tradition of Regulated Capitalism

From the earliest days of flight, the federal government played a critical role in supporting and shaping the airline industry. The first period of U.S. airline policy, from the Wright Brothers flight at Kitty Hawk in 1903 until the end of the 1920s, was defined by public financial support in the form of airmail subsidies and contracts with the Post Office. The second period runs from the 1930s to the Airline Deregulation Act of 1978. During the Great Depression, the airline industry was in a difficult situation, losing money and needing to consolidate to survive. President Hoover's administration sought to end the crisis in the industry by gathering the industry to consolidate routes and airlines, so that the industry as a whole would have less wasted capital and more stability. Early in the Franklin Roosevelt administration, congressional Democrats attacked these "spoils conferences" as corrupt. Their initial legislative response led to the 1934 "airmail fiasco" in which the Army Air Corps temporarily took over mail operations, with disastrous results. Congress and the Roosevelt administration – urged by the airline industry – once again needed to act.

After years of turmoil, the ultimate legislation, the Civil Aeronautics Act of 1938, did not embrace either endless public subsidies or destructive competition. Instead, it adopted a system of regulated capitalism that Edward Gorrell, head of the main industry-group, the Air Transport Association, called "the traditional American way."

The American tradition of regulated capitalism, drawn from the English common law and developed over centuries across sectors including transportation, communications, energy, and banking, recognized that some industries had infrastructural features, network effects, or tendencies toward monopoly and oligopoly that meant instability, abuses of power, and destructive competition. In these sectors—what my coauthors and I call networks,

platforms, and utilities—the law imposed public obligations to ensure fair and reliable access to the basic infrastructure of commerce: neutrality rules, duties to serve, just and reasonable rates, structural separations to prevent conflicts of interest and accumulations of power, and when necessary, restricted entry to prevent destructive competition or facilitate geographic networks.

In the Civil Aeronautics Act of 1938, Congress adopted this approach. The Act created the Civil Aeronautics Authority (later the Civil Aeronautics Board, or CAB) and charged it with regulating rates, routes, and entry into the industry. Coming out of the crisis of the 1930s, the CAB needed to stabilize the industry, ensure reliable nationwide service (including to smaller communities), prevent destructive competition, and promote the public interest. The understanding then was that without regulation, the industry would suffer from bankruptcies and consolidation, eventually leading to oligopoly or monopoly. With regulation, the CAB would be able to preserve and maintain a good measure of competition, in spite of the industry's inherent tendencies toward consolidation.

To greatly simplify the law and history over the next forty years, the regulated system worked through a set of mutually reinforcing structural features:

- Entry and Route Allocation: Carriers needed a certificate to operate and were allocated routes so that airlines served a mix of high-traffic, profitable city-pairs and less-profitable smaller markets. This ensured access to the whole country, including smaller markets.

- Rate Regulation: Fares were ultimately set at cost plus a reasonable return on investment, with a target load factor. This framework enabled capital investment while protecting passengers from monopoly pricing and price discrimination. By the later part of the era, an "equal fares for equal miles" approach meant prices depended on distance traveled. This further ensured affordable access to smaller markets. The CAB also authorized discounts once the industry was stable enough, in order to lower prices and spur demand.

- Neutrality Rules and Structural Separations: Airlines had duties to serve "without undue or unreasonable preference or advantage" and faced prohibitions on leveraging their power into other parts of the aviation industry. This prevented conflicts of interest, favoritism, and accumulations of power.

Over the next forty years, by and large, this system worked pretty well. The industry stabilized after the second World War. The CAB reduced the concentration of the big four airlines, from carrying 81.9 percent of passenger traffic in 1939 to only 58.6 percent in 1972.[4] Meanwhile, the number of flights and passengers flying increased steadily. Prices decreased steadily. And new technologies like jets and then wide-bodied jets were introduced into the market.

[4] WILLIAM K. JONES, CASES AND MATERIALS ON REGULATED INDUSTRIES 1091 (2d ed., 1976).

II. Deregulation and Its Immediate Results

By the late 1960s and early 1970s, the airlines were once again in a period of crisis, now largely stemming from three factors. First, passenger growth started to slow around 1970. Second, airlines had bought new fleets of wide-bodied jets, which increased costs—and when coupled with slower growth, meant emptier planes. Jet fuel prices also increased significantly in the early 1970s. Under the standard approach to rate regulation, prices were a function of costs – so higher costs meant regulators needed to authorize higher prices. The airlines asked the Nixon administration's CAB to do so, and it undertook an industrywide fare investigation to reset prices. To address the problem of excess capacity, the head of the CAB also ordered a near-complete moratorium on new routes and allowed for reductions of the number of flights on some routes.

Around the same time, intellectuals and activists on the right and left started pushing to eliminate the CAB entirely. Some economists and legal scholars argued that the industry was structurally competitive rather than having a tendency toward oligopoly or monopoly. They, and consumer advocates like Ralph Nader, also argued that regulators were captured by industry. Congress engaged in investigations into the airline industry, led by Senator Ted Kennedy and his then-counsel Stephen Breyer. Ultimately, President Jimmy Carter signed the Airline Deregulation Act in 1978.

The proponents of airline deregulation believed that if airlines could charge whatever they wanted and fly wherever they wanted, prices would go down, there would be more flights, and there would not be any significant downsides. They based this assessment on a number of assumptions and predictions.

- Entry and Competition: Open entry would yield vigorous competition. The Kennedy subcommittee investigation even cited one prediction that the industry could support "as many as 200 efficient airline companies."
- Prices: Fares would fall across the board as competition disciplined incumbents. There would be less frills and lower prices, which consumers preferred.
- Small Communities and Cross-Subsidies: Geographic access would be unaffected, because cross-subsidies did not exist "to any significant extent"; market forces were sufficient to sustain service to smaller markets.
- Market Structure: The theory of contestable markets meant new competitors could easily enter and threaten incumbents. Proponents did not believe economies of scale and barriers to entry were significant, and they did not think predatory pricing or destructive competition would be likely or lead to consolidation.

Indeed, when the Air Transport Association, the trade association of the airlines at the time, said that deregulation would lead to consolidation and abandoning routes, the Kennedy Subcommittee report said that would not happen in the "real world." The subcommittee predicted instead a "highly competitive world with flexible prices, where planes could not fly 86.7 percent full on average and carriers could not earn $2 billion in profit per year."

Some disagreed with this assessment. Frank Lorenzo, head of a small airline called Texas International, thought the result of deregulation would be "a couple of large airlines." Senator Barry Goldwater predicted that in the short term, there would indeed be more flights and lower prices, but in the longer term, there would be bankruptcies and mergers, with an eventual increase in concentration and fares.

At the end of the 1980s, a decade after deregulation, one of the most prominent advocates of deregulation, former CAB chair Alfred Kahn, admitted there had been some "surprises" in the time since deregulation: "1) the turbulence and painfulness of the process; 2) the reconcentration of the industry; 3) the intensification of price discrimination and monopolistic exploitation; and 4) the deterioration in quality of airline service."[5]

- Competition and Entry: After an initial burst of new upstart airlines entering the market, over the course of the decade, there were waves of bankruptcies and mergers. By 1985, the ten big airlines' market share had dropped from 87% to 75%, but by the end of the decade, the nine biggest airlines had a 92% market share—higher than before deregulation. Kahn put it this way: "[O]ne of the most pleasant surprises . . . was the large-scale entry of new, highly competitive carriers, so probably the most unpleasant one has been the reversal of that trend—the departure of almost all of them, the reconcentration of the industry both nationally and at the major hubs, the diminishing disciplinary effectiveness of potential entry by totally new firms, and the increased likelihood, in consequence, of monopolistic exploitation."

- Economies of Scale and Network Effects: The dynamics of the 1980s proved decisively that network effects and economies of scale are features of this sector. Hub-and-spoke systems emerged and proliferated because they maximize network value—a single connection into a hub opens access to every destination served by that hub. Hubs also enable powerful competitive advantages: greater frequency, larger route networks, lower costs, and the value of loyalty programs. Kahn conceded that he and others "were misled by the apparent lack of evidence of economies of scale," and that they did not foresee the "thoroughgoing movement to hub-and-spoke operations." The result, however, was increased concentration at major airports. According to one analysis, in 1977 many major airports had dominant carriers with 20-40 percent market share; but by 1987, those numbers had jumped to 60-80 percent.[6]

- Prices: On average, inflation-adjusted yields (revenue per passenger mile) declined at about the same rate after deregulation as they had before. But critically, fare declines were uneven: dense, competitive routes saw dramatic reductions, but

[5] Alfred E. Khan, *Surprises of Airline Deregulation*, 78 AM. ECON. REV. 316 (1988).
[6] Andrew R. Goetz & Paul Stephen Dempsey, *Airline Deregulation Ten Years After: Something Foul in the Air*, 54 J. AIR L. & COM. 927, 941 (1989). For example, according to Goetz & Dempsey's data, Detroit's top airline in 1977 had a 21 percent share, which increased to nearly 65 percent a decade later. Memphis went from 40 percent to nearly 87 percent.

thinner, less competitive routes saw little change or even increases. Kahn himself admitted that prices were not uniformly lower, saying it was "unquestionable" they had "actually increased" in some cases, and observing that he "should have recognized . . . the naturally monopolistic or oligopolistic character of most airline markets."

- Predation and Destructive Competition: Rather than being rare, predatory pricing and "sandwiching" were highly effective strategies. Incumbents matched or undercut upstarts' fares, added new flights to squeeze small entrants, and used loyalty programs and customer reservations services (CRS) to steer traffic away from competitors.

- Geographic Access: Some supporters of deregulation regretted their votes because of the impact airline deregulation had on access to air services in their states. Tennessee Senator Jim Sasser thought, as early as 1985, that deregulation was no longer seen favorably "in Congress as House members and Senators see air service into their [s]tates declining precipitously." Senator Robert Byrd of West Virginia went further and apologized publicly for his vote. He said that he "regret[ted] that he voted for airline deregulation. It has penalized States like West Virginia, where many of the airlines pulled out quickly . . . and prices zoomed into the stratosphere . . . . So we have poorer air service and much more costly air service. . . . I admit my error; I confess my unwisdom, and I am truly sorry for having voted for deregulation."

All policy choices have tradeoffs, and there were certainly tradeoffs with airline deregulation. But critically the case for deregulation was based on assumptions and predictions that were not born out – and that left even the most sophisticated experts who had advocated for deregulation admitting they were mistaken in how they understood and analyzed the industry.

III. The Longer-Term Story

Deregulation took place nearly fifty years ago, but it has shaped the dynamics of the industry along multiple dimensions since that time. In this part, I highlight a few of the ways in which deregulation transformed the industry.

Stability and the "Too Important to Fail" Problem

Airlines are an essential service for a modern economy. We rely on them for commerce, social and family life, tourism, and other activities. A stable airline industry is thus critically important. But since deregulation, the industry has become increasingly unstable. Rather than having consistently profitable, stable airlines, there are cycles of booms and busts. In some years, airlines make huge profits. But there have also been waves of bankruptcies and bailouts. With the first Gulf War, the former industry titan Pan-Am went bankrupt. After September 11, Congress passed a bailout package for the airlines. In the wake of the Great Recession, American Airlines filed for bankruptcy. And, most recently, in the midst of

COVID-19, Congress passed a public support program for the airlines. When times are good, private shareholders capture the benefits. But when times are bad, there are either disruptive bankruptcies or taxpayers have to step in to save the industry. A better system would be one in which taxpayer support is not needed for airlines to operate stably and profitably, while providing this essential public service.

Consolidation, Fortress Hubs, and Common Ownership

Since the 1990s, we have continued to see consolidation in the industry. Mergers have transformed the market from one with many players – recall Pan Am, TWA, Northwest, AirTran – to one with four major carriers. Indeed, the four biggest airlines today have a larger market share than they did during regulation. Looking at revenue passenger miles, for example, in 1977 the four biggest carriers had 51 percent market share.[7] By 2024-2025, the four biggest carriers had a 68 percent market share.[8] Notably, as the market has become increasingly concentrated, the number of domestic flights has declined, even though the population of the country has grown significantly. In December 2003, the airlines flew 807,000 domestic flights. Last Christmas season, the airlines flew only 692,000 flights in December.[9] Of course, less supply means fewer options and higher prices.

At the airport level, hub concentration has become an increasing reality, with some "fortress hubs" having extraordinary levels of single-carrier dominance. For example, Delta has 74 percent in Atlanta; American has 67 percent in Charlotte; United has 59 percent in Newark.[10] Fortress hubs have at least two downstream effects. First, analysts have long understood that fares to and from hubs are higher than on competitive routes.[11] Second, hubs create fragility: a weather event, IT outage, or cyberattack at a single fortress hub could impact the entire network, canceling or delaying thousands of flights. We have all experienced this: high winds in Dallas or a winter storm in Atlanta cause delays and cancellations that cascade throughout the country.

Finally, some have argued that common ownership has compounded anticompetitive dynamics in the industry.[12] Today, a handful of institutional investors own significant

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[7] Author's calculations drawing on data from Air Transport Ass'n, Air Transport 1978, available at https://airlines.org/wp-content/uploads/2014/08/1978.pdf.
[8] Data is from Bureau of Transportation Statistics, TranStats, available at https://www.transtats.bts.gov/(data is for July 2024-June 2025).
[9] Data is from Bureau of Transportation Statistics, TranStats, Traffic Data, https://www.transtats.bts.gov/traffic/.
[10] Bureau of Transportation Statistics, TransStates, Airport Data, available at https://www.transtats.bts.gov/airports.asp (data is for July 2024-June 2025). Other analysts report even higher levels of concentration. *See, e.g.*, James Pearson, *Revealed: The USA's Fortress Hubs in December*, SIMPLY FLYING, Nov. 21, 2024, https://simpleflying.com/usa-fortress-hubs-december/.
[11] *See, e.g.,* Severin Borenstein, *Hubs and High Fares: Dominance and Market Power in the U.S. Airline Industry*, 20 RAND J. ECON. 344 (1989); Gunnar Olson, *Flights Expensive from Your Airport? How to Break Free as a 'Hub Captive,'* THRIFTY TRAVELER (Feb. 5, 2025), available at https://thriftytraveler.com/guides/travel/hub-captives/.
[12] Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267 (2016).

shares in multiple rival airlines simultaneously. Research shows that horizontal shareholding raises prices, and some legal scholars have argued that this practice is already illegal under the antitrust laws.[13]

The Passenger Experience

The passenger experience has degraded along multiple dimensions—from confusing fare structures to uncomfortable seats to changing loyalty programs. Since the 1980s, airfares have become more complex. Airlines have multiple fare classes and they have instituted systems of dynamic pricing so that tickets cost different prices at different times. At least one airline has said it will use artificial intelligence (AI) to enhance its system of dynamic pricing,[14] and companies that help airlines with these services recognize their work would create far more dynamic prices—and would mean higher prices.[15] Airlines have also increasingly unbundled fares to separate baggage, seat selection, and other things from airfare. For many airlines, you now have to pay extra for a basic economy seat assignment. Booking websites have gotten increasingly complicated and difficult to navigate as unbundling becomes more common.

On the comfort side, to take just one example, seat sizes have shrunk over the years. Since the 1980s, economy class legroom in the big four airlines have fallen about 2-5 inches and seat widths have dropped about 2 inches.[16] This is perhaps the most obvious way in which flying has become increasingly miserable.

Loyalty programs, which expanded in the 1980s as a way for big airlines to entice passengers away from using smaller competitors, have evolved into co-branded credit card ecosystems. These systems have opaque exchange rates, and the airlines can change the terms of the deal anytime they want—including to reduce program benefits. Airlines also charge to use or transfer points, with the fees sometimes exceeding the value of the points themselves.[17]

Airlines and the Geography of Economic Growth

Smaller cities can often face higher fares, less frequent service, and a greater likelihood of losing nonstop links altogether. In recent years, major carriers have dropped dozens of

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[13] *Id*.
[14] Kelly McCarthy, *How Delta is Using AI for Ticket Pricing and What it Means for Air Travel*, ABC NEWS (Aug. 5, 2025), https://abcnews.go.com/GMA/Travel/delta-ai-ticket-pricing-means-air-travel/story?id=124343088. For Delta's explanation, see Delta Responds to Misinformation around AI Pricing (Aug. 7, 2025), https://news.delta.com/delta-responds-misinformation-around-ai-pricing.
[15] Max Chafkin, *AI Flight Pricing Can Push Travelers to the Limit of Their Ability to Pay*, BLOOMBERG (Aug. 4, 2025), https://www.bloomberg.com/news/articles/2025-08-04/how-ai-can-raise-airline-ticket-prices; Fetcherr, Dynamic Pricing in Airlines: How AI is Revolutionizing Airline Revenue Management (Dec. 5, 2024), https://www.fetcherr.io/blog/dynamic-pricing-in-aviation.
[16] Mack Deguerin, *Why are Airline Seats so Small: It all Started in 1978*, POP. SCI. (May 1, 2025), https://www.popsci.com/science/why-are-airline-seats-so-small/.
[17] Ganesh Sitaraman & William J. McGee, *The Bad News about your Airline Points*, CNN (May 10, 2024), https://www.cnn.com/2024/05/03/opinions/airline-points-rewards-programs-sitaraman-mcgee.

cities from service—and not just small towns. During the pandemic, America, Delta, and United dropped dozens of cities from service. Some cities, like New Haven, Connecticut and Toledo, Ohio have lost all daily flight services from a major carrier. To get even some service, Cheyenne, Wyoming guarantees a minimum revenue for an airline. The Essential Air Service program does not work for these cities. It is a narrow program focused on the smallest markets, and in any case, its funding is perennially threatened.

To be sure, some cities losing big carrier service might be an opportunity for smaller carriers. But the dynamics of the industry mean that there are downsides for passengers in these communities: big carriers have huge networks, so you can travel from a smaller city to a larger one and get a flight to wherever you need to go. For smaller carriers, access to these small markets does not necessarily mean they can fly passengers to where they need to go: hub concentration and limits on gate access mean major airports are not necessarily accessible at scale to small carriers. And, of course, if the connection from a smaller city to a larger one is on a small carrier without a big network, passengers might have to purchase two separate tickets, which is inconvenient and can cause issues ranging from baggage transfers to delays and cancellations.

More broadly, the loss of service is a real downside for these communities. Tourism, family visits, and commerce all depend on transportation. Organizations want to host national conventions in cities with frequent, reliable, affordable air service. Loss of service can thus harm economic growth. To put a fine point on it: Imagine being an entrepreneur with an idea for the next great Fortune 500 company: would you start your business in a city without frequent air service?

IV. IDEAS FOR FIXING FLYING

The United States does not need to have an airline industry that suffers from all of these problems. These problems are a function of legal and policy choices—and Congress has the power to change laws and policies to address them. In this section, I focus on some ideas for how to fix flying. These ideas all have benefits and drawbacks, like any policy idea does. But unless fresh, new ideas are on the table for discussion and debate, progress on improving air travel will remain elusive.

No More Flyover Country

Congress should act to address the problem of access to air travel in many smaller and mid-sized cities. Doing so is critical to improving economic growth and opportunity because air travel is an essential part of our transportation infrastructure. One big challenge is that routes to smaller cities can be uneconomical because the volume of passengers is insufficient to support the cost of the flights. Direct subsidies have not worked to solve this problem. A structural solution is needed.

- The “Draft Pick” System: One way to address this problem is to adopt a “draft pick” system, in which smaller and mid-sized cities with no or limited air service are akin to the players and the four biggest airlines in the country are akin to the teams. The

airlines would each get a pick order, and have to pick a city from the list until all cities have at least one airline. The airline would have a duty to serve that city with a minimum amount of service. To prevent monopoly pricing, the price on these routes would be no more than an affordable, preset price based on mileage traveled. This would also encourage airlines to pick cities near hubs, adding convenience for passengers. New competitors, of course, would also be free to fly to these cities if they desired, to expand access and enhance competition. But the key feature is that it would guarantee some service between these smaller and mid-sized cities and major hubs. Notably, depending on the design of this program, Congress could consider eliminating the Essential Air Service program, thereby saving taxpayer funds.

Increasing Resilience

For air travel to be resilient, airlines need to be able to withstand shocks better. This includes macro-level demand shocks, as happened with the Gulf War, September 11, and COVID-19, and micro-level shocks, such as extreme weather at a single airport.

- Resilience Plans and Rainy Day Funds: Airlines need to prepare for macro-level shocks because they are, unfortunately, inevitable. Airlines should be required to develop resilience plans that describe what they would do in the event of a crisis. For example, if there is a pandemic, war, cyberattack, failure of IT systems, terrorist attack, recession, or serious weather event, how will they respond? What plans do they have in place to keep employees and training pipelines? How would they maintain schedules? Funding is also necessary in a crisis, as the history of bailouts and public support shows. To prevent future taxpayer bailouts, airlines could be required either to create their own rainy day funds, or to pay into a joint rainy day fund. The fund would be the first financial resource for airlines in a major crisis, so they do not need to immediately ask for taxpayer support. These policies could apply to the biggest airlines to mitigate the fact that they are "too important to fail."

- Caps on Major Hub Concentration: Micro-level resilience—either due to weather or other events—is often tied to a problem at a single large airport hub or set of large airports in a region. Hub concentration can make these problems worse. If there are high winds in Dallas, or if there's a snowstorm in Atlanta or Chicago, delays and cancellations can affect thousands of flights, and not just flights to or from those destinations. Reducing hub concentration, coupled with resilience planning, will help address this problem while enhancing competition (discussed below). One way to do so would be to simply place a cap on the market share one airline can have at airports of a given, large size. A cap—for example, 30 percent—would mean that airlines would have to deconcentrate from fortress hubs. But it would also likely mean that other cities would have growth in airports, helping their economies and increasing the strength of other nodes in the network. This would, in turn, improve resilience.

Enhancing Competition

Consolidation and concentration in the airline industry is already at astonishing levels historically. There are multiple ways that Congress could enhance competition in the airline industry.

- Caps on Major Hub Concentration: As mentioned above, a cap on market share at large airports would deconcentrate the airline industry significantly. If Delta, for example, only had 30 percent of the market in Atlanta, other airlines would make up the other 70 percent. This could include major carriers like United, American, and Southwest, or value airlines and smaller carriers. More competition would help Atlantans have more choices. Notably, it is not clear what effect this would have on employment. The airlines expanding their Atlanta operations would need more staff, so it is possible total employment might stay the same or even increase. The same story could replicate around the country, creating far more competition at and between hubs.

- Gate Access: Critical to competition is access to gates and other basic airport infrastructure (such as check-in desks and baggage services). Data from the National Air Carriers Association shows that gate usage declined from before to after COVID-19 and that gates are underutilized at some major airports.[18] This suggests that large carriers might be leaving gates unused. One answer is to ensure that gates get used more efficiently. Senators Hawley and Warren have proposed one solution, the Airport Gate Competition Act, which would help address this problem by capping gates that are exclusive to one airline and ensuring a minimum percentage of common use gates that multiple airlines could use.

- Address Horizontal Shareholding: Antitrust scholar Einer Elhauge has argued that horizontal shareholding violates the antitrust laws. Congress could push the Department of Justice to take action on horizontal shareholding in this sector or simply enact a bright-line ban on horizontal shareholding in the airline industry.[19]

Improving the Passenger Experience

Flying is miserable, and it's getting worse. There are many things Congress could do to improve the passenger experience.

- Seat Sizes: Congress should set minimum seat sizes, or direct the FAA to do so, taking into account comfort of passengers.

- Safe Travel with Infants: Parents flying with infants are forced to make a difficult choice—fly with an infant on their lap, which is free but not recommended because

[18] Reauthorization 2023 ULCC Priorities, Nat'l Air Carrier Ass'n. 13 (2023), https://www.wefly4you.com/Reauthorization2023ForWeb.pdf.
[19] Elhauge, *supra* note 12.

it is unsafe in the event of turbulence, and paying for an additional seat for their child to sit in a car seat, which is safe but may not be affordable for many families. Parents should not have to choose between costs and safety for their new babies. To address this issue, parents should simply be able to purchase an adjacent economy airline seat for an infant using a carseat for a nominal fee, such as $50. This would be similar to the many other areas of the economy in which children get significant discounts. The fixed price discount fare would only apply to infants in carseats, not to kids large enough to sit on their own.

- Ban Personalized and Dynamic Pricing: Airlines have long used dynamic pricing to charge different prices to similar people. Most obviously, they regularly charge different prices based on when exactly you buy your plane tickets. The expanded use of advanced algorithms and AI, coupled with vast data collection and group and individual profiling, means that airlines are now moving toward a system of dynamic pricing that could be supercharged to raise prices on passengers. They could potentially even personalize prices to charge up to what data suggests the specific person would be willing to pay. We are dangerously close to a world in which airlines, knowing you travel to one city every year for Christmas, start specifically charging you higher rates for that specific flight knowing you will need to pay it. At a minimum, Congress should get ahead of this problem and ban personalized pricing. Congress could go even further and end dynamic pricing by simplifying pricing by fare class. Both of these proposals would enhance competition by making it easier for passengers to comparison shop.

- End Abusive Loyalty Program Policies: Congress should address unfair, deceptive, and abusive practices in loyalty programs. This could include banning retroactive devaluations and decreases in benefits, especially when linked to a credit card; requiring transparent exchange rates between points and dollars; banning added fees for transferring or using points; and mandating that points and dollars can be used interchangeably without blackout periods or limits.

- Expand Passengers' and States' Ability to Sue Airlines: The Airline Deregulation Act of 1978 preempted states' ability to "enact or enforce" any laws or regulations related to a "price, route, or service," and the Supreme Court has interpreted this provision extremely broadly.[20] Congress could put an end to preemption and expand states' and passengers' ability to hold airlines liable.[21]

There are, of course, many policies Congress could adopt, and in other work, I have discussed these proposals in more detail and offered other ideas that I believe are also

[20] *See* Northwest v. Ginsburg, 572 U.S. 273 (2014).
[21] For a discussion of these issues and a proposal, see William J. McGee & Lee Hepner, *How to Address the Air Travel Crisis: Eliminating the Airlines Legal Liability Shield*, Am. Econ. Liberties Project (Sept. 2022), https://www.economicliberties.us/wp-content/uploads/2022/09/2022-9-07-AirTravelCrisis_Quick-Take-FINAL.pdf.

worthy of serious public debate. But these ideas provide an excellent start for making flying more resilient, more competitive, and less miserable.

VI. Conclusion

We do not have to accept miserably crammed seats, limited flight choices, or communities losing their last daily service. None of this is inevitable. The problems in air travel are the result of policy choices—and in particular, the choice to deregulate the industry based on a faulty understanding of the dynamics of the sector. That choice has led to serious problems—oligopoly, service deterioration, and geographic inequality—and so far, the response has been to stick with the same failed policy approach.

It is time to change course. We can choose to make the airline industry more resilient. We can choose to make it more competitive. We can choose to ensure access to communities all across the country and to improve economic growth and opportunity. And we can choose to make flying less miserable for passengers.