CLEARING THE SKIES: EXPOSING CORRUPTION IN AMERICA'S AIR TRAVEL INDUSTRY

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I. INTRODUCTION 195
II. HISTORY OF THE AIRLINE INDUSTRY 196
III. UNFAIR INDUSTRY PRACTICES 197
  A. Deceptive Contracts of Carriage 198
  B. Predatory Pricing 199
IV. ECONOMIC AND SOCIETAL IMPACT 201
  A. Economic Impact 201
  B. Technology Issues 202
  C. Environmental Issues and Greenwashing 203
V. REGULATIONS IN RESPONSE TO INDUSTRY ISSUES 207
  A. Airline Passenger Protection Partnership 207
  B. Federal Aviation Administration Reauthorization Act 208
  C. Consumer Input 209
  D. The Issue with Deregulation 209
VI. PROPOSED SOLUTIONS 209
  A. Cabotage 209
  B. Resilience Plans 210
  C. Increased Government Regulation 211
VII. CONCLUSION 212

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I. INTRODUCTION

Unfair business practices in the United States air travel industry, including misleading contracts of carriage, price gouging, greenwashing, and evasion of federal regulations, undermine consumer trust, distort market competition, and compromise safety and environmental sustainability, necessitating urgent regulatory reform and enhanced oversight to protect both consumers and the integrity of the industry.

The airline industry has been stuck in an era of deregulation since the Airline Deregulation Act (ADA) of 1978, and now many consumers are rallying for increased government oversight.[1] With such practices recently coming to the surface due to intensified consumer unrest, a bipartisan coalition of state attorneys general along with the U.S. Department of Transportation (DOT) Secretary Pete Buttigieg announced the "Airline Passenger Protection Partnership."[2] This program could enhance the DOT's ability to monitor and enforce airlines' adherence to consumer protection laws.[3]

Nevertheless, some stakeholders remain unconvinced that heavier regulation is the solution to the issues that plague America's air travel industry.[4] At its core, air transportation is a business and its functions directly impact our economy, particularly in the employment and tourism sectors.[5] Furthermore, because the air transportation industry has such a large effect on the country's economy, driving up to 5% of the U.S. GDP, aviation is looked upon as a strategic sector by the government.[6]

This paper advocates for regulatory reform in the airline industry to protect consumers from unfair practices. The first section of this article provides a brief history of the airline industry and introduces its regulatory background. The second section addresses prevalent unfair practices that affect consumers. The third section examines the airline industry's broader economic and societal impacts, while the fourth section evaluates the advantages and disadvantages of proposed regulatory reform. Finally, the fifth section presents actionable

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1. William J. McGee, *How to Fix Flying in the U.S.*, PROMARKET (Apr. 16, 2024), https://www.promarket.org/2024/04/16/how-to-fix-flying-in-the-u-s/.

2. CROWELL, *Full Throttle Ahead: DOT and State AG Partnership to Bolster Federal Aviation Investigations Capability*, (Apr. 23, 2024), https://www.crowell.com/en/insights/client-alerts/full-throttle-ahead-dot-and-state-ag-partnership-to-bolster-federal-aviation-investigations-capability.

3. *Id*.

4. Marc Scribner, *Re-regulating Airlines Won't Help Air Travelers*, REASON FOUND. (Nov. 20, 2023), https://reason.org/commentary/re-regulating-airlines-wont-help-air-travelers/.

5. INT'L AIR TRANSP. ASS'N., *The Value of Air Transport to the United States of America*, https://www.iata.org/en/iata-repository/publications/economic-reports/the-value-of-air-transport-to-the-united-states-of-america/.

6. AIRLINES FOR AMERICA, *Impact*, https://www.airlines.org/impact/; Zhang Fangni & Daniel J. Graham, *Air Transport and Economic Growth: A Review of the Impact Mechanism and Causal Relationships*, 40 TRANSP. REV. 506, 506 (Mar. 13, 2020).

solutions for both the industry and the government aimed at enhancing transparency and accountability for consumers.

II. HISTORY OF THE AIRLINE INDUSTRY

The U.S. airline industry began in the early 20th century with airmail routes.[7] This was a time of heavy regulation and government subsidies.[8] During this first decade, "cost overruns, inefficiencies, and political scandal" created a turbulent and confusing landscape for air travel.[9] The first attempts at passenger air travel failed due to inadequate accommodations and limited aircraft performance.[10] In 1938, the Civil Aeronautics Act gave regulatory authority to the Civil Aeronautics Board (CAB), and directed it to create an air transportation system free of "unfair or destructive competitive practices."[11]

The CAB envisioned a bi-level industry in which long distance journeys would be served by big airlines and routes connecting smaller cities and trunk destinations would be served by local-service carriers.[12] However, this led to confusion as many journeys required passengers to change airline mid trip, which resulted in scheduling issues and increasingly high fares. [13]

Furthermore, overcapacity and economic issues were exacerbated in the 1970s with the transition to jet aircrafts.[14] As economic consequences became apparent, the CAB pushed even more regulations on carriers in the form of route moratoriums and capacity limitations; government actors and customers were fed up and called for change.[15] Congress passed the ADA in 1978, which dismantled and phased out the CAB over various time increments ending in 1984 and passed its surviving functions on to the DOT.[16] However, the airlines themselves lobbied against deregulation, and stakeholders now reap the consequences that they tried to warn consumers about.[17]

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7. NAT'L AIR AND SPACE MUSEUM, *Air Mail and the Birth of Commercial Aviation*, SMITHSONIAN (Dec. 9, 2021), https://airandspace.si.edu/stories/editorial/air-mail-and-birth-commercial-aviation.

8. Gerald N. Cook, *A Review of History, Structure, and Competition in the U.S. Airline Industry*, 7 J. OF AVIATION/AEROSPACE EDUC. & RSCH. 33, 42 (1996).

9. *Id*. at 33.

10. NAT'L AIR AND SPACE MUSEUM, *The Early Airlines You Might Not Have Heard Of*, SMITHSONIAN (Dec. 28, 2001), https://airandspace.si.edu/stories/editorial/early-airlines-you-might-not-have-heard.

11. Cook, *supra* note 8, at 33.

12. *Id*. at 34.

13. *Id*.

14. *Id*.

15. *Id*. at 34.

16. *Id.*

17. NAT'L AIR AND SPACE MUSEUM, *Airline Deregulation: When Everything Changed*, SMITHSONIAN (Dec. 17, 2021), https://airandspace.si.edu/stories/editorial/airline-deregulation-when-everything-changed.

The ADA transformed the airline industry and created competition that gave customers more variety at lower prices.[18] Many small airlines began to expand and tried to compete with larger carriers, who responded by lowering prices and doing away with extensive cabin service.[19] However, because there were no longer restrictions on which airlines could service which cities, carriers employed a "hub-and-spoke system" in which a small number of major airports became the main epicenters and served as connecting points.[20] This system increased aircraft efficiency and kept planes boarded, but it also created air traffic congestion and undermined competition which led to heightened fares.[21]

The recession of the 1980s only brought these problems to light as the industry began an economic downturn, and many of the smaller airlines were forced to cut their losses while the large, well-funded airlines fought for their share of the market.[22] Unfortunately, even America's leading international air lines such as Pan Am could not sustain themselves during this time, as deregulation proved cut-throat and costly.[23]

Consequently, several pioneer airlines of the time such as Southwest figured out how to prosper in the face of deregulation by taking over satellite airports in major cities, giving them a unique competitive advantage.[24] This transitional period began the debate over air travel regulation and shone a light on the dilemma of regulation in the industry.

III. UNFAIR INDUSTRY PRACTICES

In December 2020, the DOT issued a final rule defining the terms "unfair" and "deceptive" as they relate to its regulations on aviation consumer protection.[25] The rule requires the DOT to find that a practice is "unfair" if it is shown that the harm to consumers is "(1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition."[26] Similarly, the DOT must find that a practice is "deceptive" if it can be shown that "(1) the practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material

18. *Id*.; Scribner, *supra* note 4.
19. SMITHSONIAN, *supra* note 17.
20. *Id*.
21. *Id*.
22. *Id*.
23. *Id*.
24. *Id*.
25. Defining Unfair or Deceptive Practices, 85 Fed. Reg. 78707 (Dec. 7, 2020) (to be codified at 14 C.F.R. pt. 399).
26. *Id*. at 78708.

matter."[27] This is the lens through which this paper will evaluate common, colloquially unfair practices rampant throughout the industry such as contracts of carriage, price gouging, and hidden fees.

A. Deceptive Contracts of Carriage

A contract of carriage is an airline's legally binding contract between itself and its passengers.[28] These contracts detail a passenger's rights when common travel issues occur, such as delayed or canceled flights and lost or mishandled baggage.[29] However, consumers often face problems with these contracts due to their complex and ambiguous language, lack of transparency, unfair clauses, and inconsistent enforcement.

From a legal perspective, these documents may be classified as contracts of adhesion, frequently referred to as "take-it-or-leave-it" contracts because the terms are drafted by one party and often use confusing legal terms, or legalese.[30] Put more informally, passengers must accept the terms of these contracts if they want to purchase a ticket to fly.[31] Because each airline has its own terms and definitions within these contracts, there is no consistency throughout the industry.[32] To add to the confusion, the airline employees themselves are often unfamiliar with the policies outlined in these contracts.[33]

Not only do these contracts use terms that a reasonable passenger is unlikely to be familiar with, but the language is vague at best.[34] Words used to modify imperative clauses, such as "reasonable," "extensive," and "promptly," remain up to the interpretation of the airline.[35] These long, obscure contracts create an adversarial relationship between airlines and passengers.[36] When viewed through the lens of the DOT's definition of "deceptive," it would be easy to categorize murky contracts of carriage as misleading to a reasonable consumer.[37]

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27. *Id*.

28. U.S. DEP'T OF TRANSP., *Common Terms in Air Travel*, (Sept. 2, 2014), https://www.transportation.gov/airconsumer/common-terms-air-travel.

29. Bill McGee, *Contracts of Carriage: Deciphering Murky Airline* Rules, USA TODAY (July 12, 2017), https://www.usatoday.com/story/travel/columnist/mcgee/2017/07/12/airline-contract-carriage/469916001/.

30. *Id*.

31. *Id*.

32. U.S. DEP'T OF TRANSP., *supra*, note 28.

33. McGee, *supra* note 29.

34. *Id*.

35. *Id*.

36. Sheldon H. Jacobson, *A Commonsense Way to Actually Fix Air Travel,* THE HILL (May 1, 2024), https://thehill.com/opinion/technology/4633819-air-travel-passenger-rights-cancel-delay-department-of-transportation/.

37. U.S. DEP'T OF TRANSP., *Enforcement Policy Regarding Unfair and Deceptive Practices,* 87 Fed. Reg. 52678, 52681 (Aug. 29, 2022).

B. Predatory Pricing

The pricing strategies airlines use in the United States are opaque.[38] "Predatory pricing" is defined as "a price reduction that is profitable only because of the added market power the predator gains from eliminating, disciplining, or otherwise inhibiting the competitive conduct of a rival or potential rival."[39]

Predatory pricing allegations in the airline industry often emerge when a major airline reacts to a low-fare competitor by significantly reducing its ticket prices and increasing capacity.[40] This practice is known as a "targeted response to entry."[41] However, airlines are able to avoid detection under antitrust laws by maintaining the price of the route above cost.[42] Most courts adjudicating predatory pricing cases in the airline industry use an average variable cost (AVC) benchmark to determine whether, on average, the passengers on a specific route are flying at prices above or below the airline's AVC.[43] Major airlines are able to combine high and low fare passengers to ensure the AVC is above the cost of operating the flight, which allows the airlines to avoid liability for antitrust violations.[44]

Therefore, major airlines are able to price their tickets low enough to drive out low-cost entrants, which means the consumer ultimately loses in the long run.[45] Once the major airline has successfully booted its low-cost competitor from the market, it can reinstate its monopoly pricing.[46] Targeted response to entry pricing, while technically fine under antitrust law, is arguably unfair. If the practice is allowed to continue, the effect on consumers will be both "substantial" and "unavoidable." Furthermore, the loss to the consumer in the long run cannot be outweighed by the benefits because the low-cost airline is driven out of the market.

In the past, airlines have been accused of price gouging. The travel industry is volatile, and the airline market is responsive to frequent

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38. Christopher Buccafusco, Daniel Hemel, and Eric L. Talley, *Price Gouging in a Pandemic*, 84 OHIO ST. L. J. 389, 415 (2023).

39. Patrick Bolton, Joseph F. Brodley, and Michael H. Riordan, *Predatory Pricing: Strategic Theory and Legal Policy*, U.S. DEPARTMENT OF JUSTICE (Dec. 29, 2023), https://www.justice.gov/archives/atr/predatory-pricing-strategic-theory-and-legal-policy (under "The Tension Between Current Legal Views and Modern Economic Theory" heading).

40. James L. Robenalt, *Predatory Pricing in the Low-Fare Airline Market: Targeted, Discriminatory, and Achieved with Impunity*, 68 OHIO ST. L. J. 641, 642 (2007).

41. *Id.*

42. *Id.* at 641.

43. *Id*.

44. Michael E. Levine, *Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy*, 4 YALE J. ON REG. 393, 451 (1987).

45. Robenalt, *supra* note 40.

46. Aaron S. Edlin, *Stopping Above-Cost Predatory Pricing*, 111 YALE L. J. 941, 943 (2002).

changes in conditions.[47] These include the normal ebbs and flows of market functions such as fuel prices and demand, as well as crises and emergency situations like the COVID-19 pandemic.[48] However, in recent years, airlines have been accused of surge pricing during these market changes.[49] Surge pricing involves airlines use of pricing algorithms that make faster and more profitable pricing decisions.[50] However, these algorithms use AI to price discriminate.[51]

In March of 2024, JetBlue passengers began to notice "peak" and "off-peak" pricing applied to baggage fees.[52] This means passengers flying during busy times must pay five to ten dollars more per flight for checked bags.[53] This practice is textbook surge pricing – a form of dynamic pricing where companies raise prices when demand is high but do not lower prices when demand is low.[54] This adds a layer of confusion to customers trying to price check between airlines and find the most cost-effective ticket.[55] According to IdeaWorksCompany, an airline consulting firm, in 2023, airlines "made a record $117.9 billion worldwide in ancillary fees."[56] The company attributed part of this growth in revenue to assigned seating fees, another type of add-on fee.[57] Consequently, in April of 2024, the DOT announced new rules to protect airline passengers against "surprise airline junk fees."[58]

Under the DOT's final rule, airlines and ticket agents must "clearly, conspicuously, and accurately" disclose "critical extra service fees" when the consumer is first provided a fare quote.[59] Additionally, the rule requires airlines to explain the extra fee policies prior to purchase and

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47. Mattia Borsati & Xavier Fageda, *Airline Price Responses in the Face of Demand Shocks: European Lessons from the COVID-19 Pandemic*, 186 TRANSP. RES. PART E: LOGISTICS & TRANSP. REV. 103537 (2024).

48. *Id*.

49. Buccafusco, *supra* note 38.

50. Christopher R. Leslie, *Predatory Pricing Algorithms*, 98 N.Y.U. L. REV. 49, 64.

51. Patricia Hartley, *The FTC Chair is Worried Airlines Will Use AI to Target Bereaved Travelers*, CONNECTING DIRECTORS (Oct. 1, 2024), https://connectingdirectors.com/69153-ftc-chair-worried-airlines-will-use-ai-to-target-bereaved-travelers.

52. Sam Kemmis, *Dynamic Pricing is Coming for Everything in Travel*, NERDWALLET (Apr. 3, 2024), https://www.nerdwallet.com/article/travel/dynamic-pricing-is-coming-for-everything-in-travel.

53. *Id*.

54. Tyler Biscontini, *Dynamic Pricing (Surge Pricing)*, EBSCO BUS. & MGMT. RES. STARTERS (2023), https://www.ebsco.com/research-starters/business-and-management/dynamic-pricing-surge-pricing.

55. Kemmis, *supra* note 52.

56. Press Release, IdeaWorksCompany & CarTrawler, Airline Ancillary Revenue Reaches Record $117.9 Billion Worldwide for 2023 (Oct. 31, 2023) (on file with author).

57. *Id*.

58. U.S. DEP'T OF TRANSP., *Biden-Harris Administration Announces Final Rule to Protect Consumers from Surprise Airline Junk Fees*, (Apr. 24, 2024), https://www.transportation.gov/briefing-room/biden-harris-administration-announces-final-rule-protect-consumers-surprise-airline.

59. *Id*.

share this information with third party ticket sellers.[60] Furthermore, the rule ends "bait-and-switch" tactics that offer deceptive discounts applied to only a small portion of the overall fare price.[61] The rule will target "critical extra service fees" such as checked bag fees, carry on fees, cancellation or change fees, and any other services the Secretary deems critical after public feedback is received.[62] A separate rule will be proposed to cover disclosure of family seating fees and hopefully guarantee parents can sit with their children for no extra charge.[63]

While the DOT's new rule purports to ensure "consumers can avoid surprise junk fees," it only requires that airlines show "extra service fees upfront clearly, conspicuously, and accurately."[64] It does not place a ban on any specific category of fees or limit how surge pricing impacts the overall cost of a ticket.[65] For example, a traveler could book a ticket only to find out that they have to pay an additional fee to have a confirmed assigned seat at the end of the transaction.[66]

Furthermore, with advances in technology, airlines could use AI to increase fares for passengers that they have determined are traveling due to an urgent event, such as healthcare crises and major personal life tragedies.[67] Khan, the FTC chair, explained that this type of targeting is distinguishable from surge pricing because it uses personal data to selectively raise prices, a form of price manipulation known as "surveillance pricing."[68] Pricing practices such as the ones described above decrease transparency for consumers, and err on the side of being unfair and deceptive.

IV. ECONOMIC AND SOCIETAL IMPACT

A. Economic Impact

Air travel constitutes a major sector of the global economy, accounting for $3.5 trillion of gross domestic product (GDP).[69] In the U.S. alone, commercial air travel makes up 5% of the GDP which equates to $1.25 trillion.[70] Because commercial aviation is such a large part of the economy, the industry supports millions of jobs worldwide.[71]

60. *Id*.
61. *Id*.
62. *Id*.
63. *Id*.
64. *Id*.
65. *Id*.
66. Matt Villano, *Airline Seat Selection Fees: It's Pay to Play*, CNN TRAVEL (Jan. 5, 2019), https://www.cnn.com/travel/article/airline-seat-selection-fees/index.html.
67. Hartley, *supra* note 51.
68. *Id*.
69. *Aviation's Economic Success and Future Growth*, STRAITS RSCH. (Jan. 10, 2024), https://straitsresearch.com/statistic/air-travel-s-impact-on-the-global-economy.
70. *Id*.
71. *Id*.

Individuals and businesses rely on civil aviation for transportation daily.[72] Millions of passengers and tons of freight travel all over the globe, facilitating transactions and improving people's quality of life.[73] Not only does air travel contribute to the GDP through its direct activities but also indirect activities, such as tourism, international trade, and job creation all impacting economic growth as well.[74] Because air travel is such an essential part of the global economy, it is important to understand the issues and regulatory changes that affect the industry.

B. Technology Issues

Although technology is advancing each day, airlines may be struggling to keep up. Outdated hardware and software, along with institutional issues that make it difficult to upgrade technology, have caused disruptive outages that lead to thousands of cancelled flights.[75] Increased demand in the industry and bureaucratic holdups have weighed down the system.[76] Instead of using on-the-market solutions, many airlines have custom-built technology that exacerbates maintenance issues and requires specialized parts and knowledge.[77]

In fact, many of the industry's technologies are based on systems dating back to the 1970s and are difficult to modernize.[78] Furthermore, many airlines are unable to update their current systems because they only own the usage rights to the technology and not the code itself.[79] Because the air travel industry is such a vital sector in the U.S. economy, the technology used by airlines should be flexible enough to change in the wake of ever-increasing technological innovation.[80] However, the solution is not necessarily a one-size-fits-all approach; some airlines may find they need to start from scratch and build a new mainframe system for their operations, while others may be able to break up their current system into sectors and modernize each piece separately.[81]

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72. FEDERAL AVIATION ADMINISTRATION, *The Economic Impact of Civil Aviation on the U.S. Economy* (Jan. 2020), https://www.faa.gov/sites/faa.gov/files/about/plans_reports/2020_jan_economic_impact_report.pdf.

73. *Id*.

74. *Id*.

75. Brian Fung, *Aging, Outdated Technology Leaves Air Travel at Risk of Meltdown*, CNN BUSINESS (Jan. 13, 2023), https://www.cnn.com/2023/01/13/business/airline-meltdowns/index.html.

76. *Id*.

77. *Id*.

78. Apeksha Bhateja, *Hey Airlines! It's Totally Unacceptable That Tech Problems Are Making Air Travel Worse*, FODOR'S TRAVEL (Sept. 6, 2023), https://www.fodors.com/news/news/are-technological-problems-ruining-air-travel-more.

79. Jennifer Lendler et al., *Retooling to Take Flight: Technology Trends and the Airline Industry*, DELOITTE (2023), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/consumer-business/airline-tech-trends-2023.pdf.

80. *Id*.

81. *Id*.

The CrowdStrike IT outage in July 2024 recently exposed the air travel industry's vulnerability. CrowdStrike is a software security vendor that works with Microsoft Windows systems.[82] During an automatic update, CrowdStrike's cybersecurity system crashed, and, due to its close integration with Windows, this in turn caused the entire Microsoft system to shut down as well.[83] Many airlines use Windows systems for their operations, and the CrowdStrike crash disrupted the global aviation industry for seventy-two hours.[84]

This crash caused operational and logistical challenges across many airlines, leading to thousands of cancellations and even more angry customers.[85] The effects of the crash have shown that airlines may need to consider investing in redundant IT systems such as backup technologies and vendors ready to step in if the main system faces an issue.[86] Problems like this also uncover the need for passengers to know their rights and understand their options when cancellations and delays occur.[87]

C. Environmental Issues and Greenwashing

It is no secret that airplanes burn a significant amount of fossil fuel and contribute to climate change.[88] Consequently, it is no small feat to decarbonize the air travel industry.[89] Because airplanes fly at such high altitudes, air travel has negative effects unrelated to carbon emissions on the environment as well, including cloud formation, vapor trails, and nitrogen oxides.[90] Further complicating matters are the issues with technology, personal freedom, and a healthy customer base.[91] If airlines are going to reach their goal of becoming net zero by 2050, the industry will have to overcome some daunting hurdles.[92] This commitment will

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82. Sean Micheal Kerner, *CrowdStrike Outage Explained: What Caused It and What's Next*, TECHTARGET (Oct. 29, 2024), https://www.techtarget.com/whatis/feature/Explaining-the-largest-IT-outage-in-history-and-whats-next.

83. *Id*.

84. *Id.*; *See* Jim Hetzel, *The CrowdStrike IT Outage: What Does it Mean for the Airline Industry?*, CIRIUM (Oct. 7, 2024), https://www.cirium.com/thoughtcloud/crowdstrike-it-outage-what-does-it-mean-for-airline-industry/.

85. Hetzel, *supra* note 84.

86. *Id*.

87. Kelly McCarthy, *Flying Amid CrowdStrike Outage: What to Expect Next and Tips to Navigate Travel Chaos*, ABC NEWS (July 19, 2024), https://abcnews.go.com/GMA/Travel/flying-amid-crowdstrike-outage-expect-tips-navigate-travel/story?id=112101041.

88. TRANSPORTATION & ENVIRONMENT, *Planes*, https://www.transportenvironment.org/topics/planes.

89. Jocelyn Timperley, *The Six Problems Aviation Must Fix to Hit Net Zero*, THE GUARDIAN (Sept. 5, 2021), https://www.theguardian.com/environment/2021/sep/05/the-six-problems-aviation-must-fix-to-hit-net-zero.

90. TRANSPORTATION & ENVIRONMENT, *supra* note 88.

91. Timperley, *supra* note 89.

92. INTERNATIONAL AIR TRANSPORT ASSOCIATION, *Our Commitment to Fly Net Zero by 2050*, https://www.iata.org/en/programs/sustainability/flynetzero/#:~:text=Fly%20Net%20Zero%20is%20the,from%20their%20operations%20by%202050.

require the cooperation of the entire industry, from manufacturers to airlines and government support.[93]

While this commitment by the industry to become carbon neutral seems noble, passengers are not buying it.[94] Although there has been talk of various tactics to reduce emissions, including increasing operational efficiency, using electric ground vehicles, purchasing aircraft that are more fuel efficient, and using sustainable fuel, it seems that most airlines have landed on carbon offsets to negate their pollution.[95] A carbon offset is a credit passengers can purchase to make up for their emissions.[96] Airlines have begun pushing programs that persuade passengers into spending more money to supposedly reduce the climate impacts of their flight.[97] However, even climate enthusiasts quickly condemned these programs as "another case of greenwashing in aviation."[98]

Greenwashing can be defined as "the act of making false or misleading statements about the environmental benefits of a product or practice."[99] Companies use greenwashing as a way to continue harmful behaviors while profiting off of environmentally conscious consumers.[100] In reality, these programs are complete scams; it is inauthentic to sell people on the idea that paying a small additional fee can genuinely offset the emissions from the aircraft they will be flying on.[101]

In reality, most carbon offsets fail to lower emissions because they do not lead to a net decrease in atmospheric carbon over time.[102] Proponents of carbon offsets allege that travelers can make up for the carbon emitted by their flight by environmental projects that reduce the

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93. *Id*.

94. Umair Irfan, *Airlines Say They've Found a Route to Climate-Friendly Flying*, VOX (Oct. 19, 2023), https://www.vox.com/climate/23922939/airline-united-climate-change-sustainable-fuel-emissions-offset-saf.

95. *Id*.

96. Susan Shain, *Are Flight Offsets Worth It?*, N.Y. TIMES (May 6, 2024), https://www.nytimes.com/2024/05/06/climate/nyt-questions-flight-offsets.html#:~:text="Offsetting%20is%20a%20misnomer%2C",and%20it%20erases%20your%20impact.

97. JD Shadel, *Airlines Want You to Buy Carbon Offsets. Experts Say They're a 'Scam'*, THE WASHINGTON POST (Apr. 17, 2023), https://www.washingtonpost.com/travel/2023/04/17/carbon-offsets-flights-airlines/.

98. *Id*.

99. Courtney Lindwall, *What is Greenwashing?*, NRDC (Feb. 9, 2023), https://www.nrdc.org/stories/what-greenwashing#:~:text=Greenwashing%20is%20the%20act%20of,conveniently%20save%20the%20hotel%20money.

100. *Id*.

101. Helen Wilson-Beevers, *Lufthansa Accused of Greenwashing Over More Expensive 'Green Fare' Flights*, INDEPENDENT (Feb. 15, 2023), https://www.independent.co.uk/travel/news-and-advice/lufthansa-green-fare-flights-greenwashing-b2282565.html.

102. Derik Broekhoff et al., *What Makes a Higher-Quality Carbon Credit?*, GHG MGMT. INST./STOCKHOLM ENV'T INST., https://offsetguide.org/high-quality-offsets/permanence/.

same amount of carbon overall; however, even if those projects actually worked, the carbon offsets offered to passengers are so cheap that the amount passengers pay would not come close to offsetting their share of environmental damage caused by flying.[103]

Although companies are trying to improve the credibility of carbon credits, it has proved a difficult feat as most credits either have no measurable claimed benefit or do not accurately equate to the amount of reductions in emissions they claim to combat.[104] Even United Airlines CEO Scott Kirby admitted that "the majority of [carbon offsets] are fraud."[105] In addition to the fiction that passengers can pay to erase their impact, scientists condemn offsets on the principle that to actually combat climate change, airlines need to "sharply reduce emissions, not just try to cancel them out."[106] Experts claim that for offsets to be legitimate, they must be "verifiable, immediate, and durable," as well as "additional," meaning that without the money from the offset, the project would not have happened.[107] In reality, very few offset projects meet these criteria.[108]

Unfortunately for the airlines, groups of passengers have started to hold companies accountable by filing class action lawsuits alleging that their purchased carbon offsets fell short of expectations.[109] In May 2023, a consumer group filed a class action law suit against Delta Air Lines alleging the carrier falsly touted itself as the "first carbon-neutral airline" when it could offer no proof passengers' carbon offsets equated to carbon neutrality.[110]

Additionally, governments around the world have taken notice of consumer unrest and are beginning to introduce regulations cracking down on greenwashing by airlines.[111] In late 2023, the United Kingdom's Advertising Standards Authority banned advertisements from

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103. COOL Effect, *Travel Offset: What Are Carbon Offset Flights?*, https://www.cooleffect.org/travel-offset#:~:text=Carbon%20offset%20flights%20are%20one,same%20amount%20through%20environmental%20action; Kit Dillon, *We Wish Buying Carbon Offsets for Yor Flight Helped. It Doesn't.,* N.Y. TIMES (Feb. 22, 2023), https://www.nytimes.com/wirecutter/reviews/buying-carbon-offsets-for-your-flight-doesnt-help/.

104. Susan Shain, *Are Flight Offsets Worth It?*, N.Y. TIMES (May 9, 2024), https://www.nytimes.com/2024/05/06/climate/nyt-questions-flight-offsets.html#:~:text="Offsetting%20is%20a%20misnomer%2C",and%20it%20erases%20your%20impact.

105. Irfan, *supra* note 94.

106. Shain, *supra* note 96.

107. *Id*.

108. *Id*.

109. Ed Davey, *Delta Air Lines Hit With Lawsuit Over Claims of Carbon Neutrality*, AP NEWS (May 31, 2023), https://apnews.com/article/delta-airlines-lawsuit-carbon-credits-carbon-neutral-469f2671010ba7f40c934cc23d62149a.

110. *Id.*

111. COVINGTON & BURLING LLP, *Coordinated EU-Wide Crackdown on Airline Greenwashing* (May 3, 2024), https://www.cov.com/en/news-and-insights/insights/2024/05/coordinated-eu-wide-crackdown-on-airline-greenwashing#layout=card&numberOfResults=12.

Lufthansa, Air France-KLM, and Etihad Airways due to the "misleading impression" of their environmental impact.[112] More recently, in April 2024, the European Commission and the EU Network of Consumer Protection Cooperation flagged misleading greenwashing claims and sent letters to twenty European airlines, urging them to address these issues in light of potential enforcement actions, including sanctions.[113]

The U.S. government should follow suit and hold its domestic airlines accountable for deceiving passengers. Regulatory bodies can encourage a shift towards genuine environmental responsibility by ensuring there are serious consequences for false claims of sustainability.[114] Furthermore, when major industries are held accountable for deceptive practices, it sends a clear message and puts all airlines on notice.[115]

In response to customer backlash, some airlines have abandoned their greenwashing ad campaigns and instead set their sights on sustainable aviation fuel (SAF).[116] SAF is an alternative fuel made from non-petroleum feedstocks and can be blended at different levels.[117] Some sources estimate that SAF could contribute to as much as a 65% decrease in emissions needed to reach net zero by 2050.[118]

According to experts in the industry, the best solution is to "fly less" and "choose economy."[119] One scientist even pledged to donate to environmental organizations "$1,000 per ton emitted" per flight flown.[120] However, suggesting the general public commit to donate thousands of dollars per flight is simply out of touch because for many citizens, air travel itself is a luxury.[121] Furthermore, for those who have to travel frequently for work and other obligations, flying less simply is not an option. The burden should be put on the airlines and the governments that regulate them, not the consumers.

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112. Farouq Suleiman et al., *UK Bans Airline Adverts Over 'Misleading' Environmental Claims,* REUTERS (Dec. 6, 2023), https://www.reuters.com/business/aerospace-defense/uk-bans-airline-adverts-over-misleading-environmental-claims-2023-12-06/.

113. COVINGTON & BURLING LLP, *supra* note 111.

114. Marina Dorileo Barros & Paula Galbiatti Silveira, *Global Regulations to Prevent Greenwashing*, ENHESA (June 12, 2024), https://www.enhesa.com/resources/article/global-regulatory-changes-designed-to-prevent-greenwashing/.

115. U.S. DEP'T OF TRANSP., *DOT Penalizes Southwest Airlines $140 Million for 2022 Holiday Meltdown* (Dec. 18, 2023), https://www.transportation.gov/briefing-room/dot-penalizes-southwest-airlines-140-million-2022-holiday-meltdown.

116. Irfan, *supra* note 94.

117. U.S. DOE, *Sustainable Aviation Fuel*, https://afdc.energy.gov/fuels/sustainable-aviation-fuel.

118. INTERNATIONAL AIR TRANSPORT ASSOCIATION, *Developing Sustainable Aviation Fuel (SAF)*, https://www.iata.org/en/programs/sustainability/sustainable-aviation-fuels/.

119. Susan Shain, *Are Flight Offsets Worth It?,* N.Y. TIMES (May 6, 2024), https://www.nytimes.com/2024/05/06/climate/nyt-questions-flight-offsets.html.

120. *Id*.

121. *Id*.

V. REGULATIONS IN RESPONSE TO INDUSTRY ISSUES

Aviation is one of the few topics in today's polarized political environment able to unite lawmakers from both sides.[122] It is important to look at the regulations that have been introduced in response to the plethora of issues in the airline industry in order to evaluate their effect on corrupt practices.

A. Airline Passenger Protection Partnership

In April 2024, the U.S. DOT Secretary Pete Buttigieg and a bipartisan coalition of eighteen state attorneys general (AGs) introduced the Airline Passenger Protection Partnership program.[123] This initiative would potentially expand the DOT's investigatory and enforcement authority over airlines' and ticketing agents' compliance with consumer protection laws.[124] Additionally, the partnership would enact a "fast-track system" to prioritize misconduct cases from State AGs that allege unfair or deceptive airline practices.[125] The DOT and state AGs work together to protect consumers and hold airlines accountable for unfair and deceptive practices.[126]

This system will give state AGs access to the DOT's new consumer complaint database to better respond to their constituents.[127] However, many states still have not signed the Memoranda of Understanding that created this program, so customers in many states are still exposed to potential misconduct by airlines.[128] On the bright side, AGs from several more states have expressed an interest in joining the program.[129]

While the Airline Passenger Protection Program seems like the answer to airline accountability, some critics believe the way the program is set up does not serve the best interests of the passengers.[130] Increases in government entities available to address issues may contribute to an adversarial environment between airlines and the DOT,

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122. CROWELL, *Full Throttle Ahead: DOT and State AG Partnership to Bolster Federal Aviation Investigations Capability* (Apr. 23, 2024), https://www.crowell.com/en/insights/client-alerts/full-throttle-ahead-dot-and-state-ag-partnership-to-bolster-federal-aviation-investigations-capability.

123. *Id*.

124. *Id.*

125. *Id*.

126. DEPARTMENT OF TRANSPORTATION, *Bipartisan Partnership Between Secretary Buttigieg and State Attorneys General to Protect Airline Passengers* (Oct.Sep. 4, 2025), https://www.transportation.gov/airconsumer/State_AG_Partnership.

127. *Id*.

128. *Id*.

129. Wilson Beese, *Colorado Joins New Multi-State Partnership Targeting Unfair or Deceptive Airline Practices,* 9NEWS (Apr. 16, 2024), https://www.9news.com/article/travel/unfair-deceptive-practices-airlines/73-207be8c8-1adf-45ee-9fba-906ef33d7137.

130. Sheldon H. Jacobson, *A Commonsense Way to Actually Fix Air Travel*, THE HILL (May 1, 2024), https://thehill.com/opinion/technology/4633819-air-travel-passenger-rights-cancel-delay-department-of-transportation/.

leaving consumers caught in the middle.[131] Some critics argue that instead of prescribing what the airlines have to deliver, it would be better to collaborate and ask what they can deliver, and, if there is a defect, how the airline can timely respond.[132] Instead ofburdening passengers with the responsibility of reporting incidents, airlines should be empowered to take accountability on their own.[133]

B. Federal Aviation Administration Reauthorization Act

In May 2024, shortly after the introduction of the partnership program, the Senate overwhelmingly approved the bipartisan Federal Aviation Administration (FAA) Reauthorization Act, which will reauthorize the FAA and National Transportation Safety Board for five years.[134] The proposed legislation will improve aviation safety, increase consumer protections, promote innovation, and prioritize investment in these areas.[135] Shortly after the Senate approved the Act, the House of Representatives (the House) approved it as well.[136] The legislation will also improve problems within the aviation system's infrastructure and workforce.[137] Former President Joe Biden officially signed the bill into law a few days after the House passed it and called the legislation, "a big win for travelers, the aviation workforce, and our economy."[138]

While the FAA Reauthorization Act is definitely a step in the right direction, the FAA must actually implement the legislation.[139] Instead of resisting change and evolution in this area of law, the FAA must embrace uncomfortable challenges in line with Congressional intent.[140] Furthermore, the FAA needs to find a balance between efficiency and heavy regulation.[141] Having burdensome regulatory requirements can

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131. *Id*.

132. *Id*.

133. *Id*.

134. U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, & TRANSPORTATION, *Senate Overwhelmingly Approves FAA Reauthorization Act* (May 9, 2024), https://www.commerce.senate.gov/2024/5/senate-overwhelmingly-approves-faa-reauthorization-act.

135. *Id*.

136. THE HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE, *House Approves Landmark FAA Reauthorization Act of 2024* (May 15, 2024), https://democrats-transportation.house.gov/news/press-releases/house-approves-landmark-faa-reauthorization-act-of-2024.

137. *Id*.

138. Piper Hudspeth Blackburn & Sam Fossum, *Biden Signs Bipartisan FAA Bill Into Law*, CNN (May 16, 2024), https://www.cnn.com/2024/05/16/politics/joe-biden-signs-bipartisan-faa-reauthorization/index.html.

139. U.S. H.R. COMM. ON TRANSP. & INFRASTRUCTURE, *FAA Reauthorization Act of 2024: Stakeholder Perspectives on Implementation* (Dec. 11, 2024), https://transportation.house.gov/calendar/eventsingle.aspx?EventID=407897.

140. *Id*.

141. Sean Ludwig, *The Most Important Issues Facing the Aviation Industry*, U.S. CHAMBER OF COMMERCE (Sept. 17, 2024), https://www.uschamber.com/infrastructure/aviation/the-most-important-issues-facing-the-aviation-industry.

drag a project out for years before it gets approved, which stifles growth and innovation.[142]

C. Consumer Input

More recently, in December 2024, the DOT posted an Advance Notice of Proposed Rulemaking (ANPRM) inviting public comment on how consumers who experience serious travel disruptions can be protected.[143] The ANPRM requests comments on requiring airlines to compensate passengers, provide free rebooking, and cover meals, overnight stays, and similar expenses when a disruption is caused by the airline.[144] Furthermore, the DOT is also looking for comments on requiring airlines to compensate passengers for domestic flight disruptions not caused by the airline.[145] The comment period provides an opportunity for the DOT to get multiple perspectives and ideas on how to best assist inconvenienced consumers.

D. The Issue with Deregulation

In the 1970s, advocates started pushing for deregulation in the airline industry citing it would improve market competition.[146] However, deregulation led to cutthroat competition, leaving the same big airlines dominant with less regulation.[147] Now, the industry has less competition and consumers are left with fewer choices, expensive prices, and mediocre service; the deregulated system was unable to achieve what it promised.[148]

VI. PROPOSED SOLUTIONS

A. Cabotage

While a healthy domestic air travel industry benefits the economy, high demand means higher prices. Recently, in Argentina, President Javier Milei introduced the "open-skies initiative" which does away with regulations that prohibit foreign airlines from operating domestic

142. *Id*.

143. U.S. DEPARTMENT OF TRANSPORTATION, *What's New* (Dec. 5, 2024), https://www.transportation.gov/airconsumer/latest-news.

144. *Id*.

145. *Id*.

146. Jeff Neal, *Why Flying is Miserable*, HARVARD LAW TODAY (Nov. 14, 2023), https://hls.harvard.edu/today/airline-deregulation-may-be-why-flying-is-such-a-miserable-part-of-holiday-travel/.

147. *Id*.

148. *Id*.

routes.[149] This means foreign airlines will now be allowed to compete with Argentina's national airline.[150]

While America does not have a government-owned airline, the federal government still bans "cabotage"— allowing foreign airlines to operate domestic flights—leaving consumers with fewer choices.[151] More specifically, U.S. law bans the commercial transportation of persons, property, or mail between any two points in the United States in any aircraft not owned and operated by a U.S. individual or corporation.[152] However, researchers have estimated that American travelers would gain $1.6 billion a year if just one foreign airline was allowed to operate in the U.S. market.[153] Not only would greater competition lower prices, but introducing foreign low-cost European carriers such as Ryanair could spark innovation in domestic low-cost carriers.[154]

Furthermore, allowing foreign airlines to operate domestic routes would increase capacity and introduce service to underserved markets, driving costs down.[155] Additionally, allowing cabotage would put pressure on the oligopoly the "Big Four" airlines (United, Delta, Southwest, and American Airlines) have created, taking away from their 80% market share.[156] In fact, returning ticket prices to what they were before many of the domestic airlines merged would constitute a 21% drop, making air travel much more affordable.[157] The U.S. government should lift its prohibition on cabotage in order to put downward pressure on flight prices and increase consumer demand, leading to a more consumer-friendly air travel industry.[158]

B. Resilience Plans

As previously discussed, airlines have trouble recovering after crises, leading to consumer and economic problems. Many airlines do not have resilience plans in place, which contributes to the inconveniences passengers face in the form of delays, cancellations,

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149. Eric Boehm, *Let Foreign Airlines Serve Domestic Routes in the U.S.*, REASON (Dec. 26, 2023), https://reason.com/2023/12/26/argentina-will-deregulate-airlines-america-should-do-the-same/.

150. *Id*.

151. *Id*.

152. *See* Navigation of Foreign Civil Aircraft, 49 U.S.C. § 41703(c).

153. Xialong Tan, Clifford Winston & Jia Yan, *Would U.S. Travelers Benefit from Entry By Foreign Airlines? Simulating the Effect of Cabotage Based on Low-Cost Carrier Competition in U.S. and European Union Markets*, WASH. STATE UNIV., Aug. 2020, at 4.

154. *Id*. at 4-5.

155. Scott Lincicome, *How U.S. Air Travel Can Get (a Little Of) Its Groove Back*, CATO INST. (June 29, 2022), https://www.cato.org/commentary/how-us-air-travel-can-get-little-its-groove-back.

156. Adam Simons, *The Economic Impact of Air Cabotage Restrictions in the United States*, MERCATUS CENTER GEO. MASON UNIV., Spring 2019, at 14.

157. *Id*.

158. *Id*. at 17.

overscheduling, and high prices.[159] Before the 21st century, it was common for major airlines to have spare planes and crew members, but, today, even the largest domestic carriers have done away with this practice.[160] To fix these issues, major airlines should be required by law to have crisis management plans that detail how the airline would operate during a crisis, and the plans should be reviewed by the Department of Transportation.[161]

Additionally, airports themselves should have resilience plans in place to combat issues that occur during a crisis. In July 2024, legislation requiring airlines to develop operational resiliency plans was introduced to the House.[162] The Ensuring Airline Resiliency to Reduce Delays and Cancellations Act would require the secretary of transportation to enforce air carriers to develop and keep up to date a resiliency plan to limit travel disruptions and protect passengers.[163] This act should be passed by Congress so airlines are more prepared for future disasters and unexpected issues, ensuring that passengers can expect a safe, smooth travel experience.[164]

C. Increased Government Regulation

Politicians on both sides of the aisle have become critical of big corporations across different industries, and there is now more support for enforcement of antitrust laws and industrial policy.[165] As noted above, recently, there has been bipartisan support for increased regulations in the air travel industry. One of the major issues consumers face is unfair and costly ticket prices and extra fees.

The FAIR Fees Act would get rid of "unreasonable or disproportionate" change and cancellation fees, crack down on checked bag and seat assignment fees, and put in place a process to determine whether other kinds of airline fees are "reasonable."[166] This act would not only save passengers money, but it would provide much needed transparency through protection from ambiguous junk fees charged by

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159. William J. McGee & Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, AM. ECON. LIBERTIES PROJECT & VAND. POL'Y ACCELERATOR, Jan. 2024, at 12-13.

160. *Id*.

161. *Id*. at 13.

162. Melina Druga, *Legislation Would Require Airlines to Develop Operational Resiliency Plans*, TRANSP. TODAY NEWS (July 29, 2024), https://transportationtodaynews.com/news/33503-legislation-would-require-airlines-to-develop-operational-resiliency-plans/.

163. Ensuring Airline Resiliency to Reduce Delays and Cancellations Act, H.R. 9135, 118th Cong. (2024).

164. Druga, *supra* note 162.

165. Peter Coy, *To Fix Its Airlines, Does the U.S. Need to Rethink Regulation*, N.Y. TIMES (Jan. 26, 2024), https://www.nytimes.com/2024/01/26/opinion/airlines-tickets-regulation-deregulation.html.

166. Shih-Hsien Chuang, *More Airline Regulations*, CATO INST. (2023), https://www.cato.org/regulation/fall-2023/more-airline-regulations

airlines.[167] Legislation such as the FAIR Act should continue to be explored by Congress so that consumers can be protected. Some argue that deregulation has allowed airlines to flourish in a more competitive market, and that increased regulation would result in higher fares and decreased investment.[168] However, improving safety, economic, and consumer protection in the air travel industry would combat the issues that stem from the previously discussed Airline Deregulation Act of 1978.[169]

Furthermore, some argue that the airline industry should be seen as a utility because airlines receive taxpayer assistance and deem themselves necessary for security, the economy, and defense; if airlines are going to be supported by taxpayer dollars, they should be subject to government oversight.[170] The industry's market concentration has put consumers in the worst position: airlines are bailed out by taxpayer dollars when they lose, but their profits are privatized.[171] There is overwhelming evidence that deregulation has allowed the air travel industry to become an oligopoly, and the only way to dismantle this oligopoly is through government intervention.[172]

VII. CONCLUSION

The U.S. air travel industry has operated in a deregulated framework for too long, which has enabled unfair business practices, environmental negligence, and consumer exploitation. While recent regulatory efforts indicate a growing recognition of these systemic issues, further action is needed to restore competition, transparency, and accountability. The introduction of stronger consumer protections, restrictions on predatory pricing, and enforcement of environmental commitments are crucial to creating a more equitable and sustainable industry.

The air travel industry is a vital component of the national economy and an essential service for millions of Americans. The unchecked power of major airlines coupled with laissez-faire government oversight has led to market concentration, deceptive pricing practices, and reduced quality of service – all at the passenger's expense. Regulatory reform must strike a balance between fostering competition and ensuring airlines remain financially stable enough to prioritize consumer interests. Additionally, addressing technological

167. *Id*.
168. *Id*.
169. Jackson Nichols, *Is It Time to Re-Fuel Airline Regulation?*, THE REGUL. REV. (July 17, 2023), https://www.theregreview.org/2023/07/17/nichols-is-it-time-to-re-fuel-airline-regulation/.
170. *Id*.
171. *Id*.
172. *Id*.

shortcomings and mandating crisis preparedness plans will be essential in minimizing disruptions and improving industry resilience.

If policymakers and industry leaders fail to act, passengers will continue to bear the consequences of an increasingly hostile market. By implementing meaningful reforms, the U.S. can set a precedent for fair, transparent, and consumer-friendly air travel.