



**Testimony of Kate Hanni, Executive Director**  
**Coalition for an Airline Passengers Bill of Rights**  
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HR 1303– Airline Passengers Bill of Rights  
April 20<sup>th</sup>, 2007  
Aviation Subcommittee

Mr. Chairman, Members of the Committee, my name is Kate Hanni and I want to thank you for the opportunity to testify on behalf of the 15,000 Coalition members for an Airline Passenger's Bill of Rights.

I am here because of the inhumane manner in which my family, I, my husband Tim, my sons Landen and Chase Costello, and 5000 other passengers were treated on 121 diverted American Airlines flights on December 29, 2006. We believe that the horrific conditions and treatment we suffered that night should be illegal and should never happen again.

On December 29, 2006, we departed San Francisco aboard American Airlines Flight 1348, en-route to Point Clear, Alabama, by way of Dallas-Fort Worth, for a much needed holiday vacation. Still recovering from a violent assault, this was my first trip away with family. After 3 gate changes, we finally boarded at the third gate at 6:30 a.m. There had been a mechanical problem so we were subject to a short delay. The flight was uneventful until we got to DFW airspace. The pilot came on and said that there were some "Fingers of weather" rolling through Dallas and that we would be able to get there, but would have to divert to Austin briefly to wait out the "Wave/Finger of weather currently hitting DFW." We put down in Austin sometime around 12:00 p.m. We pulled into a parking lot type situation and were first in line and closest to the terminal so we could see the gates and traffic as it came and went.

It was a sunny landing, the weather was clear in Austin.

**Hour one:** Pilot says still awaiting clearing of weather. Passengers restless and nervous about connecting flights, but still o.k.

**Hour two:** Pilot still giving us 15 minute updates and telling us he's sure we'll take off, but weather still not clear and heavy traffic in the sky preventing take off. People becoming more restless. Several people who live in Austin and have weddings, funerals, parents' deaths to attend to are now upset and want off the plane. Pilot says he'll ask for a bus to come get some folks off, but accompanies that with a threat "if you deplane you are on your own, you cannot get back on, you have no guarantee of when you will get your luggage."

**Two and ½ hours:** He gets clearance to take off, but he decides it's not safe, he can see an impending thunder head and says we must wait 5-10 minutes for it to clear. It blows through, but he loses clearance to take off. People are getting angry and calling AA Customer Service to find out about their connecting flights. AA states they will surely make their connections, just stay put and that all flights have been delayed out of DFW, not cancelled.

**Three hours:** Pilot says a bus is coming for some passengers if would we be so kind as to allow the passengers who are disabled, elderly and folks with small children to deplane first. Again he accompanies it with a threat of losing your luggage, etc. We don't try to deplane at this point as my kids are older and the bus only holds 15 people. People storm the back of the plane. We see the people with the kids, the elderly and disabled return to their seats but there are a few less people on board. That is the last bus...

**Three and ½ hours:** Flight isn't going to fly. Pilot informs us he is waiting now for a gate and has made a request. Many planes have gathered next to us in the parking lot. All of them originated in California - all American Airlines. None get gates. The pilot opens the cockpit door and invites us to speak to him in the front if we want to.

**Hour 4:** People are very frustrated, hungry, angry, restless and needing their medications.

**Hour 5:** The toilets begin to stink a little, the pilot is still telling us he has requested busses to get us off, requested a gate, requested food and beverages be brought to the plane. None arrives.

**Hour 6:** The stewardess passes out a bag of pretzels and water from the bathroom sinks in plastic cups. A woman has run out of diapers and is making one out of a t-shirt. We have kids screaming and running up and down the aisles and people are fed up.

**Hour 7:** The toilets really stink, the pilot lets us know he is still requesting and being promised busses, to deplane us, bring food and beverages and to empty the toilets. He is angry they aren't giving us a gate and tells us so. He is also angry they aren't bringing us food.

**Hour 8:** There is another onset of thunder and lightning and suddenly a transformer is hit and all the lights go out around us. I can see a man flashing SOS signs out the window of his plane, I see people out on the tarmac walking their dogs, I see an ambulance and police car circling a plane. At this point I'm totally freaked out. I go to the front of the plane. The pilot is exiting the bathroom and I want to enter it. He holds the door shut and says enter at your own risk. I was already aware the rear toilets weren't usable so I entered at my own risk. The smell was intoxicating in a bad way. I could hardly stand it. I exit the bathroom and there is a crowd around the cockpit. I overhear a pilot from an adjacent aircraft state that a dog has "defecated" all over some passengers and that a woman is now throwing up and the air quality on board has deteriorated to an inexplicable extreme. He was summarily told to stop asking for a gate. We could see available gates, but we weren't being allowed to go to them. I then see Hazmat going to a plane and the police entering another plane. An ambulance and paramedics have entered another aircraft. All were denied gates. Feeling so much anxiety that I was having chest tightness, I asked the pilot whether if I were to have a medical emergency would they allow him a gate. He said no, they will send out an ambulance to get you like they are doing over there. I now know that flight 534 on our tarmac had a diabetic paraplegic who was going into shock. They tried to treat him on board but couldn't, but when they tried to remove him on the tarmac, the passengers began to revolt. At that point they asked his brother to declare an entire on board

emergency. He did and they were allowed a gate. They were the only plane that evening allowed to a gate prior to the restaurants closing in the terminal.

**9 Hours:** Our Pilot again says he is not being allowed a gate. He says he's talking to the number one and number two managers at the airport and the number one and number two managers at the airlines and being rejected. The rear of our plane was beginning to get very noisy. People were angry and trying very hard not to yell, they walked to the front of the plane and talked to the pilot. There was one particular gentleman that wasn't going to take it any more. He went to the front of the plane and had a heart to heart with the pilot. Voices were raised. At that point the pilot came on and said that he felt that it was no longer safe to hold the plane and that he may lose his job, but was taking the plane in anyway. He turned out the lights in the cabin, we applauded, he shut the cockpit door and began to move at a snails pace since he didn't have the appropriate guidance and clearance to pull in. It appeared he was pulling toward the path of an incoming jet. It was very scary. He made a series of U-Turns and pulled up behind another jet and waited until they backed away from the jet way. They did and he pulled forward. It was another 15 minutes or so before the jet way moved into position for us to deplane.

The pilot, Jesse Fedoro, told us they will get our bags off for us, so we should go to Baggage Claim 3 and wait there for our bags. As we deplaned it was like aliens coming off of a spacecraft on a different planet. We were shell shocked. You could see it in everyone's face. The restaurants had closed 30 minutes earlier so we couldn't even buy a meal. We went down to baggage claim and there were the media. The Dallas Morning News, CBS Channel 42 and others. I was interviewed by CBS and pointed out that the arrivals board didn't have our flight mentioned. My kids were tired, hungry and angry. My youngest went to sleep on the tile floor in baggage claim. My oldest bought Doritos and sodas for sustenance. We waited 2.5 hours for our bags and they never arrived. There were now a sea of bags and an even larger sea of people. We asked a security guard who was standing next to the baggage claim about the bags. She said, "Oh, they decided 2 hours ago not to remove the bags, just come back in the morning and "resume" your flight." "Resume?"\* You mean the flight isn't over? How do we get back in the airport without boarding documents?

**\*Resuming the flight is Scandalous. Resuming** meant that we couldn't make our own arrangements. **Resuming** was all part of an effort on the part of American Airlines to keep revenues received and not allow us to make our own arrangements. **Resuming** meant that instead of us being told the truth, we were "baited and switched" to continue on, even being told by American Airlines Customer Service that we had confirmed seats the next day from DFW to Mobile. **Resuming** meant that they kept our bags, kept us with them in their planes, in their airports, for 2 more days. **THE ONLY BENEFIT WAS TO THEM.** The losses we experienced in terms of our vacation, my husbands consulting fees, being relegated to lesser rooms and 2 extra days of our trip down the drain, all so they could **RESUME** the flight. **Resuming** instead of canceling should be illegal.

We went in the middle of the night to Waffle House and got a hotel room. We returned the next day to 700 of our new best friends at the airport trying to get in and couldn't. I bought a copy of the Dallas Morning News which had our flight on the front page. Good thing. I was able to tip the curbside guy and get a dummied up boarding pass, both of which had different times on them. We made it to the gate and our crew was there. They said our flight wasn't going to fly, so we went standby on another flight. They gave no explanation for why it didn't fly. We took off from Austin and headed for Dallas, our baggage still in Austin. We were upset about that.

Being in the same clothes for 2 days and counting, I wanted my bags. We got to Dallas and as we landed the pilots said if there is a flight at a gate going to where you are going, then get to it. We had called the night before and had confirmed that we "should" be on the flight since we didn't make the night before. We got clear across the DFW airport and the gate agent said, "I have good news Mrs. Hanni, your bags are on the plane. But I have bad news, Mrs. Hanni, you are not." I looked at the pilot armed with the Dallas Morning News and said, "You have no idea what we've been through here." He said, "Unless you are the Queen of England, you aren't getting on this plane." I asked him repeatedly to remove our bags and they declined. When we complained, they said "don't blame us for the weather." They said that they were even removing people from the plane with "confirmed" seats against their will due to a baggage overage. We asked for a voucher for the hotel and the gate agent said, "Don't blame us for the weather."

We spent the second night in Dallas, and contacted AA again. They said we had confirmed seats to get to Mobile the next day. We returned and did make our flight to Mobile. Our bags were there waiting for us. When we did get to our hotel, they had given our rooms to someone else, thinking we weren't going to arrive. My husband had lost the vacation portion of the trip for him, but had to complete the work over the next 4 days as committed.

57 hours in total. Enough is enough!

Not ones to stay angry very long, we turned anger into advocacy.

My husband and I started a blog and a petition, and then the Coalition for Airline Passengers' Bill of Rights. Since coalescing, there has been an epidemic of strandings, different airlines, different airports, but with the same level of frustration and anger against an Airline Industry that treats passengers like cargo. However, these events are not new – it's just that we tend not to notice until it happens to us or until the media happens to notice.

2/14 Jet Blue Valentine's Day strandings. Michael Skolnik: one guy, two jets, 17.5 hours on Jet Blue...

3/5 United Airlines stranded people at Chicago O'Hare for 8 hours.

3/17 Philly and JFK. USAir, Rahul Chandron, was a third-time victim having previously been on the Northwest Airlines strandings in '99 and United in '06. The Department of Transportation Inspector General Calvin Scovel had several members of his staff stuck on jets this fateful night.

Just when you thought it couldn't get more absurd... Cheyenne, Wyoming and Scotts Bluff, Nebraska. Abandonment by the airlines. 4 plane-loads of diverted passengers were dropped off at an airport, not their destination, and left there with no resources. Roger Barbour was trying to get to his wedding when he was dropped in Cheyenne by United Express, and the planes later flew away empty. It ended up costing him \$3000.00 to get home.

Members of the Committee - this is simply unacceptable!!

The airlines say all these events are statistically improbable. Evidently not! What I will talk about next is simply Scandalous on the part of our Government.

## DOT Testimony

- **“Excluding flights that were diverted or ultimately canceled (our reporting requirements do not capture data on delays associated with such flights)”**

We found this phrase<sup>1</sup> in the DOT’s *written* testimony. Know what it means? It means that in their oral testimonies the DOT and ATA are attempting to bamboozle this committee with statistics that have nothing to do with the incidents in Austin last year, or any of the cancelled flights in February and March of this year. I’ll cover a couple of examples here, but please refer to my written testimony for more details.

### Time on the Tarmac

Number of Flights by Minutes of Taxi-Out Time

Year	3-4	4-5	>5	Total	Passengers	Flights	Passengers	Flights	Passengers
2000	5,063,047	3,246,701	1,774,594	10,084,342	31,078	6,622	1,241	297	79
2001	5,967,780	3,894,054	1,765,709	11,627,543	32,143	3,863	628	113	16
2002	6,271,058	4,423,836	1,599,897	12,294,791	28,474	2,402	712	124	81
2003	8,400,040	4,346,011	1,807,021	14,553,072	30,000	4,057	856	210	88
2004	7,128,330	4,205,170	2,173,098	13,506,600	32,254	3,128	1,078	182	42
2005	7,149,698	4,773,052	2,154,177	14,076,927	40,576	5,988	991	134	37
2006	7,141,022	4,511,264	2,162,726	13,815,012	50,463	6,110	1,071	180	30
Jan-Feb 2007	1,194,042	216,493	328,226	1,738,761	18,267	851	170	68	11

Total 2000-2007 6600 1348 394

3-4 hours = 660,000 passengers  
 4-5 hours = 134,800 passengers  
 >5 hours = 39,400 passengers

The DOT and ATA tell us that tarmac delays have improved and complaints are down<sup>2</sup> since the airlines promised to self-regulate in 1999. By this they must mean that an increase of 19,000

<sup>1</sup> STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY FOR AVIATION and INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION before the SUBCOMMITTEE ON AVIATION U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION on Airline Service Improvements, April 11, 2007, page 6

<sup>2</sup> STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY FOR AVIATION and INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION before the SUBCOMMITTEE ON

tarmac delays<sup>3</sup> (of two hours or more) last year over the year 2000 is a good thing. But the rest of us want these numbers to decrease, not increase. By the way, if we extrapolate these rare occurrences to 100 passengers per flight, then *only* 800,000 passengers have been affected by tarmac delays of over three hours over the last five years.

## 2006 Diverted Flights

http://www.transtats.bts.gov/HomeDrillChart.asp?URL\_SelectMonth=12&URL\_SelectYear=2006

**Bureau of Transportation Statistics** **TranStats**  
The Departmental Transportation Database

Filter: All Carriers | Filter: All Airports | Filter: Year-to-Day | Filter: Arrivals

Year	Domestic Scheduled Service Passengers	Domestic Scheduled Service Flights	Diverted Flights	Diverted Flights as % of Scheduled Service Flights	Diverted Passengers	Diverted Passengers as % of Scheduled Service Passengers	Diverted Passengers per Flight
2000	4,207,899	76.11%	1,152,725	20.85%	154,311	2.79%	13,559
2001	4,325,269	72.59%	1,359,046	22.88%	187,499	3.80%	14,254
2002	4,619,134	77.40%	1,104,439	19.31%	231,170	3.07%	11,999
2003	4,329,675	82.14%	898,325	14.47%	98,349	1.24%	6,206
2004	5,317,884	81.86%	1,057,884	16.30%	182,469	1.84%	11,381
2005	5,565,830	76.88%	1,421,291	18.94%	157,757	1.79%	12,784
2006	5,525,773	77.40%	1,415,057	20.59%	122,730	1.87%	14,827
<b>2006</b>	<b>5,758,058</b>	<b>79.48%</b>	<b>1,418,587</b>	<b>22.82%</b>	<b>151,630</b>	<b>1.72%</b>	<b>16,186</b>

**16,186 x 100 passengers = 1,618,600 passengers**

This slide<sup>4</sup> simply shows the 16,186 diverted flights that I mentioned earlier. If we extrapolate to 100 passengers per flight, over 1.6 million passengers may have experienced tarmac delays like ours in Austin. Isn't it convenient that there are no tarmac statistics for any of those flights that are available to the public?

### Is that the full extent of the problem? Not even close!

- No tarmac data is kept for carriers with less than 1% of domestic scheduled service passenger revenue (i.e. including five of the seven United Express carriers).
- In the aggregate, those smaller carriers are responsible for approximately 25% of all airline passenger travel in the U.S.
- The DOT and airline advocates are using data that represent only 75% of air travel, and within that subset they are using statistics that represent only a fraction of affected flights.

<sup>3</sup> [http://www.bts.gov/programs/airline\\_information/taxi\\_out\\_times/html/all\\_airports.html](http://www.bts.gov/programs/airline_information/taxi_out_times/html/all_airports.html)

<sup>4</sup> [http://www.transtats.bts.gov/HomeDrillChart.asp?URL\\_SelectMonth=12&URL\\_SelectYear=2006](http://www.transtats.bts.gov/HomeDrillChart.asp?URL_SelectMonth=12&URL_SelectYear=2006)

This slide<sup>5</sup> simply shows that the statistics the DOT and ATA are using account for only 75% of all domestic passenger travel.

For this and the other reasons I've outlined today, we urge Congress to enact legislation to curb these outrageous practices, and require the airlines to report all tarmac delays.

As I conclude my testimony, let's watch a clip of the United Express flights leaving passengers in Cheyenne, Wyoming.

Congress must now step up and use the current FAA reauthorization legislation to ensure that airlines make passengers' rights a top priority once and for all. The last thing that we should do is provide more giveaways to the airlines and less accountability to consumers and Congress while airlines continue to strand passengers in communities all across the country. Thank you committee members for giving me the honor of speaking here today. And a special thank you Mike Thompson for taking the first step and proposing this life saving legislation.

In addition to my testimony, several prominent individuals and organizations have express their support for a Passenger Bill of Rights through testimony to the Senate Committee on Commerce, Science and Transportation and through letters of support. I have included these addendums for the record:

Addendum #1 Quotes from the Nov. 2006 DOT Review

Addendum #2 Member Letter ACAP, PIRG, APBOR dated April 17, 2007

Addendum #3 Testimony of Rahul Chandron (Senate Hearings 4-11-2007)

Addendum #4 Testimony of Paul Hudson ACAP (Senate Hearings 4-11-2007)

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<sup>5</sup> 2006 total flights all domestic flights from Table 7 (9,698,800)

[http://www.bts.gov/press\\_releases/2007/bts012\\_07/html/bts012\\_07.html#table\\_01](http://www.bts.gov/press_releases/2007/bts012_07/html/bts012_07.html#table_01) as compared to total 2006 ATA domestic flights (7,141,922) reported at

[http://www.bts.gov/programs/airline\\_information/taxi\\_out\\_times/html/all\\_airports.html](http://www.bts.gov/programs/airline_information/taxi_out_times/html/all_airports.html)

Addendum: #1

Following are some valuable excerpts and quotes that pertain to the failure of the Government to oversee or implement any meaningful penalties against the airlines for breaking their "Voluntary Commitments".

Title:

Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment

Date:

November 21, 2006

"...airlines have not set targets to reduce delays and cancellations as they promised in June 2001 congressional testimony,15 and consumers lose \$9.4 billion a year from airline delays alone." [p.14]

"The Department Should Continue To Implement Actions To Curb Congestion and Delays Because Airlines Have Not Set Targets To Reduce Delays and Cancellations as They Promised" [p.16]

"For 2005, we identified 15,640 unique flight numbers (215,016 individual flights) that were chronically delayed or canceled, affecting an estimated 16 million passengers." [p.18]

"...the frequent flyer complaint subcategory "Not Able To Redeem Miles" grew from 17 percent in 2001 to 38 percent in 2004" [p.25 sellers of air services, with penalties totaling \$21.8 million. We reviewed 121 of the consent orders signed between 1996 and 2005 relating to advertising (78), civil rights (30), and "other" consumer matters (13). The penalties assessed in these orders totaled \$14.9 million, of which OAEP actually collected \$2.1 million after offsets or forgiveness provisions." [p.33]

"For example, one air carrier was assessed a fine of \$100,000 for non-compliance with disability requirements. Of that, \$90,000 was offset because the air carrier established a consumer advisory group and provided information on their web site about the DOT toll-free hotline." [p.34]

**Aviation Consumer Action Project  
Coalition for an Airline Passengers' Bill of Rights (PBOR)  
Consumer Federation of America  
Consumers Union  
Public Citizen  
U.S. PIRG**

16 April 2007

**Support Airline Passenger Bill of Rights (HR 1303 (M. Thompson-Cubin))**

Dear Representative,

We, the undersigned consumer organizations, are writing on behalf of our members and other airline passengers to urge your support and co-sponsorship of bi-partisan legislation (M. Thompson-Cubin) to improve airline passenger rights, HR 1303, The Airline Passenger Bill of Rights Act of 2007.

The bill takes a variety of needed steps to provide airline passengers with new rights, including rights to potable food and water and sanitary facilities and a right to de-plane when they are stranded on runways for more than three hours at a time. It would also require airlines to make timely and truthful disclosures of diversions, delays and cancellations to customers at airports and on delayed planes. It would establish requirements that airlines post to the Internet the airline's lowest fares, schedules and itineraries and the status of any chronically delayed flights. In addition, the bill would require timely return of lost baggage, the inclusion of all of these rights in contracts of carriage and additional reports and actions by the Department of Transportation to improve the current situation.

These are all very important improvements to the rights of airline passengers. In addition, we urge the Congress to ensure that any final legislation guarantees that these are enforceable consumer rights, includes legally-enforceable and inflation-adjusted compensation for lost or damaged baggage or bumping and reinstates the rights of states to enforce their consumer protection laws against airlines.

Sincerely,

Paul Hudson  
Executive Director  
Aviation Consumer Action Project

Sally Greenberg  
Senior Legislative Counsel  
Consumers Union

Kate Hanni  
Executive Director  
Coalition for an Airline Passengers' Bill of Rights (PBOR)

Laura MacCleery  
Director  
Public Citizen's Congress Watch

Travis Plunkett  
Legislative Director  
Consumer Federation of America

Edmund Mierzwinski  
Consumer Program Director  
U.S. PIRG

### Addendum #3

#### **Testimony to the U.S. Senate Committee on Commerce, Science and Transportation**

Rahul Chandran

April 11, 2007.

Chairman Inouye, Vice-Chairman Stevens, Honourable Committee Members,

It is an honor to testify today, and I thank you for the opportunity to discuss the need for improvements to airline services.

Over eight years have passed since I was first stranded on a tarmac in Detroit, courtesy of Northwest airlines during the now infamous incident of January 1999. I have not thought about the incident for many years, and I am sure that the honorable members of the Committee are familiar with the incident; I simply recall many hours of miserable monotony, unpunctuated by water or food, the frequent refusal to allow customers to use the 'facilities', and a complete lack of information or communication.

In the furore that surrounded this incident, the airlines promised greater self-regulation, arguing that there was no need for legislative protection of passengers as the airlines had their best interest at heart. The free round-trip ticket I received from Northwest as 'compensation' for the ordeal, I returned to Northwest.

Shortly thereafter, in early 2000, I was on a United flight at Washington Dulles, during a sweltering summer day, for a short-hop up to New Haven, CT. We left the gate, sometime around 1 p.m. Approximately four hours later, having sat in a tiny turbo-prop, with neither water, nor access to the bathrooms – and certainly no clear information, we returned to a position near a gate, and the door was opened as the passengers were near rioting. There were, I believe, no more than eight people on board this flight. Eight people, trapped in a metal tube designed to retain heat, on the tarmac in the hot summer sun, without air-conditioning or refreshment for four hours, are still eight people on the boundaries of reasonable tolerance.

On the 16<sup>th</sup> of March, less than one month ago, and just one month after the series of incidents that affected Jet Blue, I arrived at JFK airport at 8 p.m. Although there had been some snow, and earlier flight cancellations at other airports, the website for Cathay Pacific – the airline that was slated to carry me to Vancouver – suggested that flight 889 would take off as scheduled. I came prepared, as several hundred thousand miles of flying have left me convinced that airline websites are rarely up-front about delays.

After about two hours of waiting, we boarded the plane at midnight. I exited the same plane at 9:43 a.m, nine hours and forty-three minutes after had left the gate. The intervening period had been passed on the runway, waiting for de-icing fluid, waiting for gates to become available, waiting for taxi space – in short, waiting. Waiting, that is, with our seat-belts securely fastened, our seat-backs upright and tray-tables stowed, and no ability to enjoy even the little – but important – comfort of the three-inch recline that economy class offers.

Now in certain respects, this was the best delay I have ever encountered. The captain was reasonably communicative about the delays, although his promises of a forty-five minute resolution were only reported as having failed after about an hour and a half. The crew allowed

passengers to use the restrooms, and offered us water. Twice that is – once after about one hour, and once after six and a half hours. Eventually, when the flight was cancelled – and prior to the last two hour wait for a gate – they fed us what was supposed to be our dinner. Given that almost all the dining establishments in the terminal had stopped serving food around 10 p.m, this was a good ten and a half hours after most people had last had any food, during which they had been kept awake.

So we were watered twice, fed once, and sent about our way. Upon disembarking, we received a \$15 voucher for food available at the terminal. I chose not to wait any further, and went home.

Honorable Senators, as I am sure you are all aware from your experiences, there comes a point when the consequences of a series of poor decisions accrete, and you have an intolerable outcome. Plane delays happen – I continue to fly, and have been delayed in over 30 countries, for reasons that range from the real to the incredible. Pilots need to respond to the profit-motive of their masters, and to make a good-faith effort to get their passengers off the ground, and airborne, safely.

It is, however, clear to me through all of these experiences that the companies that run airlines have failed to implement management procedures that prevent the intolerable outcome – passengers trapped on airplanes for more than six hours.

We continue to fly because air-travel is part of the engine of economic growth that has made America the success story that it remains today. A simple bill of rights that provides passengers with confidence that airlines will take care of their basic needs, prevents them from being confined in intolerable conditions, and ensures that airlines are responsible and held accountable for their actions will help to ensure that this remains the case.

Thank you for your time.

## Addendum #4

### TESTIMONY OF AVIATION CONSUMER ACTION PROJECT (ACAP) BEFORE THE SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE, HEARING ON AIRLINE SERVICE, APRIL 11, 2007, WASHINGTON, D.C.

#### Introduction

Good Afternoon Chairman Inouye, Vice Chairman Stevens and members of the Committee. My name is Paul Hudson. I am executive director of the Aviation Consumer Action Project (ACAP) which has acted as a voice for air travelers on national aviation issues of safety, security, and airline passenger rights and interests since 1971. Thank you for inviting me to testify today. I would like to make some brief summary comments and would request that my full written testimony be submitted for the record.

#### The Situation, How Bad Is It?

The situation today can best be described as "déjà vu all over again", as the problems that nearly brought the national air transportation to its knees in 1999-2000 have now re-emerged. With one of three flights now delayed, one of twenty flights being cancelled, one of 100 checked bags being mishandled, and most recently passengers on JetBlue and some other airlines being involuntarily detained in aircraft for up to 11 hours on the tarmac at Kennedy Airport, the situation requires prompt government and congressional action to prevent a new crisis, one that will not only cause hardship for airline passengers, but could negatively impact safety and the US economy.

The root cause of the current movement toward chronic air transportation congestion and periodic gridlock is record high air traffic that strains the air transportation infrastructure. The inadequate number of airports around Chicago, New York and a few other cities which are major choke-points in the system, the lack of reserve capacity of aircraft and flight crews, the lack of government oversight of airline scheduling practices and contingency planning for disruptions, has resulted in an air transportation system that is both vulnerable and deteriorating. It now takes longer to travel by air than it did 30 years ago, and the situation is much worse in high traffic areas and at peak travel times. In the past year alone, flight delays are up nearly 20%, denied boarding or bumping is up 20%, mishandled baggage is up 32%, and formal passenger complaints are up 50%. (Source: April 2007 Air Travel Consumer Report, US DOT and statistics at US DOT web site).

#### **What Should Congress Do?**

In 1978, Congress enacted legislation that deregulated the airline industry, abolished the federal agency that had regulated air fares and terms of service, the Civil Aeronautics Board (CAB). The remaining federal agency, the Federal Aviation Administration (FAA), regulates air safety, operates the air traffic control system and provides subsidies and grants to airports. There is also a small aviation consumer office in the US DOT that receives airline service complaints, collects data from the airlines and publishes monthly statistical reports. And of course since 9/11, the Transportation Security Administration has operated the aviation security system. US airports are still owned and operated by local government authorities, who control the access to major airports by airlines.

Airlines are now free to set fares as they see fit, and can compete on price, service and amenities. Barriers to entry of new airlines are now lower than they have ever been. This has brought benefits to the traveling public, but also has resulted in new problems that now demand your attention.

Congress must, in our view, not only address the problems that have caused national headlines in February and are the top passenger complaints (i.e. flight delays and cancellations and mishandled baggage), but are only the tip of the iceberg. It must also address the underlying problems of the national air transportation system.

#### Stranding and Involuntary Detention in Grounded Aircraft

Passengers should be given the opportunity to deplane when a flight is delayed more than 2 hours, and airlines should also be required to compensate passengers for more than a 2 hour delay on a per hour basis. In many cases passengers can get alternate transportation or may want to cancel their trip, if they can escape the wrongful imprisonment that airlines now increasingly impose on passengers.

There is a little known financial incentive that flight crews have to pull away from the gate (and not go back) even if they know the flight is not taking off for a long time, if at all. Most airlines only pay flight attendants and sometimes pilots from the time that the cabin door closes. This work rule goes a long way to explaining some of the more ridiculous stranding situations.

This reform would also remove another financial incentive airlines now have to over-schedule flights that they know are going to be delayed or canceled due to overcrowding or weather conditions. By lying to and fooling the passengers, then involuntarily detaining them on aircraft, they avoid the massive cancellations, defections to other airlines, and financial losses that would occur if they provided honest disclosure and scheduling. Instead airlines usually blame the weather, FAA air traffic control or mechanical problems rather than their own practices.

#### Delay & Cancellation Abuses

Reducing stranding and delay abuses also requires **enhanced disclosure of the on-time statistic for each flight**. This figure is now available, but the passenger must ask for it. All persons providing reservations services should be required to disclose the percentage that a particular flight is on time, and have available the average delay and cancellation rate. Chronically delayed flights should be posted on the carrier's and a DOT web site, as well as frequently cancelled flights.

It is unlikely that many passengers will want to book flights that are delayed or cancelled more than 50% of the time, thereby causing the airlines to discontinue such flights and rationalize their schedules, based on reality and truth in scheduling rather than deceptive scheduling.

While the number one cause of delays is air traffic congestion, the **number two cause of delays and cancellations is the airlines' lack of reserve capacity of aircraft and flight crews** which now runs at 1% or less. Extreme weather causes less than 5% of delays. No system can operate reliably without an adequate reserve capacity, sick pilots or mechanical problems now invariably cause daily avoidable delays and cancellations. Accordingly, **mandating a minimum reserve capacity**

**would be the fastest and cheapest way to improve reliability of the national air transportation system.**

However, there also needs to be **a requirement that deceptively scheduled flights be canceled**. These are flights that are delayed over 80% of the time or are frequently cancelled (eg. Over 8-10% of the time). As of February 2007 there were 175 flights that are regularly late over 80% of the time, typically for 30-120 minutes. The worst examples of this Schedule Lying include Mesa Air Flight 7174 from Birmingham to Chicago late 100% of the time an average of over 2 hours, US Airways flight 154 from Philadelphia to San Francisco late 100% of time averaging over an hour, and Comair flight 1435 from Reagan National to JFK (actual flight time less than 25 minutes) late 93% of the time an average of 79 minutes.

For economic reasons, some airlines engage in the practice of deceptive scheduling. Since airline deregulation the FAA and airports exercise little if any control over airline flight scheduling. As a result, some busy airports now have many more flights scheduled to depart or land than the airport capacity will allow during certain time periods.

Airlines have an incentive to schedule flights at the most popular times even if they know that the scheduled times cannot be met due to airport capacity and overcrowding. Such practices should be banned as they amount to a fraud on the public and may give airlines willing to engage in such dishonest practices an unfair competitive advantage. (cf. JetBlue, Express Jet, Mesa and Comair have 8-10% of their flights regularly late over 70% of the time, while Southwest, Delta, Alaska, Hawaiian, and Aloha are at only 0.0 to 0.2% of their flights).

The FAA also should be required to ensure that airlines do not chronically over schedule, particularly at choke point airports, as such practices have a negative affect on the national air traffic as well as flights originating or terminating at such airports. These airports include Chicago O'Hare, Atlanta Hartsfield, New York LaGuardia, Kennedy and Newark Airports, Los Angeles International, and San Francisco. The current non-system is analogous to having no traffic lights or traffic control rules to control congestion on our nation's roadways.

The next reform needed is to **provide compensation for passengers for flights canceled by the airline for economic reasons less than two hours before flight time**. While the airlines will not admit it, such cancellations are common and amount to breach of contract and fraud. If a flight has so few passengers that the airline wants to cancel it, it should do so at least two hours before, so that passengers do not come to the airport unnecessarily, and provide passengers with alternate transportation within an hour of the canceled flight time plus a ticket refund.

Otherwise, the airlines should provide passengers with compensation that is equivalent to normal breach of contract compensation (normally the cost of the covering the service defaulted upon with another provider and sometimes consequential damages) or at least equivalent to bumping compensation, perhaps capped at several thousand dollars. In case of any dispute, it should be presumed that a flight was canceled for economic reasons if there was no ground hold by air traffic control and the flight was less than 30% booked.

Passengers, who are **stranded by airline delays and cancellations overnight, away from their home city, should receive ground transportation and over night accommodations.** Airlines use to provide this a matter of course, but now many do not or do so only for certain favored passengers. This has led to chronic choke-point airports like O'Hare in Chicago being dubbed "Camp O'Hare" with over 50,000 passengers per year being stranded and cots being set up in the baggage claim areas after midnight during the last high air traffic years (1998-2000).

#### Inflation Adjustment for Bumping and Lost Baggage

Legislation is also needed for **automatic inflation increases in compensation for bumping** (involuntary denied of boarding of passengers with confirmed reservations due to airline overbooking). The present rule caps cash compensation at \$400 or \$200 and has not been changed or updated for inflation for over 25 years.

The compensation cap for lost or damaged luggage on international flights to or from the US is about \$1,500 (this cap is based on an arcane treaty which provides for a compensation cap based on IMF special drawing rights or SDRs, this compensation cap is now badly outdated.) Under the common-law of bailment, airlines would have unlimited liability. While legislation cannot change this treaty, it could mandate excess liability insurance be offered to passengers by airlines flying to or from the United States.

On domestic flights, the US DOT has recently increased lost baggage compensation limit to \$3,000 from \$2,800 under an inflation adjustment rule.

#### Enforcement

Finally, a **bill of rights for airline passengers needs to include a way for passengers to enforce their rights in a timely and inexpensive way.** This is something totally lacking in the present system. Complaints to airlines or the US DOT are regularly blown off (ACAP gets copies of some of these and a study can easily be done of the thousands of complaints to the US DOT consumer affairs office that are simply logged for statistical purposes).

ACAP suggests mandating a small claims arbitration process (which could be a private alternate dispute resolution service that uses retired judges, consumer affairs, or experienced arbitrators), as is typical in insurance and securities industry contracts with consumers, with the option for the customer going into local small claims court if the dispute is over a certain amount, like \$1,000. For disputes involving many passengers, and millions of dollars of claims, class actions in state or federal courts should be authorized, as well as through arbitration. There also needs to be a provision that would require the airline to pay the litigation expenses of the passenger if the resulting decision exceeds a rejected settlement offer. Now, there is no arbitration process, and airlines who are sued in state courts try to get the cases dismissed on jurisdictional grounds.

#### Conclusion

The above provisions would cover the largest number of complaints of airline passengers, which are Flight Delays and Cancellations and Lost or Mishandled Luggage, as well as their most egregious complaints and abuses of

Stranding and Wrongful Imprisonment. These reforms would also enhance and reward honest competition among the airlines and US economic productivity by discouraging abusive scheduling and service practices now causing unnecessary air transportation delays by reducing flight delays and cancellations that now impose unnecessary costs on the overall economy as well as individual passenger inconvenience and hardship.

Specific comments on the legislation recently introduced by Senators Boxer and Snowe, and by Congressperson Thompson of California are contained in Appendix A to this testimony. Thank you for holding this important and timely hearing. I look forward to responding to any questions of the Committee.

Paul Hudson, Executive Director  
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### Organizational Statement

The Aviation Consumer Action Project (ACAP) is a nonprofit corporation founded in 1971 which acts as voice for air travelers on national issues of aviation safety, security, and consumer rights. Its publications include Facts & Advice for Airline Passengers (a pocket handbook for airline passengers). ACAP has been involved in rulemaking before the FAA and most particularly bumping, baggage compensation, medical kits on airliners, airline security, and air quality.

Paul Hudson is a New York attorney and has been executive director since 1997. He represents ACAP as a member of the FAA Advisory Rulemaking Committee (ARAC), Executive Committee and the Transportation Security Administration (TSA) Aviation Security Advisory Committee (ASAC). ACAP is also an active member of the ASHRAE Advisory Committee on Aviation Air Quality Standards.

ACAP intervened in a class action case on behalf of Northwest Airline passengers who were stranded in a snow storm in Detroit for many hours in 1999, the last major case involving stranded passengers; and was successful in achieving more thorough notices and robust compensation payments for several thousand passengers involved.

ACAP receives no funding from the federal government or airlines and has no contracts or business relationships with airlines or their organizations.

Appendix A. Comments on S. 678 and H.R. 1303 – Airline Passengers Bill of Rights Act of 2007

by Aviation Consumer Action Project (ACAP)  
April 5, 2007

Overall Comment: Such legislation is necessary and long overdue. It should be comprehensive and address the major complaints of airline passengers which are flight delays and cancellations, mishandled baggage, and the lack of any enforceable rights re for service complaints. Finally, there should be consideration of rights of passengers concerning aviation security measures which have become a major concern since 9/11.

Specific Comments:

S. 678 (by Senators Boxer and Snowe) as introduced February 17, 2007

Sec. 41781 ( a) (2) Right to Deplane

The right to deplane should be triggered after 2 hours or less, not three. Most flights are under 2 hours duration. Many passengers can obtain alternate transportation if they are permitted to deplane. Wrongful imprisonment lawsuits have resulted in recovery for unreasonable detention as short as 2 hours. This provision could be used by the airlines to legitimize involuntarily detaining passengers for 3 hours or more, and therefore could be a step backwards for passenger rights and could potentially lead to an increase in stranded and involuntarily detained passengers.

H.R. 1303 (Mr. Thompson of California, et al) as introduced March 1, 2007

Sec. 41782 Standards for air carrier passenger services

( a) This provision would allow for no change in existing procedures for handling passenger complaints, which give air carriers the near absolute power to reject complaints with no effective recourse or remedy for the complaints. Airline procedures generally provide that any pro-consumer policies and practices are not part of the contract for carriage and legally unenforceable, and there is no neutral third party mediation or arbitration for unresolved complaints.

(2) METHODS OF NOTIFICATION Should also provide for include direct notification of passengers by telephone or email of flight delays. Airlines now have phone numbers for all passengers and often email for passengers and should be required to directly notify them of delays or cancellations that are known more than two hours before flight time. This will prevent unnecessary or untimely travel to, congestion at airports, and general cost and aggravation for all concerned.

(1) RIGHT OF PASSENGERS TO EXIT AN AIRCRAFT Same comment as under Right to Deplane above.

After section on Chronically Delayed Flights there should be a section for Frequently Cancelled Flights (cancelled more than 5-10% of the time) that requires such to be discontinued and compensation paid to passengers as in bumping regulations.

Sec. 41783 Procedures for Departure Delays (a) Should also include permitting deplaning passengers without returning to gate which is often feasible especially where passengers are transported to aircraft by bus.

(2) MEETING This provision should include representatives of passengers, not just government and industry representatives.

Goal of contingency plans should be "graceful degradation" of national air traffic in weather related, natural, or man made disasters and emergencies, using diversion to pre-designated alternative and secondary airports and enhanced ground transportation. The current system effectively causes national air traffic brownouts and blackouts that take as long as a week to recover from, whenever a major airport is unavailable.

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