



TESTIMONY OF

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BEFORE THE

**AVIATION SUBCOMMITTEE,
HOUSE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE**

CONCERNING

**“THE AIRLINE PASSENGER EXPERIENCE:
WHAT IT IS AND WHAT IT CAN BE”**

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Good morning, Chairman Larsen, Ranking Member Graves, and Subcommittee Members. On behalf of Consumer Reports,¹ the independent, nonprofit consumer organization, thank you for the opportunity to speak today regarding the concerns of millions of American air travelers.

Three years ago I appeared before the House Transportation and Infrastructure Committee,² at a marathon 4.5-hour hearing to discuss “Oversight of U.S. Airline Customer Service”—and specifically the state of domestic airline policies in the wake of the infamous “Dr. Dao incident,” in which a paying passenger was literally dragged off a United Airlines flight outsourced to a regional carrier. Consumer Reports would like nothing more than to report that conditions have improved for airline passengers since then. But unfortunately, discontent among the nation’s travelers with the state of air travel has been increasing, and for good reason.

Massive industry consolidation since 2001 has not produced the higher levels of customer service that were promised by airline executives during the wave of mega-mergers that absorbed America West, Continental, Northwest, TWA, US Airways, and other carriers and have left the country with just three major network hub-and-spoke airlines—American, Delta, and United, and one major point-to-point carrier, Southwest. These were the mergers that many of us vocally opposed right here in the House and Senate,³ as we warned that a lack of robust competition would leave American air travelers at the mercy of an airline oligopoly resulting in lower levels of service, fewer hub airports, fewer nonstop flights on many routes, and higher fares on routes not served by Low Cost Carriers. Simply put, due to consolidation airline executives are responding less and less to the needs of customers, who no longer have the kinds of meaningful choices they once did.

¹ Consumer Reports is an expert, independent, non-profit organization, founded in 1936, that works side by side with consumers for a fairer, safer, and healthier world, fueled by our trusted research, journalism, advocacy, and insights. We reach nearly 20 million people each month across our print and digital media properties, and we use our labs, auto test center, and survey research center to rate thousands of products and services annually. We have been active for decades on a wide range of policy issues advocating for the interests of consumers, including protecting their safety and rights in air travel.

² ConsumerReports.org; “Testimony of William J. McGee, House Committee on Transportation and Infrastructure,” May 2, 2017, advocacy.consumerreports.org/wp-content/uploads/2017/05/Consumers-Union-McGee-05-02-2017-House-airline-hearing.pdf.

³ *E.g.*, advocacy.consumerreports.org/research/cu-to-raise-concerns-about-american-airlines-us-airways-mergers-potential-impact-on-consumers/.

What’s more, in recent years aircraft cabins have become more fully packed than at any time since World War II, with the most recent annual passenger load factors averaging 84%,⁴ straining the system to capacity on a daily basis. Seats have never been tighter, as legroom pitch and width continue to shrink while airlines attempt to shoehorn ever more passengers into aircraft. And the nickel-and-diming of fees has never been higher or more pervasive; in 2018 Consumer Reports conducted a nationwide survey that found a third of respondents had recently experienced an unexpected airline fee in the previous two years, and half of those went over budget due to such fees.⁵ And these fees continue to get higher. A report released by a leading aviation marketing firm just two weeks ago estimated that airline ancillary revenue reached \$75.6 billion worldwide last year.⁶ In fact, airline financial reports indicate that the primary source of profits of some airlines *is* ancillary fees, with base airfares becoming increasingly secondary.⁷

This monetization of every aspect of air travel—from checked bag to boarding order to seat selection—has led to new challenges and complications. As I will discuss in greater detail below, airline seating and pricing schemes have created a situation in which families with children discover that they are required to pay additional fees or upgrades in order to ensure they will be seated together. This creates situations that many parents find inconceivable, and it creates safety and security concerns for all travelers.

Many promises were made by executives from United and other domestic airlines at that hearing in 2017, though few tangible improvements ended up in airline Contracts of Carriage. Statistics released by the U.S. Department of Transportation just two weeks ago⁸ indicate that between 2018 and 2019, involuntary denied boardings increased by 57%, with 20,868 passengers bumped against their will last year, enough to fill the Capital One

⁴ U.S. Department of Transportation, Bureau of Transportation Statistics, “Estimated Full Year 2019 and December 2019 U.S. Airline Traffic Data”, January 17, 2020, www.bts.gov/newsroom/estimated-full-year-2019-and-december-2019-us-airline-traffic-data.

⁵ <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees/>.

⁶ IdeaWorks Company, “CarTrawler Global Statistics of a la Carte Revenue,” February 18, 2020, www.ideaworkscompany.com/february-18-2020-press-release.

⁷ *E.g.*,

IdeaWorks Company, “CarTrawler Ancillary Revenue Series for 2019,” July 24, 2019, www.ideaworkscompany.com/wp-content/uploads/2019/08/2018-Top-10-Airline-Ancillary-Revenue-Rankings.pdf.

⁸ U.S. Department of Transportation, Air Travel Consumer Reports, www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports.

Arena. That's why Consumer Reports continues to advocate for a clear prohibition on involuntary relinquishment of ticketed seats—except for compelling safety or security reasons—and clear guidelines for ensuring that relinquishments are truly voluntary, in exchange for appropriate compensation. But amazingly, one of the most central questions of all concerning Dr. David Dao has never been addressed: Why him? What internal airline calculations determine which passengers will be permitted to board and which will be involuntarily bumped—or worse, dragged off a flight?

Involuntary bumping is just one manifestation of much more systemic problems for consumers. From the passenger's perspective, this is an industry in desperate need of transparency. Nearly every aspect of the customer experience is mired in mystery. Consider:

- When booking a trip weeks or even months in advance, the search through the multitudes of flights, with potentially billions of fares available on flights worldwide is mind-numbing, a process economists have described as one of the most complex pricing mechanisms on the open market. It has spawned cottage industries advising how, where, and even when to shop, down to the best hour of the week. The experience can be especially confounding to the millions of air travelers who fly less than once a year. And the airlines make it difficult to comparison shop.⁹

- Fees can be even more opaque than fares. In fact, sometimes it can even be impossible to determine the full amount of fees prior to booking. Many of these fees are not optional; they are charged for basic services such as checking bags, selecting seats, changing flight reservations, or even *carrying on* a small bag.

- When passengers select seats, it's common now for airlines to block out seats throughout the cabin, leaving fewer seats available, a practice that can result in scaring consumers into paying more to secure seats or upgrading to more expensive classes. Indeed, the uncomfortable product known as Basic Economy is designed to attract shoppers and then pressure them by upselling.¹⁰

⁹ See advocacy.consumerreports.org/research/comments-of-consumers-union-and-us-pirg-to-dept-of-transportation-re-ensuring-access-to-reliable-airline-flight-information/.

¹⁰ U.S. Senate, Committee on Commerce, Science, & Transportation, Sen. Bill Nelson, Ranking Member, "New Fares and Fees Take Flight: Basic Economy and New and Increased Fees Continue to Confuse

- When a flight is delayed, which passengers will be quickly rebooked and which will not? When a flight is cancelled, which passengers will be given accommodations, and which will sleep on an airport floor? For those not in premium classes or elite members of frequent flyer programs, there is no transparency on such decisions, and often little communication.

- Even safety itself is opaque. There is no transparency on the outsourcing of critical scheduled maintenance and repairs for U.S. airline fleets to facilities in foreign locations such as El Salvador, Brazil, Mexico, China, and Singapore, often under far less stringent oversight, yet with the full blessing of the Federal Aviation Administration.

I spent seven years working in airline flight operations management, and I don't know that any front-line industry employees can answer these questions, because airline systems are now intentionally opaque, with Contracts of Carriage that provide travelers with few rights and guarantees. They are lengthy, filled with legal jargon, and designed to protect the airline, not passengers. They typically promise only that airlines “may” rather than “will” accommodate passengers fairly. This is why for years now Consumer Reports and others have advocated for a comprehensive, consistent Passenger Bill of Rights, similar to what the European Union has effectively enforced for 16 years now.¹¹ It should include standardized accommodations during flight delays and cancellations; up-front transparency for flights, fares, and fees; and effective standards for safe and healthy aircraft seating.

Because the federal preemption clause of the 1978 Airline Deregulation Act overrules nearly all state consumer protection laws, the federal Department of Transportation plays a particularly essential role in protecting airline passengers. But unfortunately it's a role the DOT has largely been abdicating in recent years. Consider:

- In 2017, the Department cited “limited public benefit” and withdrew two key proposed rulemakings on airline pricing transparency, a move

Airline Travelers,” January 2018, www.commerce.senate.gov/services/files/44126719-3475-49f6-a974-df2b21e22e10.

¹¹ European Union, Air Passenger Rights, europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm.

strongly criticized by Consumer Reports and other consumer organizations.¹²

- The Department’s Notices of Proposed Rulemakings—which allow the flying public, consumer advocates, and other interested parties to offer comments on critical aviation issues—have trickled down to a fraction of the NPRMs put forth under past Administrations. Ironically, one of the few NPRMs in that trickle is a notice issued just two weeks ago that proposes to *restrict* the Department’s oversight of unfair and deceptive airline practices.¹³ We are particularly concerned that, as is noted in the NPRM, the impetus for this proposal came from the trade association for the airlines.

- For two years, the DOT’s Aviation Consumer Protection Advisory Committee did not hold quarterly meetings, as its predecessor committee had for many years. When the ACPAC was finally reconstituted in 2019, the DOT appointed as the consumer representative an adjunct fellow from the American Enterprise Institute, who had no previous history of advocating for consumers. This was a stark departure from the very purpose of establishing the committee.

- For three years now, Consumer Reports has joined other consumer organizations in requesting a meeting with Secretary Elaine Chao to present our concerns about these issues, just as we have met with every other DOT Secretary in recent years. To date that request has been denied.

As for the Department’s enforcement authority, all too often the punishments fall far short of the offenses, according to independent analysis.¹⁴ In 2019, the DOT issued just eight enforcement actions against airlines, a record low number. And in 2018 it levied just \$1.8 million in such fines, a new low in dollar amounts. For example, the hard-fought tarmac delay rules that were enacted a decade ago to end the airline practice of holding passengers captive on airport taxiways—often for hours on end, without food or water or even lavatory access—were initially quite effective, but in recent years tarmac delays are steadily increasing. This is hardly

¹² U.S. Department of Transportation, “DOT Withdraws Two Proposed Rulemakings,” December 7, 2017, www.transportation.gov/briefing-room/dot9117.

¹³ U.S. Department of Transportation, “Notice of Proposed Rulemaking: Defining Unfair or Deceptive Practices,” February 20, 2020, www.transportation.gov/individuals/aviation-consumer-protection/notice-proposed-rulemaking-defining-unfair-or-deceptive.

¹⁴ “It’s Official! Airline Fines Hit a Record Low in 2019,” Christopher Elliot, January 3, 2020, chriselliotts.com/government-airline-fines-hit-record-low/.

surprising, considering that last year the DOT fined American Airlines roughly \$77,000 per delay for 13 flights, and Delta Air Lines roughly \$68,000 per delay for 11 flights. For corporations that generated \$44.5 billion and \$44.4 billion respectively in annual revenues in 2018, there clearly is little fear of DOT oversight.

Perhaps the clearest example of the Department's deliberate inaction is an issue Consumer Reports has been closely following for four years. In 2016, Congress, led by this committee, directed the DOT to "review, and if appropriate, establish a policy" to ensure U.S. airlines allow families with children 13 and under to sit together without paying additional fees.¹⁵ After two years of virtual silence from the DOT, in 2018 Consumer Reports filed a Freedom of Information Act request.¹⁶ After another year's delay, the DOT finally forwarded 136 consumer complaints to us, while stating publicly that it was unnecessary to take action—"based on the low number of complaints."¹⁷ We analyzed those complaints and were horrified to find they included cases involving children as young as 1, 2, and 3 years old assigned seats away from their parents; other children seated separately were autistic, suffered seizures, or were susceptible to life-threatening nut allergies.¹⁸

Seating children apart from their families also creates a disruption during an emergency evacuation, posing a threat to all passengers. Furthermore, a 2018 FBI report¹⁹ stated that inflight sexual assaults are on the rise, with children particularly vulnerable.

Shocked by the DOT's refusal to act, we established our own online portal and within weeks had received and forwarded in excess of 600 complaints, more than four times the DOT's original total. Many of the individuals who reached out to us were clear they did not know about the

¹⁵ Congress.gov; "FAA Extension, Safety, and Security Act of 2016," July 15, 2016, www.congress.gov/114/plaws/publ190/PLAW-114publ190.htm.

¹⁶ Consumer Reports, "Family Seating FOIA," September 23, 2019, advocacy.consumerreports.org/research/consumer-reports-letter-to-house-transportation-committee-dot-reply-to-family-seating-freedom-of-information-act-request/.

¹⁷ U.S. Department of Transportation, "DOT's Review of U.S. Airline Family Seating Policies," September 17, 2019, www.transportation.gov/individuals/aviation-consumer-protection/review-us-airline-family-seating-policies.

¹⁸ Consumer Reports, "Letter to Congress," September 23, 2019, advocacy.consumerreports.org/wp-content/uploads/2019/09/Family-seating-FOIA-CR-letter-to-House-TI-9-23-19-FINAL-4.pdf.

¹⁹ FBI, "Sexual Assault Onboard Aircraft," April 26, 2018, www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618.

DOT's complaint system, and surely would have complained earlier if they were aware of it.

We continue to urge the DOT to fulfill its mandate to protect the safety of airline passengers by developing the sort of rule this committee envisioned in 2016. In the meantime, we are urging the major airlines to fix this themselves, and are joined by more than 114,000 individuals who signed a petition on the subject in just one week.²⁰ Last week, we wrote to American, Delta, and United reminding them how they can fix this consumer protection issue on their own and ensure that children sit with family members on planes. Furthermore, we also support H.R. 5292, the Fly Together Act,²¹ introduced by Rep. Ann Wagner and Rep. Anthony Brown, that would force DOT's hand, taking away its flexibility to decide if a rule is "appropriate" and requiring it to issue such a rule. We hope this issue can be addressed without further legislation, but appreciate the introduction of the bill nonetheless.

We also are concerned about other critical safety issues that have not been effectively addressed by the DOT and its component, the Federal Aviation Administration. These include:

- The FAA's lack of proper oversight of aircraft maintenance outsourcing to foreign repair stations, which echoes the well-documented debacle of the FAA's oversight of the Boeing 737 MAX development. This is why we strongly support H.R. 5119, the Safe Aircraft Maintenance Standards Act.²²

- The FAA's emergency evacuation testing has failed to actively take into account seismic changes in air travel extending over the past two decades, including record-high passenger loads; tighter seats; larger passengers; increases in carry-on baggage due to checked bag fees; distracting electronics; the influx of oversized, untrained emotional support animals; and of course, children being seated apart from their families.²³

²⁰ Consumer Reports, "Airlines: Kids Should Sit with Their Parents!", [action.consumerreports.org/fees20200219petition_airlinefamilyseating](https://www.consumerreports.org/fees20200219petition_airlinefamilyseating).

²¹ www.congress.gov/bill/116th-congress/house-bill/5292/text.

²² www.congress.gov/bill/116th-congress/house-bill/5119.

²³ Consumer Reports, "Consumer Organizations Letter to DOT and FAA on Passenger Emergency Evacuation Tests," October 21, 2019, [advocacy.consumerreports.org/research/consumer-organization-letter-to-dot-and-faa-on-passenger-emergency-evacuation-test/](https://www.consumerreports.org/research/consumer-organization-letter-to-dot-and-faa-on-passenger-emergency-evacuation-test/).

- The FAA’s refusal to close a 67-year-old loophole and require children under 2 to be properly restrained on commercial flights.

At Consumer Reports we hear continually from passengers expressing frustration at not being heard by indifferent airline executives. In recent weeks, journalists and social media have highlighted raging battles over whether passengers can recline their seats when it crowds passengers sitting behind them.²⁴ While passengers fight with each other or with flight attendants, the real culprits are the airlines that intentionally make seats tighter.

In abdicating its critical role to protect and defend the rights of airline passengers, all too often the Department has taken steps that serve the best interests of the aviation industry, not the best interests of the flying public and taxpayers who fund the system. That’s why it’s imperative that Congress enact meaningful passenger rights protections and provide greater safety oversight. And we applaud the Aviation Subcommittee for its continuing efforts.

I will be happy to answer any questions you may have. Thank you very much.

²⁴ *E.g.*, CNN.com, “Her Reclined Seat was Repeatedly Punched,” February 29, 2020, www.cnn.com/2020/02/18/us/plane-passenger-reclined-seat-cnn/index.html.