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Floor Statement of U.S. Senator Chuck Grassley of Iowa  
FAA Reauthorization  
Tuesday, May 6, 2008

Mr. President, people across the country may be wondering what's going on here today. Let me see if I can shed some light on where we are at. As I shed some light, I will respond to some of the fiction that has taken the guise of debate.

On Wednesday last week, Senators Durbin and Hutchison offered an amendment to strike a provision in the substitute amendment. The substitute then pending was the product of extensive staff negotiations and member discussions between the two committees with jurisdiction over the Federal Aviation Administration (FAA) program. The two committees are the Finance Committee and the Commerce Committee.

The Finance Committee determines the aviation excise taxes and controls the Airport and Airway Trust Fund. That's basically how the program is financed. Without that money, there wouldn't be much of a federal aviation program. The Commerce Committee develops the aviation program and policy.

Last year, the Commerce Committee acted first. Finance acted a few weeks later. The Finance Committee addressed airline pensions. And we've heard many arguments, pro and con, about the merits of the Finance Committee provision. I addressed the merits myself at length last week. I won't repeat that statement now, but, in a few moments, I will respond to some of the points made by the opponents of the Finance Committee provision.

Now, as I said earlier, Mr. President, the substitute was the product of a deal between the Finance Committee and the Commerce Committee. Under that deal, the Commerce Aviation Subcommittee Chairman and Ranking Republican were managing the bill. They were, however, at a minimum, under the obligation to consult with the Finance Committee Chairman and Ranking Member with respect to Finance Committee matters in the substitute. That deal was violated when the Democratic floor manager unilaterally modified the substitute. The modification was directly adverse to the interests of Finance Committee members. They breached the deal. Plain and simple. They breached the deal.

What made matters worse, Mr. President, is that the Democratic Leader backstopped the Democratic floor manager's violation of the Commerce-Finance deal by filling the amendment

tree.

Now, we all know the proponent of the amendment, the Democratic Whip, has a lot of power. That power was displayed when the offending narrow pension provision was air-dropped into a conference report on Iraq war spending. No hearings. No markup. No committee process. No transparency. Nope. Just air-dropped into a war supplemental conference. Wham-bam. Here it is. Take or leave-it special interest provision cooked up in the offices of the Democratic Leadership. It's not the way we ought to legislate.

I seem to recall a lot of outrage when these kinds of narrow provisions were air-dropped into conference reports when Republicans were in charge. And no one was louder than the proponent of the amendment, the Democratic Whip. If we had a C-SPAN checker, you could roll the tape back a few years. We'll have to settle for *The New York Times*. I ask unanimous consent to insert a copy of an article from *The New York Times*, dated September 11, 1997.

That article deals with a successful effort to remove an extraneous matter that had been air-dropped into a conference report on a popular tax relief bill. The offensive measure was a tax credit for payments made by tobacco companies. The Democratic Whip successfully repealed the air-dropped provision. He did the right thing then. I supported his efforts. The Democratic Whip noted his victory by saying in part "Don't try this kind of backroom deal and deception in the future." "It is really an example of the old school of politics, the old style of politics."

The distrust of the public for the old school of politics, the old style of politics is something the Junior Senator from Illinois has eloquently raised on the Presidential campaign trail. To be bipartisan, the Senior Senator from Arizona has also touched a nerve about the old school of politics and the old style of politics as well.

Mr. President, the Democratic Whip was right almost 12 years ago. Unfortunately, with respect to this air-dropped pension provision, the old school of politics, the old style of politics was applied.

What do I mean? In this case, old school, old style power politics was at play. A powerful member of the Democratic Leadership and a key member of the Appropriations Committee did an end-run around the Finance Committee and the Health Education, Labor, and Pensions Committee. Forget about the nearly year-long conference negotiations on the pension bill. Forget about all the hearings the House and Senate tax writing and labor committees held on pension reform. Forget about the delicate compromise worked out on the way the funding rules affected the airlines. None of that mattered.

The policy implications some might ask? Forget about them too. All that mattered was a powerful Senator air-dropping a narrow provision into an unrelated conference report. All that mattered was a favor for a constituent of a powerful Senator.

Mr. President, here's what should've happened. The Senior Senator from Illinois and the Senior Senator from Texas should have agreed to set aside their amendment. They refused to. Let me repeat that. The Senate was wrapped around its axle because the proponents of the

Durbin-Hutchison amendment refused Chairman Baucus and my request to set their amendment aside.

Let me tell you Chairman Baucus and I've managed a lot of bills on the floor. I challenge anyone to find examples of this kind of behavior. Many times amendments come up that are controversial. In the interests of moving legislation along, we agree to set the amendment aside, move on to other business, and deal with the controversial amendment later. Why we weren't accorded the same courtesy in this instance is beyond me.

This lack of courtesy was compounded by the Majority Leader's amendment tree filling exercise.

To add insult to injury, the Majority Leader and several members of the Democratic Leadership threw a red herring into the picture. They insisted that the Majority Leader take the role of the Rules Committee of the House, and pre-screen Republican amendments. If Republican Senators refused to go along with this attempted power-grab, then the Republicans were being obstructionists. The rationale for the attempted power-grab was to limit the FAA debate to germane amendments.

Mr. President, there's something known as "The Golden Rule." To paraphrase it: do unto others as you would have them do unto you. It makes a lot of sense to follow The Golden Rule in the Senate because of the Senate Rules. The Majority Leader needs to think about The Golden Rule.

Now, some might ask how does The Golden Rule apply here? Well, if you were to take a look over the four years Republicans were last in the Majority in the Senate, 2003-2006, you'd find a lot of flexibility towards Democratic amendments not related to the subject matter. In the FSC-ETI legislation, which was a tax bill, we dealt with amendments on government contracting. We dealt with amendments on trade adjustment assistance (TAA). We dealt with amendments on Labor Department regulations. On other bipartisan tax bills, we had amendments dealing with Halliburton. We had amendments dealing with the Jack Abramoff scandal. We had amendments dealing with body armor. Democrats got to have their say on these amendments. And often painful votes resulted. Then-Majority Leader Frist realized that those votes were a cost to do business.

The Majority Leader needs to follow The Golden Rule. He needs to recognize that the rights of my conference, under Thomas Jefferson's Senate Rules, need to be respected. The Democratic Leadership needs to play it straight with the reason for the stalemate. It was the refusal of the Democratic Whip and the floor manager to honor the legitimate position of Chairman Baucus myself, and the members of the Finance and HELP Committees. All the Democratic Leadership had to do was set aside the Durbin-Hutchison amendment and move onto other business.

Now, Mr. President, why did Chairman Baucus and I insist on our prerogatives with respect to the Durbin-Hutchison amendment?

The short answer is that we want to protect the retirement plans involved. We want to be conservative in how the plans are funded. We're looking out for the retirement plans' of retirees and workers. We're also looking out for the American taxpayer. And it's important to note, that we're looking out for the airline industry as well.

My colleagues might ask -- how are we looking out for the airline industry? In 2006, Congress recognized the need to provide special pension funding rules for the airlines industry. These special rules were more generous than the rules that most other plan sponsors of defined benefit plans must currently follow.

These special rules were carefully crafted. There were two different approaches. One approach was available to airlines that froze their pension plans. The second approach was available to airlines that did not freeze their pension plans.

These approaches were different. Congress carefully considered the financial status of the companies at the time. Congress also considered the fact that the carriers that froze their pension plans established a 401(k) plan for current and new employees, while carriers that did not freeze their plans continued to maintain their pension plans.

Some members advocated that the approaches should not be different and that each group should be afforded the same set of rules. Proponents of the Durbin-Hutchison amendment say that they were promised that this Congress would "level the playing field" and provide the same set of rules to each of these groups.

Well the Senate Finance Committee made good on that promise. The Senate Finance Committee approved of a provision that allows airlines that did not freeze their pension plans to use a favorable interest rate to determine the plan's pension liabilities -- just like we allow airlines that froze their pension plans.

This is equitable. What is not equitable is to allow airlines that did not freeze their pension plans to underfund benefits earned in the current year. That is what the provision that was air-dropped into the War Supplemental does.

But the senior Senators from Illinois and Texas want my Senate colleagues to believe that underfunding the pension plans is equitable. They want you to believe that if the carrier is required to contribute one more dollar, that the carrier would go under.

I recognize that the airline industry is fragile. I recognize that Congress should not enact policies that results in the downfall of a company. But we as policymakers have to balance the directions we place on our nation's businesses with worker protections. Especially when it comes to protecting retirement security. My Senate colleagues must also understand that we're not only protecting workers' retirement security, we are protecting the PBGC and the taxpayer.

I would like to outline for my colleagues what will happen if the carriers are permitted to underfund their plans. In year 11-- when the special relief expires and the carriers are no longer permitted to use the favorable interest rate to determine their pension liabilities -- the plans will

be underfunded by approximately \$2 billion, give or take. In year 11, the carriers will have three choices:

1. push the unfunded liabilities onto the PBGC and the taxpayer;
2. make the hefty contribution, which could place the carriers in financial distress; or
3. ask Congress to provide them with new or additional relief.

Is this protecting the company? Allowing the carriers' plans to be so underfunded that drastic measures would be required to be taken? It's certainly not protecting the worker, the PBGC, or the taxpayer.

Isn't the "resetting" of the pension contributions eerily similar to all of the subprime mortgages that are currently resetting -- or will reset -- in the coming year? Should we as policymakers be condoning, let alone advocating for, such behavior?

Mr. President, it comes down to this. Senators Durbin and Hutchison and the proponents of their amendment permit carriers that did not freeze their pension plans to maintain their plans at an artificial funding level -- which allows them to contribute less money to the plan, resulting in an underfunded plan.

Contrary to the proponents' belief, this does not help the airlines. And it certainly does not help workers, the PBGC, or the taxpayer. I yield the floor.