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February 2, 2009

Congressional Research Service

Report RL32984

Dalla Love Field: The Wright and Shelby Amendments

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November 9, 2005

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CRS Report for Congress

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Updated November 9, 2005

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Summary

The history of the Wright Amendment dates back to the 1960s when the now defunct Civil Aeronautics Board (CAB) proposed the creation of a single regional airport in the Dallas-Fort Worth (DFW) area. To construct the new airport, the two cities entered into an agreement that required the phasing out of separate existing airports in Dallas and Ft. Worth and transferring air service to the new DFW Airport, which opened in 1974. During this time, Southwest Airlines began operating out of Dallas's Love Field as a purely intrastate air carrier. As such, Southwest was not subject to CAB regulation. Congress's subsequent passage of the Airline Deregulation Act of 1978, resulted in Southwest being allowed to operate interstate flights from Love Field, and prompted concerns from many local officials about DFW's financial stability.

The Wright Amendment represents a compromise that was designed to protect the interests of both DFW Airport and Southwest Airlines. The Wright Amendment contains a general prohibition on interstate commercial aviation to or from Love Field subject to exceptions that permits Southwest's continued operations in a regional four state market. In addition, the Shelby Amendment, enacted in 1997, further expands the scope of the regional market to three additional states, but nevertheless retains the basic compromise and structure of the original Wright Amendment. The language of the Wright Amendment has been the focus of several administrative interpretations by the Department of Transportation, as well as litigation at both at the state and federal level. Each court decision to date has affirmed the DOT's interpretation of the Wright Amendment.

The newest iteration of this long running issue is primarily the result of events that have occurred since the Fall of 2004. First, Delta Airlines decided in October 2004 to pull most of its service out of Dallas Ft. Worth International Airport (DFW). Next, DFW asked Southwest Airlines to consider operating long distance flights out of DFW. Southwest rejected the DFW offer and instead announced in November 2004 that it intended to seek legislative relief from the Wright/Shelby Amendments. This announcement ended what was regarded as a long standing truce on this issue. In the period since November, DFW, joined by other parties such as American Airlines, have lobbied in favor of retaining the existing Wright/Shelby restrictions on airline operations at Love Field. Southwest, and others, have, at the same time, presented their own arguments as to why these restrictions should be removed.

The DFW arguments are primarily couched in the politics, legalities, and history of the regional compact that created the airport. The rationales for retaining the Amendments are primarily of local interest and origin, e.g. protecting investments and markets at DFW. The rationale for removing the restrictions is the rationale for deregulation in the first place, the unrestricted flow of air commerce. A question for policymakers then is should the exceptions to deregulation that are the Wright/Shelby Amendments be retained in the context of the existing national aviation system? Legislation affecting the Wright/Shelby restrictions has been introduced in the 109th Congress; H.R. 2932, H.R. 2646, H.R. 3058, H.R. 3383, S. 1424, and S. 1425. This report will be updated as warranted by events.

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Dallas Love Field: The Wright and Shelby Amendments

The history of the Wright Amendment dates back to the 1960s when the now defunct Civil Aeronautics Board (CAB) proposed the creation of a single regional airport for the Dallas-Fort Worth (DFW) region.¹ As part of the airport's funding arrangement, the cities adopted the 1968 Regional Airport Concurrent Bond Ordinance,² which, among other things, created the DFW Airport Board and required the cities to phase out existing air transportation operations at their local airport facilities and transfer them to the new DFW Airport.³ To fulfill the requirements of the Bond Ordinance, the DFW Board entered into contracts with the existing federally regulated air carriers requiring them to relocate their services to the newly constructed DFW Airport.⁴ After the contracts had been signed, but prior to the completion of construction, Southwest Airlines began operating intrastate commuter flights from Dallas's Love Field.⁵ Shortly thereafter, Southwest informed the DFW Airport Board that it intended to remain at Love Field even after DFW Airport was completed.⁶ Southwest's decision led the cities of Dallas and Fort Worth, in conjunction with the Airport Board, to seek a declaratory judgment excluding Southwest from operating flights from Love Field once the new airport was operational.⁷ The District Court for the Northern District of Texas held that because Southwest was flying only intrastate flights, the CAB did not have jurisdiction over their activities.⁸ Thus, according to the court, Southwest, by virtue of its purely

¹ See Eric A. Allen, *The Wright Amendment: The Constitutionality and Propriety of the Restrictions on Love Field*, 55 J. AIR L. & COM. 1011, 1014 (1990) (citing *City of Dallas v. Southwest Airlines*, 371 F.Supp. 1015, 1020 (N.D. Tex. 1973)).

² See Dallas, Tex., Regional Airport Concurrent Bond Ordinance 12,352; see also Fort Worth, Tex., Regional Airport Concurrent Bond Ordinance No. 602.

³ *Id.* at § 9.5(A) (stating that the cities were to “take such steps as may be necessary, appropriate and legally permissible ... to provide for the orderly, efficient and effective phase-out at Love Field, Redbird, GSIA and Meacham Field, of any and all Certificated Air Carrier Services, and to transfer such activities to [DFW] effective upon the beginning of operations at [DFW].”).

⁴ See *City of Dallas v. Southwest Airlines*, 371 F.Supp. 1015, 1020-21 (N.D. Tex. 1973).

⁵ *Id.* at 1021.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1022

intrastate operations, could not be excluded from utilizing Love Field as long as the airport remained operational.⁹

In 1978, however, Congress passed the Airline Deregulation Act of 1978,¹⁰ which included a provision allowing automatic entry into interstate aviation markets provided that the carrier seeking entry was fit, willing, and able to comply with all existing rules, regulations, and requirements of the CAB.¹¹ Southwest promptly petitioned and was granted permission to operate interstate flights from Love Field to New Orleans, Louisiana.¹² The expansion of Southwest's service from Love Field to interstate markets, however, prompted concerns from local officials about DFW's financial stability because it appeared that the local officials were powerless to prevent Southwest from expanding service.

Legislative Action

The Wright Amendment. The Wright Amendment represents a compromise that was designed to protect the interests of both DFW Airport and Southwest Airlines. Included as part of the International Air Transportation Competition Act,¹³ the amendment, as originally drafted, would have effectively prohibited any interstate airline service from Love Field.¹⁴ The final legislation, however, has proven to be a more flexible limitation on interstate commercial aviation originating from Love Field than a strict prohibition.

The Wright Amendment contains a general prohibition on interstate commercial aviation to or from Love Field.¹⁵ The amendment also contains four exceptions: first,

⁹ *See id.* at 1035.

¹⁰ Airline Deregulation Act of 1978, P.L. 95-504, 92 Stat. 1705 (1978).

¹¹ *Id.* at § 12 (providing that any intrastate air carrier which has a valid certificate or license issued by a State regulatory authority to engage in intrastate air transportation ... may apply to the Board for a certificate under this subparagraph to engage in nonstop service between any one pair of points in interstate or overseas air transportation ... the Board shall issue a certificate to such applicant for the nonstop service specified in such application, unless within such sixty-day period the Board determines that the applicant is not fit, willing, and able to provide such nonstop service and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board issued under this Act.)

¹² *See* Southwest Airlines, Automatic Market Entry, CAB Order No. 79-9-192 (Sept. 28, 1979). The CAB stated that they were “persuaded by the clear language ... and the legislative history of the automatic market entry section of the Act that our authority to deny a [sic] application is highly circumscribed unless the carrier is unfit and that, on the facts before us, we have no discretion to deny the application.” *See id.* at 2-3.

¹³ International Air Transportation Competition Act of 1979, P.L. 96-192 § 29, 94 Stat. 35, 48-49 (1980).

¹⁴ *See* Conference report (H.Rept. 96-716, 24) 96th Cong., 2d Sess. (1980).

¹⁵ *Id.* at § 29(a) (stating that “neither the Secretary of Transportation, the Civil Aeronautics
(continued...)”)

the amendment permits ten interstate charter flights each month to and from Love Field;¹⁶ second, it allows flights by “commuter airlines operating aircraft with a passenger capacity of 56 passengers or less;”¹⁷ third, the amendment specifically grandfathers in the existing interstate service that Southwest was providing between Love Field and New Orleans,¹⁸ and; finally, what is referred to as “turnaround service” from Love Field to one or more points within the states of Louisiana, Arkansas, Oklahoma, New Mexico, and Texas are permitted, provided that the carrier does not “offer for sale” through or connecting service with any other air carrier outside the listed states.¹⁹

The legislative history provided by the conference committee indicates that the language was intended to provide “a fair and equitable settlement” to the dispute and was agreed to by representatives of “Southwest Airlines, the City of Dallas, the City of Fort Worth, DFW Airport authority, and related constituent groups.”²⁰ The conferees also attempted to make clear that the Wright Amendment was to supercede any Federal Aviation Act provision that might have, or could in the future, be construed to permit interstate commercial service from Love Field.²¹ In addition, the conferees indicated that the Love Field situation was unique and that the compromise offered by the Wright Amendment was not to be construed “as a harbinger of any similar proposals for any other airport or area.”²²

¹⁵ (...continued)

Board, nor any other office or employee of the United States shall issue, reissue, amend, revise, or otherwise modify (either by action or inaction) any certificate or other authority to permit or otherwise authorize any person to provide the transportation of individuals, by air, as a common carrier for compensation or hire between Love Field, Texas, and one or more points outside the State of Texas ...”).

¹⁶ *Id.* (stating that “charter air transportation not to exceed ten flights per month”).

¹⁷ *Id.*

¹⁸ *Id.* at § 29(b) (stating that “no person shall provide or offer to provide the transportation of individuals, by air, for compensation or hire as a common carrier between Love Field, Texas, and one or more points outside the State of Texas, except that a person providing service to a point outside of Texas from Love Field on November 1, 1979, may continue to provide service to such point.”).

¹⁹ *Id.* at § 29(c) (providing that “Subsections (a) and (b) shall not apply with respect to, ... transportation of individuals, by air, on a flight between Love Field, Texas, and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico, and Texas by an air carrier, if (1) such air carrier does not offer or provide any through service or ticketing with another air carrier or foreign air carrier, and (2) such air carrier does not offer for sale transportation to or from, and the flight or aircraft does not serve, any point which is outside any such State.”).

²⁰ Conference report (H.Rept. 96-716, 24) 96th Cong., 2d Sess. (1980).

²¹ *Id.* at 25 (stating that “this provision supercedes any provision of the Federal Aviation Act that may otherwise be construed to authorize interstate service to Love Field.”).

²² *Id.*

The Shelby Amendment. The Wright Amendment remained in place, unamended, until 1996, when Legend Airlines sought to begin interstate service from Love Field. Legend filed a petition to operate pursuant to the exception in the Wright Amendment that appeared to permit unrestricted interstate service by airlines operating aircraft with a seating capacity of less than 56 passengers.²³ In response, however, the DOT's Office of General Counsel issued an opinion stating that the Wright Amendment's exception only applied to aircraft that were originally configured to hold fewer than 56 passengers.²⁴ The following year, Congress adopted the Shelby Amendment as part of the Department of Transportation and Related Agencies Appropriations Act of 1998.²⁵ The Shelby Amendment specified that the Wright Amendment's 56 passenger exception includes "any aircraft, except aircraft exceeding gross aircraft weight of 300,000 pounds, reconfigured to accommodate 56 or fewer passengers if the total number of passenger seats installed on the aircraft does not exceed 56."²⁶ In addition, the Shelby Amendment added Kansas, Alabama, and Mississippi to the list of States previously included by the Wright Amendment.²⁷ The legislative history that was included in the act's conference report does not articulate a rationale for the clarifying language, nor does it offer an explanation for the additional three States.²⁸ Instead, the report language focuses on Congress's concern with respect to the safety of flight operations in the Dallas- Fort Worth area and the requirement that the Federal Aviation Administration take the necessary steps to alleviate the problems and report back to the appropriate congressional committees.²⁹

Litigation History

Since its original adoption in 1980, the Wright Amendment's provisions have been challenged in court on two separate occasions. Interestingly, both litigations have attempted to prevent the expansion of airline services operating from Love Field. Both lawsuits were instigated after interpretive rulings by the DOT, and in

²³ See Robert B. Gilbreath & Paul C. Walter, *Perimeter Rules, Proprietary Powers, and the Airline Deregulation Act: A Tale of Two Cities ... And Two Airports*, 66 J. AIR L. & COM. 223, 227-28 (2000) (citing *American Airlines v. Dep't of Transp.*, 202 F.3d 788, 794 (5th Cir. 2000)) [hereinafter Gilbreath & Walter].

²⁴ See *American Airlines v. Dep't of Transp.*, 202 F.3d 788, 794 (5th Cir. 2000).

²⁵ Department of Transportation and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-66 § 327(a), 111 Stat. 1425 (1998)(October 27, 1997).

²⁶ *Id.*

²⁷ *Id.* at § 327(b).

²⁸ Conference report (H.Rept. 105-313, 45) 105th Cong., 2d Sess. (1998).

²⁹ *Id.* (stating that "[u]pon a 50 percent increase in total flight operations from the levels existing on the date of enactment of this Act at either of the airports mentioned in this section, the Administrator shall report to the House and Senate Committees on Appropriations and the Senate Committee on Commerce, Science, and Transportation within 30 days describing what actions, if any, are recommended to ensure the efficient and safe operation of Dallas-Fort Worth metroplex airspace.").

each case the DOT's ruling was upheld by a federal court and local authorities were ordered to permit the expanded services.

Continental Airlines v. Department of Transportation. In 1985, Continental Airlines sought to establish passenger service between Love Field and Houston, Texas. The DFW Board, joined by the cities of Dallas and Fort Worth and Southwest Airlines, sought to prevent Continental's action by initially requesting that the Department of Transportation interpret subsection (c) of the Wright Amendment as imposing a "class restriction" and preventing air carriers who operate through service or ticketing with another carrier from operating at Love Field.³⁰ The DOT, however, disagreed, holding that the subsection did not prevent a carrier from operating at Love Field simply because they provided through service elsewhere on its system.³¹ In addition, the DOT held that while the Wright Amendment does not preclude airlines from "double ticketing,"³² air carriers are prohibited from advertising, promoting, or otherwise affirmatively soliciting double ticket services.³³ The basis for this ruling by the DOT appeared to be the prohibition on "offering for sale" transportation outside the proscribed service area.³⁴ In *Continental Airlines v. Department of Transportation*, the United States Court of Appeals for the District of Columbia reviewed and affirmed the DOT's decision in its entirety.³⁵ Since *Continental Airlines*, there appears to have been no other substantive challenges to the provisions of the original Wright Amendment. At least one law review author, however, has suggested that there may be grounds for a constitutional challenge to the Wright Amendment.³⁶

American Airlines v. Department of Transportation. As a result of the Shelby Amendment, Southwest Airlines began offering flights to Alabama and Mississippi, while Legend, Continental, and other air carriers began to explore

³⁰ See *Continental Air Lines v. Dep't of Transp.*, 843 F.2d 1444, 1447 (D.C. Cir. 1988).

³¹ See Love Field Amendment Proceeding, Order No. 85-12-81 (Dep't of Transp. Dec. 31, 1985); see also *Continental Air Lines*, 843 F.2d at 1447.

³² According to the DOT, double ticketing is "the purchase by a passenger of two separate tickets: one for service from Love Field to a point within Texas or the four adjacent states, and a separate, second ticket for service from that destination to a point beyond the authorized Love Field Service Area." See *Continental Airlines*, 843 F.2d at 1455 (citing DOT's Brief at 48, n. 34).

³³ See Love Field Amendment Proceeding, Order No. 85-12-81, 10-11 (Dep't of Transp. Dec. 31, 1985)

³⁴ *Id.*

³⁵ *Id.* at 1453-54.

³⁶ See Eric A. Allen, *The Wright Amendment: The Constitutionality and Propriety of the Restrictions on Love Field*, 55 J. AIR L. & COM. 1011, 1032-1074 (1990) (arguing that passengers may have a claim against the Wright Amendment for violating their constitutional right to travel. In addition, the article suggests that States located outside the proscribed service area may challenge the Amendment on the grounds that it violates the port preference clause of the Constitution (Art. I, § 9, cl. 6)).

providing both interstate and intrastate service from Love Field.³⁷ Litigation ensued at both the federal and state level. Initially, the City of Fort Worth brought a suit in the Texas State court against the City of Dallas, the DFW Board, Legend, Continental, and Continental Express, attempting to block the proposed additional service from Love Field. Fort Worth argued that the Bond Ordinance, which was part of the original DFW construction agreement, required the cities to phase out service at their local airports and shift them to DFW.³⁸ According to Fort Worth, the terms of the Bond Ordinance were not preempted by either the Airline Deregulation Act, or the Wright and Shelby Amendments; therefore, Dallas was obligated to utilize its proprietary powers to restrict service at Love Field.³⁹ The state court agreed, holding that “Dallas was obligated ... to preclude airlines from flying between Love Field and areas outside Texas and the four-state service area authorized by the Wright Amendment.”⁴⁰

While an appeal of the state court’s decision was pending, the DOT initiated an interpretive proceeding that resulted in a Declaratory Order rejecting the claims of the City of Fort Worth. Specifically, the DOT held that:

(i) the City of Fort Worth may not enforce any commitment by the City of Dallas ... to limit operations at Love Field authorized by federal law, and the proprietary powers of the City of Dallas do not allow it to restrict services at Love Field authorized by federal law; (ii) the ability of the City of Dallas to limit the type of airline service operated at Love Field is preempted by the Wright and Shelby Amendments; (iii) any airline operating aircraft with a passenger capacity of no more than 56 passengers and a gross aircraft weight of no more than 300,000 pounds may operate service with any type of equipment and flights of any length from or to Love Field, notwithstanding any claim that such service violates any agreement between the Cities of Dallas and Fort Worth; (iv) the Dallas-Fort Worth International Airport Board may not enforce any contract provision that allegedly bars an airline from operating interstate airline service at another airport in the Dallas-Fort Worth metropolitan area; and (v) any airline may offer through service between Love Field and any other point to passengers using a flight between Love Field and another point within Texas operated under subsection (a) of the Wright Amendment, as amended by the Shelby Amendment
....⁴¹

Given the conflicting rulings by the Texas state court and the DOT, the parties appealed both judgments. The Texas court of appeals, however, issued a stay pending the resolution of the DOT appeal, which was before the Fifth Circuit Court

³⁷ See *American Airlines*, 202 F.3d at 795.

³⁸ See *supra* notes 2-3.

³⁹ See *Gilbreath & Walter*, *supra* note 30 at 229 (citing City of Fort Worth's Motion for Summary Judgment or Alternatively Motion for Partial Summary Judgment, City of Fort Worth, Texas, No. 48-171109-97(48th Dist. Ct., Tarrant County, Tex., filed August 21, 1998)).

⁴⁰ See *American Airlines*, 202 F.3d at 795.

⁴¹ See *id.* (citing Love Field Service Interpretation Proceeding, Order No. 98-12-27, 58 (Dep't of Transp., Dec 23, 1998)).

of Appeals in Texas. While the Fifth Circuit ultimately affirmed the DOT's Declaratory Order, one of the major issues addressed by the court was the scope of an airport owner's proprietary powers.⁴²

According to the court, federal courts have generally held that "an airport proprietor can issue only 'reasonable, nonarbitrary, and nondiscriminatory rules that advance the local interest.'"⁴³ While under this standard courts have upheld regulations aimed at addressing environmental concerns,⁴⁴ and managing congestion,⁴⁵ the court was able to find no justification for a broad grant of proprietary power that would permit an airport owner to "allocate traffic between two airports so as to preserve the short-haul nature of one facility."⁴⁶ Although the court did note a willingness to review the exercise of proprietary powers with respect to advancing previously unrecognized local interests, the city of Fort Worth failed to present a sufficiently viable justification in this instance.⁴⁷

As a result of the Fifth Circuit's decision, it appears that local governments are likely to have regulations enacted that are designed to protect the economic interests of airports preempted by federal law to the extent that such regulations conflict with federal requirements. Notwithstanding the Fifth Circuit's willingness to consider previously unrecognized local interests, it would appear that a locality's proprietary powers are limited, and any future judicial interpretations of such interests will likely be narrowly tailored to address a specific local issue. Thus, it would appear that the local governments and DFW Board are substantially limited in their ability to remedy any economic distortions that are the result of either the Airline Deregulation Act or the implementation and enforcement of the Wright and Shelby Amendments.

Economic Issues

The current dispute, as discussed above, has its origins in the 1960s. The new chapter of this long running discussion is primarily the result of events that have occurred since the Fall of 2004. First, Delta Airlines decided in October 2004 to pull most of its service out of Dallas- Ft. Worth International Airport (DFW). Next, DFW asked Southwest Airlines to consider operating long distance flights out of DFW. Southwest rejected the DFW offer and instead announced in November 2004 that it intended to seek legislative relief from the Wright/Shelby Amendments. This announcement ended what was regarded as a long standing truce on this issue between Southwest and DFW. Since November, DFW, joined by other parties such as American Airlines (American), have lobbied extensively in favor of retaining the

⁴² *American Airlines*, 202 F.3d at 806-808.

⁴³ *Id.* at 806.

⁴⁴ *See National Helicopter Corp. of America*, 137 F.3d 81, 88-89 (2d Cir. 1998).

⁴⁵ *See Western Air Lines v. Port Authority of New York and New Jersey*, 658 F. Supp. 925, 958 (S.D.N.Y. 1986).

⁴⁶ *American Airlines*, 202 F.3d at 807.

⁴⁷ *Id.* at 808.

existing Wright/Shelby restrictions on airline operations at Love Field. Southwest, and others, have, at the same time, presented their own arguments as to why these restrictions should be removed.

This section of the report will discuss the major claims and counterclaims made by each side in this discussion. The subjects chosen for examination are those most frequently discussed in public forums on this subject.⁴⁸ Additional background information will also be detailed to provide a context for these discussions.

Until very recently there has been a minimal level of public interest in this issue outside of the Dallas-Ft. Worth area. A few articles about the Wright/Shelby Amendments have appeared in the national press since last November, but they have been few and far between. The aviation trade press has taken a slightly greater interest, but here too the treatment of the issue dwells primarily on the local aspects of the issue.

The Dallas-Ft. Worth Aviation Market

The Dallas-Ft. Worth region is served by one large hub airport, DFW, and one medium hub airport, Love Field.⁴⁹ Respectively they rank 4th and 55th nationally in terms of total passenger enplanements. In FY2003, DFW enplaned 24.6 million passengers while enplanements at Love Field stood at around 2.8 million. Commercial aircraft operations totaled 751,546 versus 126,313 respectively during the same period.⁵⁰

Both airports are important components of the regional economy. Each airport can claim to be the home of one of the nation's 10 largest airlines, with American based at DFW and Southwest based at Love Field. American is the nation's largest airline having an almost 18% share of the U.S. market in February 2005.⁵¹ Southwest, which controls about 7.5% of the U.S. market, is the nation's most profitable airline, being one of a very small number of airlines that has remained profitable throughout the post-September 11th period. Southwest had revenues of \$6.5 billion in 2004 and a net profit of \$313 million. For the same period American had revenues of \$18.6 billion and a net loss of \$761 million.⁵²

⁴⁸ Much of the material discussed in this section is taken from DFW Airport and related materials found at, [<http://www.keepdfwstrong.com/>]; and Southwest and related materials found at, [<http://www.setlovetfree.com/>]

⁴⁹ The Federal Aviation Administration (FAA) classifies U.S. airports on the basis of passenger enplanements and ranks them accordingly.

⁵⁰ U.S. Department of Transportation. Federal Aviation Administration. *Terminal Area Forecast Summary: Fiscal Years 2004 - 2020*. March 2005. p. 14 - 15.

⁵¹ *Aviation Daily*. U.S. Industry Traffic Market Share, February 2005. March 21, 2005. p. 7. Market share is based on revenue passenger miles flown during the period.

⁵² All financial information from Hoover's Company Information. Hoover's Inc. Austin, TX.

American is clearly the dominant air carrier at DFW. In 2003, just over 71% of all passengers at DFW boarded American and American regional air carrier flights (17,990,193 enplanements).⁵³ Delta, and Delta regional carriers, accounted for about a 17% share of DFW traffic (4,314,445 enplanements). The next largest major air carrier share was United Airline's 2%. At Love Field, Southwest had a market share of almost 97% in 2004 (2,945,588 enplanements).⁵⁴ Continental Express accounted for most of the remaining 3% of passengers. There are no other significant air carrier competitors at the airport at this time.

Airline Competition in the Dallas-Ft. Worth Market

As can be seen from the above, most of the airline traffic in the regional market is controlled by a small number of air carriers. There are some major differences affecting how these air carriers operate in the current marketplace, however.

Southwest is the most successful air carrier in the era since deregulation of the industry in 1978. It has been corporately based in Dallas for its entire existence. It has also been profitable for most of its existence, which is a rather unique situation in the U.S. airline industry. It has done this by offering low, or lower, fares, while at the same time maintaining relatively low operating costs. Southwest is the prototypical low cost carrier (LCC) and its operating structure has been imitated at least to some degree by many new air carriers formed since deregulation (imitating Southwest has not guaranteed success, however). For much of the 1980s, Southwest was primarily viewed as a niche carrier with an uncontested regional market based out of Love Field. During the later 1980s and especially in the 1990s, Southwest has expanded dramatically with a route system that became national in scope. Southwest does not operate hub-and-spoke service, hence Love Field is not referred to as a hub. Rather, Southwest operates primarily as a point-to-point air carrier. Because the Wright/Shelby Amendments limit direct service from Love Field to 7 states, it has not been possible for Southwest to compete directly with DFW-based air carriers in many major national airline markets. This does not mean that Southwest travelers originating in Dallas have been unable to reach other Southwest cities such as Baltimore. A passenger can reach these destinations, but cannot be through ticketed and must change planes at some other destination such as New Orleans.

Over time, Southwest has faced very limited competition at Love Field. At the present time the only other airline providing service from the airport is Express Jet, which is a Continental Airline's affiliate. All of this service is between Love Field and Houston Bush International. Because of the regional air carrier exemption to the Wright/Shelby Amendments, any service beyond the 7 state restriction must be performed by an aircraft with 56 seats or less. The now defunct Legend Airlines unsuccessfully tried to provide service to multiple national destinations in the late 1990s. No airline provides such service at present.

⁵³ *Aviation Daily*. Airport Market Share at Leading U.S. Airports. August 25, 2004. p. 9.

⁵⁴ [<http://www.dallas-lovefield.com/lovenotes/lovenotes.html>]. Traffic Statistics.

American Airlines is one of the nation's oldest air carriers. It is one of the air carriers known in industry parlance as a legacy carrier. It operates international service from DFW and other locations, and operates multiple hubs - Chicago, Miami, and to a lesser extent New York. From DFW, American can take a passenger almost anywhere in the world on a single ticket. It provides service to most major U.S. cities either on American aircraft or on affiliated American regional air carriers. American was not originally headquartered at DFW, having moved there from New York after the airport was completed in the mid-1970s. Like most other legacy air carriers, American has lost money consistently since September 11th. At some points in the 1990s and 1980s, however, it was one of the most financially successful of U.S. air carriers.

Delta has a history similar in many respects to that of American. Its corporate base is Atlanta. Its now reduced foray into DFW met with limited success initially, but, especially since September 11th, it has consistently lost money at the airport, according to industry analysts. Other air carriers at DFW serve the airport primarily as a feeder to their own hub-and-spoke systems, e.g. United service to Chicago or Denver, Continental service to Houston. DFW has sought to encourage service to the airport by other LCC air carriers such as Airtran and Jet Blue. Airtran has a growing presence at the airport, but is not yet viewed as a replacement air carrier for Delta's lost service.

Impacts of Delta's Decision to De-hub at DFW

Delta Airlines maintained a hub at DFW airport for some years, but as can be seen from the market share figures discussed above, it was dramatically smaller than its American counterpart. In October 2004, Delta announced that it was restructuring system-wide in order to stave off a bankruptcy filing. Delta announced its intention to cut up to 7,000 jobs, reduce wages, close its DFW hub, and make major operating changes throughout the remainder of its system. Its DFW hub, now closed, ended operation earlier this year. Delta continues to provide service at the airport, though at a much more modest level: 21 departures per day versus the 258 departures per day in October 2004. In its new configuration, Delta now uses 4 gates at the airport versus the 28 it previously occupied.

Since deregulation began in 1978 there have been several instances in which more than one airline tried to operate a hub at the same airport. In most instances these multiple airline hubs, for example, Miami and St. Louis, have either become single airline hubs (Miami) or stopped being hubs altogether (St. Louis). A very few multiple airline hubs still exist, e.g. Chicago O'Hare and Atlanta Hartsfield Jackson. Many airline industry observers believed from the establishment of its hub at DFW that Delta would be unable to compete with American on its home turf. They expected, correctly, that Delta would eventually scale down or abandon its hub at DFW.

Delta's withdrawal comes at what the airport views as an inopportune time. DFW is currently constructing/completing several major capital projects, including a new international terminal (\$1.09 billion) and a new internal people mover system (\$885 million). In total, its ongoing capital improvement program will cost \$2.7 billion and raise airport debt levels to \$3.8 billion. Delta's presence had been an

important part of DFW's decision to initiate its capital improvement program and Delta's landing fees and other related revenues were expected to make a major contribution to paying off the bond issues floated to pay for the improvements. DFW now expects that the withdrawal of Delta will decrease its revenue stream by \$50 million annually and that it will need to find new revenues to compensate for this loss in order to avoid problems paying off its debts.

DFW's Incentive Plan to Attract New Air Carrier Service

In January 2005, DFW announced that it would provide significant financial incentives for an air carrier willing to initiate new service at the airport and take over at least 10 of the gates made available by Delta's departure. These incentives included a year's free rent on airport facilities and up to \$22 million in other aid. To date there have been no takers. DFW contends that Southwest's move to eliminate the Wright/Shelby Amendments is a major reason for this situation. DFW contends that no carrier is currently willing to take a gamble until there is some certainty about the future of the Wright/Shelby Amendments.

DFW's argument could explain some of the reluctance of new carriers to locate at the airport, but does not take into consideration other factors that might be more important in the market at the moment. The current financial state of the airline industry makes it almost impossible for all but a few LCCs to significantly expand service to new airports. At the moment, no legacy airline is known to be contemplating the creation of a new hub. LCCs, as mentioned earlier, do not normally create hubs. The DFW argument also fails to fully acknowledge American's competitive position at the airport. American has always been a fierce competitor and is likely to remain one, its financial problems notwithstanding. There are not many airlines who are willing to compete head-to-head with American's well established hub at the airport, especially when they have other options.

Airport Competition in the Dallas - Ft. Worth Market

There are a number of major cities that have more than one major airport successfully operating in relative proximity to each other. Examples include Chicago, New York, Los Angeles, San Francisco/Oakland/San Jose, Washington/Baltimore, and Houston. Southwest contends that this national experience could easily be replicated in the Dallas Ft.Worth region and that any negative effects on DFW of increasing flights out of Love Field would be of relatively short duration as regional growth continued to create new opportunities for both airports.

DFW goes to some length in its briefing materials to argue that the Houston model in particular would be a bad model for the Dallas-Ft. Worth region. DFW argues that it already provides more service out of DFW alone than Houston does out of two airports. It also argues that its fares are as low, and in some cases are lower, than those prevalent in the Houston region. Again, DFW repeats the argument that it would be inefficient for the region's resources to be split between two airports.

Competing Economic Impact Studies

DFW Initiated Work. As part of its presentation on why the Wright/Shelby amendments need to be retained, DFW hired economists at the University of North Texas to perform an economic analysis of what the Delta hub closure means to the airport and the local economy.⁵⁵ The specific findings of this analysis are that the Delta pullout will result in a \$782 million per year decrease in regional economic activity, the loss of more than 7,000 jobs, a decrease in wages and salaries of \$344 million per year, an annual loss of tax and other revenues collected by state and local governments of \$58 million, and, in 2005, a \$35 million loss to the airport as a result of diminished landing fees, concession fees, etc. The authors conclude their assessment by stating that:

...the airport will be severely pressed to fill the 24 gates left vacant by Delta. Given Southwest Airlines' decision not to move flights to DFW, and the reluctance of other discount carriers to serve DFW with Southwest making noises about expanding service from Love Field, it may be many years before DFW's gates and terminals are fully utilized.⁵⁶

The type of economic analysis utilized by the authors, input-output analysis, is a standard tool employed to show the benefit or loss that might accrue to a community as a result of some sort of action. For example, new stadium and other large public works project proposals are frequently accompanied by economic analyses of this type. It is not uncommon for opponents of stadiums, etc. to hire their own economists to provide an alternative view using the same basic methodology, which, as will be seen in the next section, is the situation here.

As is sometimes the case, the assumptions that go into the input-output process are often questioned. For example, some of the observations in the report, while sounding quite dramatic, are much less so when put in the perspective of the greater regional economy. The Dallas-Ft. Worth region had total wage and salary disbursements in 2003 of \$116.4 billion.⁵⁷ This represents a year over year increase of \$524 million, or roughly a 0.5% increase over the previous year's level. The \$344 million in wages and salaries associated with Delta's pullback equates to less than 3/10ths of one percent of total local salaries and wages. Less than eight months' growth in the regional economy at current growth rates would, therefore, overshadow the regional effects of Delta's departure (individuals and businesses, however, may continue to suffer from the pullout for a much longer period).

DFW commissioned a second study by aviation consulting firm SH&E that focuses on how aviation activity in the region might change as a result of repeal of

⁵⁵ Weinstein, Bernard L. and Clower, Terry L. *Economic and Fiscal Consequences of Dallas-Fort Worth International Airport and the North Texas Region From the Shutdown of Delta Airlines' Hub Operations*. University of North Texas. Denton, Texas. November 23, 2004. 9 p.

⁵⁶ Ibid. p. 9.

⁵⁷ U.S. Department of Commerce. Bureau of Economic Analysis. Regional Economic Accounts. Found at [<http://www.bea.doc.gov/bea/regional/bearfacts/action.cfm>]

the Wright/Shelby amendments. The study does not express its findings in dollar terms, but rather tries to demonstrate that repeal would redistribute air service in a manner that would be bad for DFW and for the regional economy. This second study works from the premise that Southwest would greatly expand its activity at Love Field to major destinations outside of the seven states to which service is currently restricted under two growth scenarios.⁵⁸ The study, assuming a worst case outcome from the perspective of DFW, presents several major findings, among these are: that air traffic at Love Field could triple,⁵⁹ that international traffic at DFW would be reduced, that the number of domestic destinations served from DFW would also be reduced, and that DFW would lose up to 35% of its annual passengers. Against this backdrop SH&E comes to the conclusion that the best option for the region would be the retention of the Wright/Shelby amendments because it would concentrate future aviation growth at DFW where infrastructure is readily available. Otherwise SH&E predicts DFW would be underutilized with significant financial implications for the region, which at the same time might need to pay for expensive new public infrastructure at Love Field.

There are many assumptions in the SH&E study that can be questioned, which is the normal situation for a study of this type. One assumption open to question is the prediction that American and other DFW-based airlines can only compete with Southwest successfully by moving and/or creating new service at Love Field. Although certainly possible, this would seem to be in conflict with the experience in other multi-airport metropolitan areas where airlines successfully compete using different airports.

Southwest Airlines Initiated Work. Southwest has contracted for its own study of the effects of repealing the Wright/Shelby amendments. The study by the Campbell-Hill Aviation Group takes a very different approach from the DFW initiated studies.⁶⁰

Campbell-Hill contends that the Wright/Shelby amendments impose an economic penalty on North Texas of \$2.4 billion and on the nation as a whole of \$4.2 billion. This penalty, in the view of the study's authors, is the result of limited competition at DFW that results in above market fares to many destinations. The figures in the study are derived from a detailed regression analysis that assumes that Southwest would be able to compete in 15 city-pair markets from which it is currently excluded. A Southwest able to compete in the regional market, it is assumed, will offer lower fares in these city-pairs than those currently available at DFW from American or other airlines. The study also assumes that lower fares will attract considerable new airline traffic to North Texas and that each visitor will have a positive economic for the region as a whole.

⁵⁸ SH&E. Dallas/Fort Worth International Airport: Potential Impacts - Repeal of Wright Amendment. May 2005. Found at [<http://www.keepdfwstrong.com/pdf/results.pdf>]

⁵⁹ The study assumes that much of the new traffic is from American and other airlines that would move service from DFW to Love Field as a competitive counter to Southwest's expanded service.

⁶⁰ Campbell-Hill Aviation Group, Inc. The Wright Amendment Consumer Penalty. June 7, 2005. Found at [http://www.setlovefree.com/pdf/Campbell_Hill_Study.pdf]

There are of course several issues that a study of this type cannot and is not designed to answer. For example, the study does not discuss the issue of offsetting investments in new infrastructure that might accrue to facilitate this increased traffic, especially at Love Field.

American Airlines Initiated Work. American Airlines' has also commissioned a study supporting the DFW position.⁶¹ The study, done by Eclat Consulting, suggests that the Southwest supported Campbell-Hill study is flawed and considerably overstates the regional benefits of increased Southwest service at Love Field. Eliminating the Wright/Shelby restrictions would, also in this view, cause significant changes in American's DFW hub system and lead to reduced/eliminated service to numerous small cities and some international destinations. As with the other studies mentioned above, the authors of this report made a number of assumptions as a basis for analysis. Primary among them in this case is that American would move a significant amount of service from DFW to Love Field.

All of the above mentioned studies provide insights into the relative merits and demerits of repealing the Wright/Shelby amendments. None, however, give a complete picture and each is built on assumptions that can and will be called into question.

Potential Impacts of Repeal on DFW

DFW is legitimately concerned that it will have a tough time paying off its bonded indebtedness if it loses airline service as a result of a Wright/Shelby restriction repeal. It is, as discussed earlier, a principal argument made by the airport for retention of the restrictions. Whether these effects would be short-term or long-term in nature, however, is debatable. Also debatable is whether DFW's potential financial plight vis-a-vis Love Field should be a matter of congressional concern.

In the last two decades numerous airports have seen large reductions in air service. In some instances the reductions were far greater than what appears to be the case at DFW. Several airports, for example, have lost a hub carrier. Atlanta and Miami both went through some rough times after the collapse of Eastern Airlines. Indianapolis is currently dealing with the loss of ATA as a major presence at the airport. Many other examples could be detailed. The experience in each case has been similar. There have been no major bond failures at any of these airports. In most major markets, replacement air carriers, or growth by the incumbent air carrier, has over time, restored the airport to economic health. In light of the experience of other cities, DFW would not be expected to experience serious long-term economic repercussions as a result of the dynamic nature of the Dallas-Ft. Worth regional marketplace. In the short-term, however, DFW may go through some hard times.

The biggest threat to the financial health of DFW is the long-term financial health of American Airlines. American is not just the largest air carrier at the airport,

⁶¹ Torbenson, Eric. American report says repeal risks D/FW hub; Southwest disagrees. *The Dallas Morning News*. [http://www.dallasnews.com/cgi-bin/bi/gold_print.cgi] October 11, 2005.

its route system and its future aspirations are largely the rationale for much of the infrastructure at the airport. As suggested above, the move of a significant number of American flights to Love Field would hurt DFW financially. An American business failure would have much more serious repercussions. It could be argued, therefore, that DFW's campaign to save the Wright/Shelby Amendments is as much concerned with protecting American's market position as it is with trying to retain its overall preeminent position in the North Texas aviation market. And from the airport's perspective this is a common sense position.

Potential Impacts of Repeal on Love Field

A 2001 Master Plan adopted by Love Field limits service to 34 gates, and makes no plans for runway or other airside expansion. Love Field is physically constrained by surrounding development that includes several residential neighborhoods. Noise issues are important to the local community and noise concerns played an important role in the adoption of the Master Plan.

Southwest contends that its potential expansion of service at Love Field can be easily handled within the context of the Master Plan. Further, they contend that their fleet of relatively quiet Boeing 737-700 aircraft ensures that increased noise will not be a factor in any ramp-up of service. Southwest has consistently stated that it welcomes new competitors at the airport, so long as everyone has to abide by the same rules.

Unclear, however, is how a relaxation of the Wright/Shelby Amendments might play out amongst Southwest's competitors. American has suggested that termination of the existing restrictions would force them to open a hub at Love Field as a competitive response.⁶² American perceives, possibly correctly, that it could lose significant amounts of Dallas originating traffic if Southwest were able to provide national service from the downtown airport without direct competition. American currently owns three gates at Love Field although it does not use them. At this point it is far from clear whether American could in fact create a parallel, but smaller hub operation at Love Field. By their own admission, serving two airports in close proximity would be inefficient. Such a move could certainly have at least short-term negative financial implications for DFW.

So far, no other major air carrier has publicly stated an intention to serve Love Field if restrictions are withdrawn. Many industry observers would question the idea that some carrier would want to go head-to-head with Southwest on its home turf. More likely is that additional airlines might wish to add regional or even large jet service at the airport to serve their own hub-and-spoke or point-to-point route systems.

American contends in its statements that it views the Love Field Master Plan as moot in the event of a Wright/Shelby repeal. This is not a view shared by either Southwest or the City of Dallas. It is likely that this issue would become very

⁶² Associated Press. *USA Today*. American threatens to build hub at Love Field. March 22, 2005.

important locally in the event that the Amendments were repealed. As mentioned above, there is considerable sensitivity in the surrounding communities to increased noise and other activities at and around the airport. As a result, there might be considerable local opposition to the increase in airport activity that might accompany Amendment repeal.

Local Reaction to a Proposed Wright/Shelby Repeal

The large populations of American and Southwest employees in the region, by itself, almost guarantees that this subject will generate considerable local debate. It is not surprising, therefore, that regional opinions appear to be mixed. A perusal of the websites created by DFW and Southwest to promote their respective positions details local support for both protagonist's positions.⁶³ Local newspapers have also weighed in on the subject, providing extensive coverage of the debate over Wright/Shelby.⁶⁴ Again, coverage would seem to indicate that broad consensus on the question of repeal is absent.

Local politicians are also weighing in on the subject. Notably, the Mayor of Dallas now seems to be seeking an as of yet undefined compromise on the issue.⁶⁵ In addition, Members of the region's congressional delegation are weighing in on the subject, with two Members supporting repeal and several others opposing the idea.

Prospects for Congressional Action

In the 108th Congress, several members of the Tennessee congressional delegation introduced legislation that would have allowed direct air service between Love Field and airports in Tennessee (H.R. 5187). The bill received no further congressional consideration. Comparable legislation has now been introduced in the 109th Congress (H.R. 2932, Representative Marsha Blackburn, June 16, 2005). The bill has been referred to the House Committee on Transportation and Infrastructure, Subcommittee on Aviation. At this point no further action on the legislation has been taken.

Legislation that would repeal the Wright/Shelby Amendments has been introduced in the 109th Congress (H.R. 2646, Representative Jeb Hensarling, May 26, 2005). This legislation has also been referred to the Subcommittee on Aviation. No further action on the legislation has been taken.

As of this writing, three pieces of legislation have been introduced in the Senate that would impact the Wright/Shelby Amendments. The first of these would have the practical effect of eliminating the existing restrictions, but does so, not by repealing the Wright/Shelby Amendments, but by amending the existing provisions

⁶³ www.keepdfwstrong.com and [<http://www.setlovefree.com>]

⁶⁴ e.g. the Dallas Morning News at [<http://www.dallasnews.com/business/wright/index.html>] tracks the debate.

⁶⁵ Marta, Suzanne and Gillman, Todd J. *Mayor wants role in Wright's future*. June 28, 2005. [<http://www.dallasnews.com/s/dws/bus/stories/062905dnbuswright.556daad9.html>]

to include the 43 states not currently named in the Amendments as allowable service points (Puerto Rico is also added)(S. 1424, Senator John Ensign, July 19, 2005). A second bill, opposed to lifting the Wright/Shelby restrictions, would require the closure of Love Field three years after the date of enactment (S. 1425, Senator James Inhofe, July 19, 2005)⁶⁶. A final piece of legislation is a provision in the Senate-passed version of the Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies Appropriations Bill, 2006 (H.R. 3058 as amended, October 20, 2005). This provision would appear to permanently add Missouri to the existing list of states eligible for direct service to Love Field.

The Senate Committee on Commerce, Science and Transportation has scheduled a November 10, 2005 Hearing on the Love Field dispute. It is unclear whether action, other than on the appropriations bill, will be taken on any of these bills during the remainder of the 1st Session of the 109th Congress. It is unknown whether the Senate appropriation's provision concerning Love Field will survive, or be modified by, the Conference Committee considering the legislation.

In its November 2005 announcement, Southwest contended that H.R. 5187 in the 108th Congress clearly showed a desire on the part of Congress to expand direct service to Love Field beyond the 7 states allowed service by the Wright/Shelby Amendments. Southwest believes that the legislation introduced in the 109th Congress, excluding S. 1425, bolsters this position. Southwest also contends that the departure of Delta from the regional market provided a need for additional service in the market, especially low fare service, and that with relief from the Wright/Shelby restrictions, Southwest is in the best position to provide it.

DFW, obviously, takes a very different view. From their perspective, Southwest should either offer long distance service from DFW, or live with the Wright/Shelby Amendment restrictions. Giving Southwest authority to fly beyond the seven states it can now serve would, in their opinion, have a chilling effect on DFW's ability to attract new air carriers to replace Delta. By extension, such a move could also diminish the economic vibrancy of the airport and the region (Love Field, in this view, is not seen as a regional asset, but rather as a Dallas City asset).

The DFW arguments are primarily couched in the politics, legalities, and history of the regional compact that created the airport that are discussed more fully earlier in this report. The rationales for retaining the Amendments are primarily of local interest and origin, e.g. protecting investments and markets at DFW. Many industry observers, including some outside the Dallas/Ft. Worth region, believe that Wright/Shelby repeal or modification is a local issue, and should be decided in the context of local aviation needs.

Since its 1978 deregulation, the airline industry has become very competitive. Airlines move service in and out of airports as their marketing strategies change. This is mostly done irrespective of the financial and other needs of the airports they

⁶⁶ Legislation introduced subsequent to S. 1425 would require that airports in Tulsa, Oklahoma and Des Moines, Iowa be closed if Love Field were to be closed (H.R. 3383, Representative Hensarling, July 21, 2005).

serve. There are still a few other airports with operating restrictions; Reagan Washington National and New York La Guardia are the two most commonly mentioned. But the restrictions in each instance are far less constraining than they are at Love Field, and the reasons for these restrictions are completely unrelated to those at issue here. The rationale for removing Wright/Shelby restrictions, therefore, is the rationale for deregulation in the first place: the unrestricted flow of air commerce. A question for policymakers, then, is should the exceptions to deregulation that are the Wright/Shelby Amendments be retained in the context of the existing national aviation system or should local concerns be the primary determinant as to the desirability of repeal and/or modification?