CHILD SAFETY RESTRAINTS: A CONTROVERSY
OVER SAFE INFANT AIR TRAVEL

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I. INTRODUCTION

I frantically tried to hold my baby. She was screaming bloody murder. I was sobbing. “Don’t cry, Mom” my son was saying as we crouched over in a crash position. Then there was a terrible jolt, the sound of crunching metal—the plane was flipping over. My baby was pulled out of my arms. I thought the floor had given way or that she had gone out of a hole or a window. I didn’t even have time to react, or tighten my grip. She was gone.¹

WITH THE TRAGIC deaths and injuries of several young children in the Sioux City, Iowa, United Airlines Flight 232 crash and the Long Island, New York Avianca Airlines Flight 52 crash,² the issue of child safety seats on aircraft began receiving increased attention.³ Studies of these and other airline crashes indicate that

² NTSB, supra note 1, at 5.
³ See, e.g., AIR TRANSPORT ASSOCIATION OF AMERICA, Petition—Infant/Child Restraints, February 22, 1990 [hereinafter ATA Petition](Air Transport Association (ATA), an organization which includes the nation’s commercial airlines, petitioned the Federal Aviation Association (FAA) to require child safety restraints aboard aircraft for children under the age of two); Airline Infant Safety Seats Required, AV. WEEK & SPACE TECH., Feb. 5, 1990, at 17; Younger, Straight Answers About Safety Seats and Airlines, AAA WORLD, Nov.-Dec. 1990, at 10-12 (safety experts advocate child safety restraints aboard aircraft as a means for increasing child safety).
three out of every five infants who have died during air disasters might have lived had they been wearing mechanical safety restraints.4 Basically, “infant passengers experience excess mortality in survivable air crashes.”5

This comment discusses the tragedy that can occur when children are not properly restrained on aircrafts. The comment first examines the magnitude of the problem and its historical perspective.6 Next, this paper addresses the legislation pertinent to mandatory child restraint systems, namely, Senate Bill 1913, passed on August 2, 1990, and House Resolution 4025, which was not voted upon during the one hundred and first Congress, but will be reintroduced during the next Congressional session.7 The comment then explores the arguments supporting the passage of the House Resolution and the sub-


6 See infra notes 11-72 and accompanying text.


sequent law requiring child safety restraints on aircraft.\textsuperscript{8} Finally, while the paper considers opposing viewpoints,\textsuperscript{9} it ultimately recommends mandating child safety restraints on all aircraft.\textsuperscript{10}

II. PRESENTATION OF THE PROBLEM

A. The Status Quo

Each day approximately sixteen thousand commercial airline flights arrive and depart from United States airports.\textsuperscript{11} An average of five to ten thousand infants and toddlers travel daily on these flights.\textsuperscript{12} Four million children under the age of two fly on United States domestic flights each year.\textsuperscript{13} During these flights, every item on board is securely fastened, preventing anything from moving about the aircraft and causing passenger injury or endangering equipment—every item, that is, except those travelers who are under the age of two.\textsuperscript{14} As James Kolstad, Chairman of the National Transportation Safety Board (NTSB) comments, “all objects must be secured during take off and landing, including coffee pots and luggage. And yet . . . our precious children are not.”\textsuperscript{15}

\textsuperscript{8} See infra notes 92-236 and accompanying text.
\textsuperscript{9} See infra notes 237-337 and accompanying text. The approved Senate Bill and the proposed House Resolution are identical except for an amendment to the Senate Bill added at the time of its passage. See S. 1913, supra note 7; H.R. 4025, supra note 7. This amendment indicates that United States carriers on international flights should not have to require child restraints unless there is a standard requirement established by the International Civil Aviation Organization. S. 1913, supra note 7, § 2; see also Four Aviation Bills Recommended for Senate Approval, AVIATION DAILY, Aug. 1, 1990, at 205. Since the House Resolution remains unpassed, this comment will emphasize the arguments concerning its passage. Presumably, these arguments also apply to Senate Bill 1913.
\textsuperscript{10} See infra Conclusion.
\textsuperscript{12} Id.; see also ATA petition, supra note 3, at 5.
\textsuperscript{13} Younger, supra note 3, at 11.
\textsuperscript{14} Child Restraint Hearings, supra note 7, at 83 (statement of Walter S. Coleman, Vice President, Operations Air Transport Association of America (OATA)).
\textsuperscript{15} Waters, How do Planes Differ from Buses?,” NEWSWEEK, June 4, 1990, at 70. Nora Marshall made a similar statement, “the FAA doesn’t allow anything in the cabin to be unrestrained except kids under two.” Safety Recommendation Urges FAA
Under present law, children under two do not have to use any type of safety device while travelling. Instead, they may be held on a parent’s lap.¹⁶

A considerable body of evidence indicates that child safety restraints should be mandatory aboard all aircraft. Both medical professionals and safety experts contend that infants and young children travelling without proper restraint face definite hazards.¹⁷ Tests have shown that holding a child in one’s arms offers the child virtually no protection during a crash or severe turbulence.¹⁸ These

¹⁶ 14 C.F.R. § 121.311(a)(1-2), (b) (1990). This rule indicates:
(a) No person may operate an airplane unless there are available during the takeoff, en route flight, and landing,
(1) an approved seat or berth for each person on the airplane who has reached his second birthday; and
(2) an approved safety belt for separate use by each person on board the airplane who has reached his second birthday, except that two persons occupying a berth may share one approved safety belt and two persons occupying a multiple lounge or divan seat may share one approved safety belt during en route flight only.
(b) During the takeoff and landing of an airplane, each person on board shall occupy an approved seat or berth with a separate safety belt properly secured about him. However, a person who has not reached his second birthday may be held by an adult who is occupying a seat or berth. A safety belt provided for the occupant of a seat may not be used during takeoff and landing by more than one person who has reached his second birthday.

Id. (emphasis added).

See also 14 C.F.R. § 91.14 (3). This regulation provides in pertinent part “[A] person who has not reached his second birthday may be held by an adult who is occupying a seat or berth . . . .” Id. See generally Younger, supra note 3, at 11 (article examines current aviation laws concerning child safety restraints).

¹⁷ Henretig, M.D., Children’s Safety in Aircraft, SAFE RIDE NEWS, Fall 1989, at 2; Fife, supra note 5, at 1245; NTSB, supra note 1, at 4-7; Child Restraint Hearings, supra note 7, at 19 (statement of Rep. Jim Lightfoot).

¹⁸ FAA-CIVIL AEROMEDICAL INSTITUTE (CAMI), Preliminary Report, SUMMARY OF INFANT RESTRAINT DEVICES IMPACT TEST SERIES, (June 1989) [hereinafter FAA-CAMI Report]; Fife, supra note 5, at 1245. The results of an FAA sponsored
tests conclude that infant occupation of aircraft presently constitutes an extreme safety risk.¹⁹ Not only are young children at risk, unrestrained children also jeopardize the safety of others on board the aircraft.²⁰ Ironically, despite opposing mandatory child restraint systems on aircraft,²¹ the Federal Aviation Administration (FAA) calls child restraint systems the best safety option for travelling children.²² In fact, the FAA has published a brochure advocating that parents "buckle up" their infants during air travel.²³

The NTSB, the organization charged with investigating and determining the cause of aviation accidents,²⁴ has addressed this problem. The Board recommends that the FAA pass rulings to ensure the safety of all of its passen-
gers, young and old. In the alternative, the Safety Board suggests a legislative solution designed to better protect children under the age of two who travel by air.

B. A Historical Perspective

Permissive language excluding infants under the age of two from mandatory safety regulations which require seat belt use aboard aircraft first appeared in the 1953 Civil Air Regulations. At the time of the passage of the 1953 regulations, child safety restraints were not available. Studies showed that an infant who could not hold his head upright or whose body had not matured enough to fit the contours of a seat with a seatbelt could not properly use an adult seat and safety restraint. Therefore, these young children were initially excluded from safety restraint requirements. Further, because commercial air travel was a fairly new phenomenon in the 1950's, children rarely traveled on aircraft and were not a focus of either safety regulations or legislation. However, as technology and research techniques have become more sophisticated, not only has child protection during flight become feasible, it has become a necessity.

Since the 1960's, the FAA and other experts have conducted research aimed at improving child safety aboard

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25 NTSB, supra note 1, at 3, 7; see also Weinhouse, Keeping Kids Safer on Planes, REDBOOK, Nov. 1989, at 132.
26 NTSB, supra note 1, at 1. Senator Christopher Bond contends that legislation must be promulgated, noting that without rulemaking authority, the NTSB recommendation is merely a recommendation. Child Restraint Hearings, supra note 7, at 6, 7 (1990)(statement of Sen. Christopher Bond); see also id. at 83 (statement of Walter S. Coleman, Vice President, OATA).
27 Child Restraint Hearings, supra note 7, at 84 (statement of Walter S. Coleman, Vice President, OATA).
28 Fife, supra note 5, at 1245; Child Restraint Hearings, supra note 7, at v.
29 Child Restraint Hearings, supra note 7, at 84 (statement of Walter S. Coleman, Vice President, OATA).
30 Snyder, supra note 4, at 85.
31 Child Restraint Hearings, supra note 7, at 84 (statement of Walter S. Coleman, Vice President, OATA); telephone interview with Christy Cohen, Assistant to Rep. Jim Lightfoot (October 15, 1990)[hereinafter Cohen].
Despite the fact that this research, including some done by the FAA, indicates that child safety seats offer improved protection for children travelling on airplanes, no requirements mandating child restraints have been passed. Under present law, children still travel unrestrained, held only by a human force—their parent's arms.

C. The Current Problem

The tragedy of allowing children to travel by air without proper safety devices manifests itself dramatically. During the past two decades there have been numerous airplane accidents in which unrestrained children have been severely injured or have died. In fact, the FAA has identified eight incidents involving commercial airlines that have occurred during the past fifteen years in which the proper use of child safety mechanisms might have reduced infant casualties. Two 1989 accidents, the crash of United Airlines Flight 232 and the crash of Avianca Airlines Flight 52, demonstrate the danger infants and children face when travelling by air without proper safety devices.

On July 19, 1989, United Flight 232 crashed during an attempted landing in Sioux City, Iowa. In preparation for the crash landing, the flight crew followed standard FAA crash procedures. Accordingly, flight attendants instructed parents travelling with children under the age of two to place their children on the floor, cushioning them with pillows and bracing them between an adult's

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32 Child Restraint Hearings, supra note 7, at v; NTSB, supra note 1, at 6.
33 Child Restraint Hearings, supra note 7, at 20 (statement of Rep. Jim Lightfoot); NTSB, supra note 1, at 6; see 14 C.F.R. §§ 91.14, 121.311, supra note 16.
34 Child Restraint Hearings, supra note 7, at 37 (statement of Susan M. Coughlin, Vice Chairman, NTSB).
37 NTSB, supra note 1, at 1.
38 Id. at 2.
feet. Three infants and one toddler were travelling on board the craft. One mother aboard the flight recalled that on impact her son flew off of the floor and into the air, striking his head on the cabin wall several times before she could grab him. This boy suffered severe head injuries. Another child died when he slipped from between his mother's feet and was thrown down the aisle. In fact, every infant and toddler on board the plane suffered injury in the crash. By contrast, some adults aboard the aircraft, all of whom were restrained, escaped uninjured.

On January 25, 1990, Avianca Airlines Flight 52 crashed in Cove Neck, New York. Among the passengers were seven children under the age of two. Again, in compliance with FAA regulations, parents were instructed to place small children on the floor. Tragically, six of these infants received serious, life-threatening, and in some cases, permanent injuries; the seventh was killed. These airline crashes are only two examples of the great difficulty present in protecting unrestrained children during a crash situation. Obviously, the standard FAA safety procedures offered little protection to these infants.

Other tragic crashes have occurred in which unprotected children have perished or been seriously injured. In one crash, NTSB investigators were able to identify the particular manner in which one of two infant deaths occurred. On November 15, 1987, a Continental Airlines

40 NTSB, supra note 1, at 1-2.
41 Child Restraint Hearings, supra note 7, at 388 (statement of Lori Michaelson).
42 Id.
43 Id.
44 NTSB, supra note 1, at 2.
45 Id. at 1.
46 Id. at 5.
47 Id.
48 Id. at 5; Forte, supra note 4.
49 Child Restraint Hearings, supra note 7, at 49, 267-70.
DC-9 crashed on takeoff from Stapleton International Airport in Denver, Colorado.\textsuperscript{50} Five unrestrained children were on board.\textsuperscript{51} Two of these children died, and two suffered severe injuries.\textsuperscript{52} NTSB investigators determined that one infant was thrown into the plane's bulkhead, receiving fatal blunt impact injuries, skull fractures, and thorax injuries.\textsuperscript{53}

Many researchers cite one particular air crash as the most tragic example of the need for child safety restraints on board aircraft. On April 4, 1975, \textit{Operation Babylift} left Saigon, Vietnam, carrying two hundred forty-seven orphans to new homes in the United States.\textsuperscript{54} While enroute the plane crashed; ninety-eight infants and children were killed.\textsuperscript{55} Unfortunately, little is known about the circumstances on board this aircraft because of the Vietnam War.\textsuperscript{56} However, since safety restraints are neither mandatory nor commonly used, it is assumed that none of the children below the age of two were restrained by appropriate safety mechanisms.\textsuperscript{57} In another tragic crash, in 1978, three unrestrained children under the age of two suffered fatal injuries when a United Airlines flight crashed in Portland, Oregon.\textsuperscript{58}

Fatalities and injuries to unrestrained infants aboard aircraft do not occur solely during crash situations. Bob Gibbons of Northwest Airlines indicates that severe turbulence constitutes a hazard more real to the typical air traveler than a crash.\textsuperscript{59} In fact, during turbulence on a

\begin{itemize}
\item \textsuperscript{50} NTSB, \textit{supra} note 1, at 4.
\item \textsuperscript{51} Snyder, \textit{supra} note 4, at 80.
\item \textsuperscript{52} \textit{Id.}
\item \textsuperscript{53} \textit{Id.}
\item \textsuperscript{54} \textit{Id.} at 79.
\item \textsuperscript{55} \textit{Id.}
\item \textsuperscript{56} \textit{Id.}
\item \textsuperscript{57} \textit{Id.}
\item \textsuperscript{58} \textit{Id.}
\item \textsuperscript{59} Birnbaum, \textit{supra} note 18, at 20; \textit{see also Child Restraint Hearings}, Public Works
National Airlines 1972 flight, a lap-held, unrestrained infant flew out of his holder's arms, struck his head on an overhead compartment and suffered fatal head injuries.60 A similar incident occurred more recently on July 13, 1986, when an Eastern Airlines flight encountered expected turbulence during landing. During this turbulence, a seven month old, unrestrained infant flew upward, fell on the armrest of the seat in front of his mother's seat and suffered facial injuries.61

Numerous other cases involving unrestrained infant fatalities on aircraft exist.62 In some instances, the circumstances have made it difficult to speculate about the causes of death and the possibility that the children might have survived had they been restrained.63 However, the accidents discussed clearly demonstrate that restrained adults frequently survive crashes in which unrestrained infants die.64

Perhaps the best analysis of increased risks associated with unrestrained infant air travel is a 1981 Harvard Medical School epidemiology study of 1976-1979 U.S. aircraft accidents in which there were both survivors and fatalities.65 This study determined that infant restraints could

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60 NTSB, supra note 1, at 3.

61 Id. at 4. In another case, an unrestrained seven week old infant sustained serious head injuries when the American Airlines plane on which it was travelling encountered expected turbulence. No adults were injured on this flight. Id. at 5.

62 Fife, supra note 5, at 1243-44; NTSB, supra note 1, at 1-7; see supra note 49 and accompanying text.

63 Snyder, supra note 4, at 80.

64 See generally NTSB, supra note 1. In many cases, the NTSB has established that child safety restraints would have saved a child's life. Forte, supra note 4. The NTSB knows of no aircraft fatalities involving a child wearing a safety restraint. NTSB SAFETY INFORMATION, supra note 58, at 301.

65 Fife, supra note 5, at 1243-44.

US air carriers were involved in 21 fatal accidents during the period 1976-1979. Passengers died in 14 of these accidents. The remainder involved the deaths of aircraft crew or of people outside the airplane. Three of the 14 accidents with passenger deaths had no survivors, and these three accidents accounted for 389 deaths. The remaining 11 accidents had deaths and survivors among the passen-
have prevented three of the five infant passenger deaths that occurred in the crashes studied, and concluded that unrestrained infants undergo excessive mortality rates in crashes in which adults survive.66

That more effective child restraint mechanisms are necessary aboard aircraft is suggested by the deaths and injuries which occurred in the accidents discussed, the test results noted, and the testimony showing the impossibility of holding onto an infant during either a crash or severe turbulence.67 Medical literature, the FAA, and the NTSB all indicate that air travel for unrestrained, young children
gers and accounted for 493 deaths. Four of these eleven aircraft had children on board.

Id. at 1243. Crashes were excluded from the survey if there were no survivors or no infants aboard or if deceleration was not a factor. Five international crashes were also studied. The following table shows the crashes included in the study. Id.

<table>
<thead>
<tr>
<th>Place</th>
<th>Year</th>
<th>Passengers</th>
<th>Died</th>
<th>Survived</th>
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<td>1976</td>
<td>infants</td>
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<td>3</td>
<td>4</td>
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<tr>
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<td>1976</td>
<td>infants</td>
<td>0</td>
<td>3</td>
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<tr>
<td></td>
<td></td>
<td>noninfants</td>
<td>2</td>
<td>165</td>
</tr>
<tr>
<td>Ketchikan, AL</td>
<td>1976</td>
<td>infants</td>
<td>0</td>
<td>2</td>
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<td></td>
<td></td>
<td>noninfants</td>
<td>1</td>
<td>40</td>
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<tr>
<td>St. Thomas, VI</td>
<td>1976</td>
<td>infants</td>
<td>2</td>
<td>1</td>
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<tr>
<td></td>
<td></td>
<td>noninfants</td>
<td>24</td>
<td>45</td>
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<tr>
<td>Finland</td>
<td>1963</td>
<td>infants</td>
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<td>0</td>
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<td>noninfants</td>
<td>17</td>
<td>2</td>
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<tr>
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The following crashes were excluded from the analysis

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<th>Died</th>
<th>Survived</th>
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<td></td>
<td></td>
<td>noninfants</td>
<td>34</td>
<td>0</td>
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<tr>
<td>Canada</td>
<td>1978</td>
<td>infants</td>
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<td>0</td>
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<td></td>
<td>noninfants</td>
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<tr>
<td>Los Angeles</td>
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<td>infants</td>
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<td>2</td>
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<tr>
<td>Denmark</td>
<td>1971</td>
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<td>0</td>
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<td></td>
<td>noninfants</td>
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<td>Greece</td>
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Id. at 1243-1244.

66 Id. at 1245.
67 See supra notes 18-20, 35-66 and accompanying text.
is dangerous. Specifically, there is a "definite hazard inherent in air travel by infants and young children without proper restraint." Indeed, "[a] small child sitting unrestrained on a plane becomes a little missile when the aircraft hits severe turbulence [or crashes]." According to the NTSB, this "missile" is not only at an increased risk of injury or death, he or she is a danger to other passengers. For example, the infant killed in the Sioux City Crash weighed thirty-five pounds. NTSB suggests that an unrestrained child weighing this much "represents a major contradiction in the FAA regulations that require all other 'items of mass' such as carry-on baggage to be stowed for take-off and landing." FAA administrator James B. Busey admits that "forces generated by a crash can exceed the parents' ability to restrain a child safely, and additionally, that in encounters with severe air turbulence, high forces pose a potential danger to unrestrained infants."

III. PROPOSED LEGISLATION

Both the House and the Senate have introduced legislation seeking to mandate safety restraints for children traveling on aircraft. On February 20, 1990, Representative Jim Lightfoot introduced a bill mandating that child safety restraints be required on all United States commercial aircraft. Acknowledging the realities of both the United Airlines Flight 232 crash in Sioux City and the Aviation

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68 Henretig, supra note 17, at 20; see also Child Restraint Hearings, supra note 7, at 125 (statement of Anthony J. Broderick, Associate Director for Regulation and Certification, FAA). Broderick remarked, "the use of a child safety seat can increase the likelihood of [a] child surviving a crash. . . . The FAA believes that child safety seats should be used." Id.

69 Birnbaum, supra note 18, at 20 (quoting Bob Gibbons of Northwest Airlines).

70 NTSB, supra note 1, at 6.

71 Id.


73 H.R. 4025, supra note 7. This bill reads: Section 1. CHILD RESTRAINT SYSTEMS ON COMMERCIAL AIRCRAFT
(a) In General—Section 601 of the Federal Aviation Act of 1958
anca Airlines Flight 52 crash in Cove Neck, New York, as well as the concerns of the NTSB, Lightfoot stressed that virtually all experts agree that infants and small children should be restrained during air travel, especially during turbulence, landing and take-off.\textsuperscript{74} The Congressman emphasized that evidence supporting this view has been available for at least fifteen years.\textsuperscript{75} Lightfoot introduced House Resolution 4025 to the Public Works and Transportation Subcommittee of the House Aviation Committee:

It has long been recognized that adults should be restrained during turbulence, landing and take-off. Yet children under age two are not required to be restrained. There is no excuse for requiring coffee pots and corpses to be restrained while leaving children under age two to fly around the cabin—that's sheer lunacy. This issue has been studied for years—now is the time to act. We can't afford to wait. It's time to get our heads out of the clouds.\textsuperscript{76}

Senator Christopher Bond introduced legislation in the Senate, Senate Bill 1913, which is identical to House Resolution 4025.\textsuperscript{77} Senate Bill 1913 has an interesting history. Senator Bond originally introduced this bill in

\begin{verbatim}
(49 U.S.C. App. 1421) is amended by adding at the end the following new subsection:

"(g) CHILD RESTRAINT SYSTEMS.—Not later than 90 days after the date of the enactment of this subsection, the Secretary shall issue regulations requiring the use of child safety restraint systems approved by the Secretary on aircraft providing air transportation of passengers. Such regulations shall establish age or weight limits for children who are to use systems."

Id.
\end{verbatim}

\textsuperscript{74} Child Restraint Hearings, supra note 7, at 19-20 (statement of Rep. Jim Lightfoot).
\textsuperscript{75} Id.
\textsuperscript{76} Id. at 19.
\textsuperscript{77} Child Restraint Hearings, supra note 7, at 6 (statement of Sen. Christopher Bond). Senate Bill 1913 reads exactly as House Resolution 4025, but it adds the following amendment:

(b) CONFORMING AMENDMENT.—The table of contents contained in the first section of such Act is amended by inserting at the end of the matter relating to section 601 the following new item:

"(g) Child Restraint Systems"
November 1989 as an amendment to Senate Bill 341, the Air Travel Rights for Blind Individual's Act.\textsuperscript{78} For unclear reasons, the Senate removed Senate Bill 341 from its calendar of pending business on June 12, 1990.\textsuperscript{79} Consequently, the Senate also removed the Bond amendment from consideration.\textsuperscript{80} However, Senator Bond later reintroduced the child safety restraint legislation as Senate Bill 1913.\textsuperscript{81} The Bill passed the Senate on August 2, 1990.\textsuperscript{82}

Support for this legislation is widespread and emanates from many groups, including the NTSB, the Air Transport Association (ATA), the Flight Attendants Association, the Airlines Passenger Association, parents, safety experts, medical groups, and the commercial airlines.\textsuperscript{83} The Flight Attendants Association expresses a sentiment which exemplifies the position of these organizations.

The FAA has gone to the trouble of regulating carry on bags. They ought to do at least the same for infants... An infant held on the floor is not likely to stay in place during a crash... in some circumstances [a safety seat] can make the difference between life and death.\textsuperscript{84}

The most active support for the legislation comes from the NTSB and the ATA. These two organizations have formally recommended that the FAA promulgate air craft

\textbf{SECTION 2.—INTERNATIONAL STANDARD.}

It is the sense of the Congress that the United States representative to the International Civil Aviation Organization should seek an international standard to require that passengers on a civil aviation aircraft be restrained on takeoff and landing and when directed by the captain of such aircraft.

\textsuperscript{78} The Air Travel Rights For Blind Individual’s Act, supra note 7.
\textsuperscript{79} Child Restraint Hearings, supra note 7, at 9 (statement of Sen. Christopher Bond); Parrish, Blind Rights Bill Off Senate Calendar, AIR SAFETY WEEK, June 18, 1990, at 3.
\textsuperscript{80} Child Restraint Hearings, supra note 7, at 9-10 (statement of Sen. Christopher Bond).
\textsuperscript{81} S. 1913, supra note 7.
\textsuperscript{84} Weinhouse, supra note 25, at 132.
regulations requiring children to be restrained in safety devices during air travel. In doing so, these two groups note that abundant evidence demonstrates the need for child restraint systems. The FAA has responded to this evidence by approving restraints which comply with motor vehicle safety standards for use on aircraft and by allowing their use in flight. However, there is still no FAA requirement that children traveling by air must be restrained in safety seats. In the absence of FAA action, the NTSB and the FAA support a congressional legislative solution. House Resolution 4025 and Senate Bill 1913 seek to provide this solution.

The only opposition to House Resolution 4025 and Senate Bill 1913 comes from the FAA. The FAA offers several reasons why it believes this proposed legislation is ill-founded. In the next two sections, this comment will examine the positions of those who support and those who oppose the child safety restraint legislation.

IV. SUPPORT FOR CHILD SAFETY RESTRAINTS

A. Safety Issues

1. An Attempt at a Safe Alternative

The NTSB recently expressed concern that the FAA has not adequately addressed infant traveller protection since

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85 NTSB, supra note 1, at 7; ATA petition, supra note 3, at 5.
86 Child Restraint Hearings, supra note 7, at 2 (statement of Rep. Jim Lightfoot). "Virtually all experts agree that small children should be better restrained during air travel." Id. at 1.
88 Child Restraint Hearings, supra note 7, at v.
90 H.R. 4025, supra note 7; S. 1913, supra note 7.
1978, although child safety aboard aircrafts has long been a problem facing the aviation industry. Following a 1978 United Airlines crash involving infant fatalities, the NTSB recommended that the FAA expedite both research and rulemaking in an effort to make air travel as safe as possible for young children and infants. In response, the FAA issued a 1982 ruling permitting the use of some automobile restraint devices on airplanes, and when pressed by the NTSB, extended this permit in a 1985 ruling to all child/infant seats acceptable under the Federal Motor Vehicle Safety Standards Number 213. This 1985 ruling did not require infant seats nor did it require that all commercial airlines accept the usage of the child safety restraints. Since the 1985 ruling, more than four air incidents involving injury or death to an unrestrained infant have occurred. The Air Transportation Association of America (ATA) and the NTSB have responded to the FAA's rulings.

The ATA, on behalf of its member airlines and in accordance with H.R. 4025, petitioned the FAA on February 22, 1990 "to initiate rulemaking to amend certain portions of [Federal Aviation Rule] FAR 121.311 pertaining to the restraint of persons who have not reached their second birthday." The FAA responded to the ATA's petition by expressing concern over the safety of infants

\[\text{\textsuperscript{92}}\text{NTSB, supra note 1, at 3.}
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\[\text{\textsuperscript{93}}\text{Id.; see also supra note 58 and accompanying text.}
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\[\text{\textsuperscript{94}}\text{1982 TSO C-100, supra note 87; NTSB, supra note 1, at 3.}
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\[\text{\textsuperscript{95}}\text{1985 TSO C-100a, supra note 87; NTSB, supra note 1, at 3. The NTSB has termed this response untimely. Id.}
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\[\text{\textsuperscript{96}}\text{1985 TSO C-100a, supra note 87.}
\]
\[\text{\textsuperscript{97}}\text{NTSB, supra note 1, at 3-4. These accidents include the 1987 Continental Airlines crash at Stapleton International Airport in Denver, Colorado, in which one infant died; the 1990 Avianca Airlines crash at Cove Neck, New York, in which one child died and six were severely injured; the 1989 Sioux City, Iowa, crash in which one infant died and others were severely injured; and the turbulence problems experienced in January 1990 by an American flight near Puerto Rico in which one infant suffered serious injuries. Other crashes and turbulence problems have occurred since the 1985 FAA action. See supra notes 37-72 and accompanying text.}
\]
\[\text{\textsuperscript{98}}\text{ATA petition, supra note 3, at 1. The ATA suggests the following replacement for 14 C.F.R. § 121.311:}
\]
travelling on air planes and strongly advocating parental use of child restraints.\textsuperscript{99} In fact, in testimony at an October 30, 1989 NTSB public hearing, an FAA official stated “infants are best protected in an FAA approved infant/child restraint system that [is] properly installed in a seat.”\textsuperscript{100} Despite this statement and other expressed concerns, the FAA initiated a March 1, 1990 rule which did not require or even encourage use of child safety seats aboard aircraft. This ruling prohibited air carriers from denying use of approved restraints to those seeking to use them.\textsuperscript{101} The FAA’s March 1 proposal did not satisfy the ATA; therefore, the ATA vigorously supports and actively

\begin{quote}
\textbf{Seats, Safety Belts, and Shoulder Harnesses.}

(a) No person may operate an airplane unless there are available during the takeoff, en route flight, and landing,

(1) An approved seat or berth for each person on board the airplane; and

(2) An approved safety belt for separate use by each person on board the airplane, . . .

(b) During the takeoff and landing of an airplane, each person on board shall occupy an approved seat or berth with a separate safety belt properly secured about him.

\textit{Id.} at 2.


\textsuperscript{100} NTSB, \textit{supra} note 1, at 4.

\textsuperscript{101} Miscellaneous Operational Amendments, 55 Fed. Reg. 7415 (1990)(to be codified at 14 C.F.R. § 91.107)(proposed March 1, 1990)[hereinafter 55 Fed. Reg. proposed rule]. Practically, this proposal is no different from the 1958 TSO, C-100a. \textit{See supra} note 87. Child restraint systems are still optional. 55 Fed Reg. discussion, \textit{supra} note 35, at 7416. The FAA’s latest proposal purports to clarify the option parents have of bringing a child restraint for their child on board an aircraft. The proposed rule, 14 C.F.R. § 91.107 reads in pertinent part:

[a] Unless otherwise authorized by the Administrator—

(3) Except as provided in this paragraph, each person on board a U.S. registered aircraft . . . must occupy an approved seat or berth with a safety belt and, if installed shoulder harness, properly secured about him during movement on the surface, takeoff, and landing. However, notwithstanding the preceding requirements of this paragraph, a person may:

(i) Be held by an adult who is occupying a seat or berth if that person has not reached his second birthday;

(ii) . . .

(iii) Notwithstanding any other requirement of this chapter, occupy an approved child restraint system furnished by the operator or one of the persons described in paragraph (a)(3)(iii)(A) of this section provided that:

(A) The person is accompanied by a parent, guardian or per-
advocates Representative Lightfoot's legislation.\textsuperscript{102}

The March 1, 1990, FAA ruling did not please the NTSB either. The Safety Board announced that voluntary use of child safety seats was not an appropriate means of ensuring infant safety aboard aircraft.\textsuperscript{103} On May 30, 1990, the NTSB officially recommended to the FAA that child safety restraint systems be mandated for all infant/children travelers.\textsuperscript{104}

\begin{itemize}
  \item[(B)] The approved child restraint system, depending upon its date of manufacture, bears either one or two labels as follows:
  \begin{enumerate}
    \item Seats manufactured between January 1, 1981 and February 25, 1985, must bear the label: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."
    \item Vest- and harness-style child restraint systems manufactured before February 26, 1985, are not approved. Seats manufactured on or after February 26, 1985 must bear two labels:
      \begin{enumerate}
        \item "This child restraint system conforms to all applicable Federal motor vehicle safety standards"; and
        \item "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT"; and
      \end{enumerate}
  \end{enumerate}

  \item[(C)] The operator complies with the following requirements:
  \begin{enumerate}
    \item The restraint system must be properly secured to an approved seat or berth;
    \item The person must be properly secured in the restraint system and must not exceed the specified weight limit for the restraint system; and
    \item The restraint system bears the appropriate label(s).
  \end{enumerate}

\end{itemize}

[b] The operator may refuse to permit use of a restraint system that has an obvious defect and, in the operator's judgment, may not function properly.

55 Fed Reg. proposed rule, at 7423.

\textsuperscript{102} ATA Petition, supra note 3, at 3. \textit{See also} Child Restraint Hearings, supra note 7, at 19 (statement of Rep. Jim Lightfoot).

\textsuperscript{103} NTSB, supra note 1, at 4.

\textsuperscript{104} Id. at 7. The recommendation is:

Revise 14 CFR 91, 121, and 135 to require that all occupants be restrained during takeoff, landing, and turbulent conditions, and that all infants and small children below the weight of 40 pounds and under the height of 40 inches be restrained in an approved child restraint system appropriate to their height and weight. Conduct research to determine the adequacy of aircraft seatbelts to restrain children too large to use child safety seats and to develop some suitable means of providing adequate restraint for such children.

\textit{Id.} The FAA has not responded to this recommendation with a ruling for
2. **Dissatisfaction with the FAA’s 1990 Ruling**

The supporters of mandatory child safety seats cite numerous reasons for their displeasure with the FAA’s March 1, 1990 rule proposal which leaves the use of child restraint systems aboard aircraft to the parent’s discretion. First, the groups stress the documented risk to children who travel unrestrained on aircraft.

Although parents on current airline flights are instructed to hold the infant under two years of age on their lap, from an occupant protection viewpoint clasping the child in the mother’s or father’s arms offers virtually no protection at all in the impact deceleration of a crash, or even in severe turbulence in flight.\(^{105}\)

Ironically, overwhelming indications of this risk come from the FAA itself. In 1989, the Civil Aeromedical Institute (CAMI) undertook a research and development program for the FAA, evaluating the performance of approved infant/child restraint systems under a series of dynamic test conditions. The tests involved the use of two dummies, one representing a six month old child and the other a two year old child. The dummies were placed in child restraints and attached to aircraft seats. The test results clearly indicate that the restrained infant and child could survive severe forces, including those exerted during turbulence and airline crashes.\(^{106}\) The test further shows that the typical airline seatbelt adequately protects children over age two, but is grossly inappropriate for children two and under.\(^ {107}\) Moreover, a Harvard University study concluded that unrestrained infant passengers experience a higher risk of injury and death than do re-

\[^{105}\text{Child Restraint Hearings, supra note 7, at 12 (statement of Sen. Christopher Bond).}\]

\[^{106}\text{Child Restraint Hearings, supra note 7, at 1 (statement of Rep. Jim Lightfoot); see also Snyder, supra note 4, at 90, 95; see supra notes 18-20 and accompanying text.}\]

\[^{107}\text{FAA-CAMI REPORT, supra note 18, at 1; see also ATA petition, supra note 3, at attachments B and C.}\]

\[^{107}\text{Id. at 3.}\]
strained adults. The study suggests that the excess risk to unrestrained passengers is related to a lack of mechanical restraint systems.

Second, the groups supporting child safety restraints aboard aircraft indicate that an unrestrained child faces two serious hazards during an aircraft crash or severe turbulence. First, the child faces the danger of striking the aircraft interior on impact. Second, the lack of child restraint systems could cause the death of both the unrestrained child and his parent if the child is lost aboard a downed aircraft during a crash. During impending crashes, parents are instructed to place their children on the floor and brace them with their feet. If a child survives the impact of a crash, there is a strong possibility that he will not stay at the feet of his parent but will instead slide or "fly" to another part of the plane. The loss of the child may hinder a parent from promptly evacuating himself or his child from the aircraft. As parents search for their lost infants, the death rate aboard a downed airplane can increase dramatically.

Not surprisingly, numerous professional groups staunchly advocate mandatory child safety restraints aboard aircraft. For example, the American Academy of Pediatricians' (AAP) Committee on Accident and Poison Prevention has expressed concern over the lack of child restraints used on aircraft. The Committee reviewed the available medical literature on the subject of the safety

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108 Fife, supra note 5, at 1245.
109 Id. at abstract.
110 Child Restraint Hearings, supra note 7, at 80 (statement of Susan Bianchi-Sand, President, Association of Flight Attendants).
111 Id. at 81.
112 See supra note 39 and accompanying text.
113 Child Restraint Hearings, supra note 7, at 81 (statement of Susan Bianchi-Sand); Sioux City Crash Puts Heat on FAA, SAFE RIDE NEWS, Fall 1989, at 2. This hazard was demonstrated in the Sioux City Crash when a child slid from between his mother's legs and perished in the crash's fire. Child Restraint Hearings, supra note 7, at 79 (statement of Jan Brown, Flight Attendant, United Air Lines Flight 232).
114 See Child Restraint Hearings, supra note 7, at 79 (statement of Susan Bianchi-Sand, President, Association of Flight Attendants). Id. at 81.
115 Henretig, supra note 17, at 1.
of children under the age of two on aircraft and interviewed numerous safety experts.\textsuperscript{116} The Committee concluded that the relative risk of infant mortality during an airline crash far exceeds the similar risk to an adult, attributing this difference to the lack of adequate infant/child safety mechanisms.\textsuperscript{117} As a result, the Committee and the American Academy of Pediatricians actively support legislation mandating child safety restraints on aircraft.\textsuperscript{118} The Aviation Consumer Action Project, a non-profit consumer organization which spends one hundred per cent of its efforts on aviation issues, also supports mandating child restraints on aircraft.\textsuperscript{119} After surveying an enormous amount of material, this group concluded that unrestrained infants face extreme danger during air travel.\textsuperscript{120} Numerous other groups also support the legislative proposal mandating child safety restraints.\textsuperscript{121}

Proponents of mandatory child restraint systems further contend that the FAA ignores benefits which child restraints will provide in addition to saving lives.\textsuperscript{122} For example, they argue that legislation mandating child safety restraint systems will eliminate current airline confusion concerning when and how to protect a child aboard an aircraft and prevent airlines from refusing to allow parents to use child restraint systems aboard a flight.\textsuperscript{123}

Confusion arises among parents preparing for a crash as to the best method of protecting their children. For example, in the Sioux City crash, flight attendants encouraged parents to place their children on their laps,

\textsuperscript{116} Id.
\textsuperscript{117} Id. "The [American Academy of Pediatrics] Committee [on Accident and Poison Prevention] believes that all infants and young children should be restrained during air travel in a child safety seat. . . ." Id.
\textsuperscript{118} Id. In fact, the committee now advises AAP members to tell their air traveling patients to fly only with children properly restrained. Id.
\textsuperscript{119} Child Restraint Hearings, supra note 7, at 85 (statement of Christopher J. Witkowski, Executive Director, Aviation Consumer and Action Project).
\textsuperscript{120} Id. at 85-87.
\textsuperscript{121} Id. at 20-21 (statement of Rep. Jim Lightfoot).
\textsuperscript{122} See, e.g., id. at vi.
\textsuperscript{123} Id. at 7 (statement of Sen. Christopher Bond).
while the captain instructed the parents to place their children on the floor.\textsuperscript{124} In addition, there is confusion among parents as to what age child constitutes an infant. Parents of toddlers over the age of two who have adequate restraints in a typical seat with a seatbelt may interpret an instruction to place infants on the floor as a requirement seeking to ensure the safety of all young children.\textsuperscript{125} Frequently, parents who mistakenly remove their children from either a child restraint or a seat to place them in their lap or on the floor will expose the child to increased danger.\textsuperscript{126}

The safety seats themselves inspire further confusion. Both air carrier personnel and parents are uncertain which safety seats are approved for airline travel.\textsuperscript{127} Few parents are aware of FAA publications describing child safety restraint systems acceptable for air travel. Due to this lack of knowledge and the confusion it generates, many parents opt to hold their children instead of placing them in a safety seat.\textsuperscript{128}

Similarly, some misinformed air carrier personnel advise parents not to use a child restraint system, and others refuse to allow their use.\textsuperscript{129} As a result, parents might be able to use their restraint on one leg of a trip, but not on another.\textsuperscript{130} Often there is no place to store the forbidden restraint system.\textsuperscript{131} Moreover, airline personnel are frequently unaware that placing a child in a restraint system is safer than holding the child. One mother recalls being allowed to leave her child in its safety seat during the

\textsuperscript{124} Michaelson, \textit{supra} note 1, at 131.

\textsuperscript{125} NTSB, \textit{supra} note 1, at 5.

\textsuperscript{126} Id. at 5-6. An incident during the Sioux City crash is illustrative. In that crash, a parent placed a three year old child on the floor rather than leaving her in her safety belt. The child subsequently died from her injuries.

\textsuperscript{127} Id. The FAA has certified FMVSS No. 213 approved child restraints as acceptable for aircraft travel. \textit{See supra} note 87 and accompanying text.

\textsuperscript{128} NTSB, \textit{supra} note 1, at 6.

\textsuperscript{129} Michaelson, \textit{supra} note 1, at 131; \textit{Child Restraint Hearings, supra} note 7, at 11 (statement of Sen. Christopher Bond).

\textsuperscript{130} Younger, \textit{supra} note 3, at 11-12.

\textsuperscript{131} \textit{Child Restraint Hearings, supra} note 7, at 6 (statement of Sen. Christopher Bond).
flight, but having to hold the child during takeoff, landing, or when the fasten seatbelt light was lit.\(^{132}\) Ironically, these are the most crucial times for the child to be in the restraint system.\(^{133}\)

In an effort to eradicate the obvious confusion over child safety restraints, the airline industry supports the passage of legislation requiring child restraint systems on aircraft. The industry lists numerous other reasons for offering this support, the foremost of which is safety. As Robert J. Aaronson, president of ATA, stated, "[i]mproving safety for all passengers is a constant industry goal and the regulation . . . [proposed] will make flying safer for the estimated 5,000 to 10,000 infants who travel in the laps of adults on commercial flights each day."\(^{134}\)

3. The Automotive Industry's Experience with Child Safety Restraints

The need for automobile restraint devices for children began to receive attention in the late 1950's.\(^{135}\) By 1960, the Society of Automotive Engineers (SAE) had formed the Children's Restraint Committee to consider the desirability of designing and implementing the use of child/infant restraint systems.\(^{136}\) By the early 1970's, studies by the SAE and the National Highway Traffic Safety Admin-

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\(^{132}\) Michaelson, supra note 1, at 179; see also Snyder, supra note 4, at 83.
\(^{133}\) Fife, supra note 5, at 1245-46.
\(^{134}\) ATA Petition, supra note 3, at press release.
\(^{135}\) Snyder, supra note 4, at 82; Child Restraint Hearings, supra note 7, at v.
\(^{136}\) Snyder, supra note 4, at 82. At about the same time, the Air Transport Cabin Safety Provisions Committee of the Society of Automotive Engineers identified the need for child restraint systems on board aircraft. This Committee's recognition of a child safety problem aboard aircraft was not as widely accepted as the similar conclusion reached by the Children's Restraint Committee regarding automobiles. Id. In February, 1990, the ATA sponsored a Child Restraint Conference. Among those attending were the ATA airlines, representatives from the FAA Flight Standards, FAA-CAMI representatives, National Highway Traffic Safety Administration representatives, NTSB representatives, the American Academy of Pediatrics, Aerospace Industries Association, Association of Flight Attendants, manufacturers of child safety seats and university researchers. The conference attendees decided to form a subcommittee under the auspices of a committee of the Society of Automotive Engineers Aerospace. This new subcommittee was assigned the task of modifying the infant/child safety mechanisms
istration (NHTSA) revealed that approximately one thousand children under the age of five were killed annually during car accidents.\textsuperscript{137} Ten thousand additional children were severely injured in automobile accidents.\textsuperscript{138} NHTSA determined that most of these deaths and injuries could be prevented if children were restrained so as to not "fly" about the vehicle at impact.\textsuperscript{139} In fact, mortality statistics revealed that properly restrained children were better protected from death and serious injury than were unrestrained children.\textsuperscript{140} While seatbelts were mandatory in all cars manufactured after 1972,\textsuperscript{141} "[t]he size and fragility of infants and small children makes their use of safety belts impractical. . . ."\textsuperscript{142} Grim statistics indicated that the only appropriate way to protect a child travelling in an automobile was to strap him into an approved child safety restraint seat.\textsuperscript{143} As a result of these determinations, the NHTSA began actively encouraging child restraint usage in all motor vehicles.\textsuperscript{144} In 1971, the NHTSA established standard Number 213 governing the manufacture, testing, and usage of child restraint systems.\textsuperscript{145} By 1980, this standard was altered to reflect very stringent testing regulations and usage standards for all motor vehicle child restraints.\textsuperscript{146} Today, Federal Motor Vehicle Safety Standard (FMVSS) 213 specifies requirements for child restraint systems in both motor vehicles and aircraft.\textsuperscript{147} "The purpose of this standard is to reduce the number of children

\begin{itemize}
\item \textsuperscript{137} 43 Fed. Reg. 21,471 (1978).
\item \textsuperscript{138} Id. at 21,471.
\item \textsuperscript{139} Id.
\item \textsuperscript{140} Fife, \textit{supra} note 5, at 1242.
\item \textsuperscript{141} 49 C.F.R. § 571.208(4.1) (1989).
\item \textsuperscript{142} 43 Fed. Reg., \textit{supra} note 137, at 21,471.
\item \textsuperscript{143} \textit{Child Restraint Hearings, supra} note 7, at 4 (statement of Walter S. Coleman, Vice President, OATA).
\item \textsuperscript{144} 43 Fed. Reg., \textit{supra} note 137, at 21,471.
\item \textsuperscript{145} Snyder, \textit{supra} note 4, at 87.
\item \textsuperscript{147} FMVSS 213, \textit{supra} note 87.
\end{itemize}

One of the highest priorities of NHTSA is to increase the number of young children occupying motor vehicles who are routinely placed in protective child restraint systems. Largely through the efforts of the NHTSA, all fifty states and the District of Columbia presently require and enforce the use of child safety restraints for children travelling in cars who are under certain age or weight/height standards.

The Air Transport Cabin Safety Provisions Committee of the Society of Automotive Engineers contends that children travelling in aircraft need just as much, if not more, protection than children travelling in cars. Each piece of literature discussing the issue of child safety restraints aboard aircraft discusses the success of child safety restraints in automobiles. The analogy seems readily apparent. Indeed, as Robert J. Aaronson, president of the Air Transport Association of America remarked, "[c]hild safety seats and seat belt use are required in automobiles in all fifty states. If we buckle our children up at 50 miles per hour, why not at 550 miles per hour?"

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148 Id. § S2.
149 Snyder, supra note 4, at 87.
151 Id. at 24,395.
152 Snyder, supra note 4, at 82.
153 This includes materials put out by the FAA and appearing in the FAA's rule proposal discussion on child safety restraints. See 55 Fed. Reg. discussion, supra note 35, at 7415. See generally, Child Restraint Hearings, supra note 7 (hearing accumulates a great deal of material pertaining to child restraint systems aboard aircraft; there are many references to the fact that all fifty states require child restraint systems in automobiles).
154 ATA Petition, supra note 3, at 1.
B. The Equal Protection Argument

1. The Fourteenth Amendment

The fourteenth amendment to the United States Constitution mandates that no state shall deny equal protection of the law to any person. Generally, this "equal protection guarantee . . . governs all governmental actions which classify individuals for different benefits or burdens under the law." While the fourteenth amendment contains other provisions, its equal protection clause represents the most important protection of individual rights in the Constitution.

The fourteenth amendment is one of three post civil war amendments to the Constitution originally designed to secure equal treatment for the newly free slaves. In Strauder v. West Virginia, the Supreme Court described discrimination against the newly freed slaves as "habitual," declaring the black race in need of "protection against unfriendly action in the States where they are resident." The equal protection clause became vital to ensuring that laws were the same for all people, specifically the newly

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155 U.S. Const. amend. XIV, § 1. The fourteenth amendment to the United States Constitution provides in pertinent part:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State where in they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Id. §§ 1, 5.


157 Id. at 524.

158 Strauder v. West Virginia, 100 U.S. 303 (1880). The Supreme Court described this amendment as "one of a series of constitutional provisions having a common purpose; namely securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy." Id. at 306.

159 Id.
emancipated black. Until the middle of the twentieth century, courts interpreted this clause very narrowly, following the precedent of *Strauder* and offering equal protection only in cases of racial discrimination. The equal protection clause took on new importance with Supreme Court cases decided while Earl Warren was Chief Justice. During the 1960's, the Warren Court began to apply the equal protection clause to situations unrelated to race. The Court concluded that the clause prohibits states from enacting legislation classifying persons in a manner which creates an invidious discrimination against a particular class. Simply put, the fourteenth amendment guarantees that government classification of individuals will not be based on impermissible criteria or arbitrarily burden individuals.

2. *Equal Protection as Applied to Federal Legislation*

The fourteenth amendment on its face does not apply to the federal government, but rather only to state and local governments. The Constitution does not contain an equal protection clause governing federal activities and legislation. This apparent anomaly first received atten-

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160 *Id.* at 309. *Strauder* specifically refers to equal protection for the newly emancipated black race, stating "the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States...." *Id.* at 307; see also G. STONE, L. SEIDMAN & C. SUNSTEIN, *CONSTITUTIONAL LAW* 448 (1986)[hereinafter *STONE*].

161 Gunther, *In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972). "At the beginning of the 1960's, judicial intervention under the banner of equal protection was virtually unknown outside racial discrimination cases." *Id.* Even prior to the 1930's, the Court endorsed segregated facilities and other overt cases of a lack of equal protection with the separate but equal doctrine. This was invalidated in 1954 with the court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954). NOWAK, *supra* note 156, at 555.

162 Gunther, *supra* note 161, at 8.

163 *STONE, supra* note 160, at 495; Gunther, *supra* note 161, at 8; see Harper v. Virginia Board of Elections, 383 U.S. 663, 669 (1966)("notions of what constitutes equal treatment for purposes of the equal protection clause do change").


165 NOWAK, *supra* note 156, at 525.

166 *Id.* at 524.

167 *Id.* The omission of such a parallel clause has been termed anomalous. The
tion in the 1950's when the Supreme Court began using the equal protection clause in realms outside of racial discrimination. The Supreme Court found a way to remedy the [Constitutions's] textual omission, concluding that the fifth amendment's due process clause prohibited arbitrary discrimination by the federal government. Basically, the Supreme Court handles equal protection claims against the federal government just as it handles equal protection claims against state governments. The fifth amendment prohibits arbitrary discrimination by the federal government in the same manner that the fourteenth amendment prohibits discrimination by the states. Therefore, when examining federal legislation for equal protection violations, the fourteenth amendment equal protection clause arguments, cases, and framers intended the fourteenth amendment to prevent racial discrimination. However, it seems unlikely that the Congress itself would deem it necessary that it be bound by an equal protection clause. Karst, The Fifth Amendment's Guarantee of Equal Protection, 55 N.C.L. Rev. 541, 541-4 (1977).

168 Karst, supra note 167, at 542.

169 Id. The fifth amendment of the United States Constitution reads as follows: "No person shall . . . be deprived of life, liberty, or property without due process of law. . . ." U.S. Const. amend. V. The Supreme Court in Bolling v. Sharpe recognized "discrimination may be so unjustifiable as to be violative of due process." 347 U.S. 497, 499 (1954). Bolling involved racial discrimination, declaring the segregation of the District of Columbia's public schools unconstitutional. This concept was extended to areas far beyond the initial application to racial discrimination in the same manner as the extension of the fourteenth amendment's equal protection clause. Karst, supra note 167, at 542; see also Weinberger v. Wiensenfeld, 420 U.S. 636 (1975)(fifth amendment equal protection claim applicable in a gender discrimination case involving a federal statute); Mathews v. Lucas, 427 U.S. 495 (1976)(Court examines treatment of the illegitimate by the Social Security Act using the fifth amendment equal protection analysis).

170 Weinberger, 420 U.S. at 638 n.2 (1975). The fifth amendment's due process clause precludes the federal government from engaging in discrimination that is "so unjustifiable to be violative of due process." Schlesinger v. Ballard, 419 U.S. 498, 500 n.3 (1975) (citing Bolling, 347 U.S. at 497, 499). The Court's approach to fifth amendment equal protection has been precisely the same as its approach to equal protection under the fourteenth amendment. Weinberger, 420 U.S. at 638 n.2 (1975).

171 Karst, supra note 167, at 545. Fifth amendment equal protection is justified by both text and history. Id. at 547. See generally Karst, supra note 167 (discussion of the historical overlaps of due process and equal protection and how they allow the fifth and fourteenth amendments to be similarly interpreted).
precedents control.\textsuperscript{172}

3. \textit{Levels of Review}

In guaranteeing that similarly situated people are treated alike and those in different circumstances are not treated as if they were the same, equal protection examines whether legislative classifications are properly drawn.\textsuperscript{173} Classifications cannot be drawn in a manner inconsistent with the fourteenth amendment.\textsuperscript{174} Discriminatory classifications may be upheld as constitutional only if they relate to a proper governmental purpose with a sufficient, clear state justification.\textsuperscript{175} In determining the propriety of federal or state legislative classifications, the courts carefully examine each classification and the purported state justification.\textsuperscript{176} A classification which meets the equal protection guarantee serves a legitimate government purpose and does not overly burden the identified class.\textsuperscript{177} The Supreme Court employs three tiers of re-

\textsuperscript{172} Karst, \textit{supra} note 167, at 554. "In case after case, fifth amendment equal protection problems are discussed on the assumption that fourteenth amendment precedents are controlling." \textit{Id.}; \textit{see} Johnson v. Robison, 415 U.S. 361 (1977). In \textit{Robison}, the Court noted "if a classification would be invalid under the \{e\}qual \{p\}rotection \{c\}lause of the fourteenth amendment, it is also inconsistent with the due process requirement of the fifth amendment." \textit{Id.} at 364 n.4; \textit{see also} Washington v. Davis, 426 U.S. 229 (1976)(Court reviewed fourteenth amendment in reviewing this fifth amendment case involving racial discrimination); Frontiero v. Richardson, 411 U.S. 677 (1973)(sex discrimination case concerning the validity of a federal statute in which the controlling precedent was a fourteenth amendment equal protection decision); Jimenez v. Weinberger, 417 U.S. 628 (1974)(case involving discrimination against the illegitimate under a federal statute in which the court utilized fourteenth amendment equal protection authority). \textit{See generally} Karst, \textit{supra} note 167, at 556 n.84.

\textsuperscript{173} NOWAK, \textit{supra} note 156, at 525.

\textsuperscript{174} Id. "A classification does not violate the guarantee when it distinguishes persons as 'dissimilar' upon some permissible basis in order to advance the legitimate interests of society." \textit{Id.} The essential question is "whether this statutory differentiation . . . is justified by the promotion of recognized state objectives." Trimble v. Gordon, 430 U.S. 762, 774 (1977).


\textsuperscript{176} Id. at 670. The Court states in \textit{Harper}, "[w]e have long been mindful that where fundamental rights and liberties are asserted under the equal protection clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined." \textit{Id.}

\textsuperscript{177} NOWAK, \textit{supra} note 156, at 529. The essential question is a dual one: does
view in deciding which classifications are justified. The first type of review afforded to equal protection questions is strict scrutiny. The Supreme Court applies strict scrutiny when "statutory classifications approach sensitive and fundamental personal rights . . . ." Traditionally, strict scrutiny has been utilized only in cases involving race and national origin. Over the past few years, examination by strict scrutiny has been expanded to other categories in which legislation limits fundamental constitutional rights, classifies people with regard to their ability to exercise a fundamental right, or bases the classification upon a "suspect trait." In cases in which the court uses strict scrutiny, the offending statute is upheld only if it is necessary to promote a compelling or overriding government interest. These statutes are stricken in all but the most extraordinary circumstances.

The second level of scrutiny which courts use in equal protection cases is not formally labeled. In recent years, the Supreme Court has suggested a level of equal

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178 Stone, supra note 160, at 496.
179 NOWAK, supra note 156, at 530.
180 Trimble, 430 U.S. at 767.
181 Matheus, 427 U.S. at 504.
182 NOWAK, supra note 156, at 531. A suspect trait is one "which itself seems to contravene established constitutional principles. . . ." Id. A suspect classification includes one based on race, national origin or alienage. Id. Some of the requirements for rendering a trait suspect are 1) the trait is not within the control of the individual; and 2) the trait does not relate to the individual's ability to contribute to or participate in society. Matheus, 427 U.S. at 505.
183 NOWAK, supra note 156, at 530; see, e.g., Korematsu v. United States, 323 U.S. 214 (1944)(Supreme Court ruled that laws excluding those of Japanese ancestry from certain areas of the United States were constitutional within the war powers of the executive, because of the compelling need to protect United States interests during the war with Japan); McLaughlin v. Florida, 379 U.S. 184 (1964)(Court invalidated a law forbidding cohabitation between a black and white, noting that there was no compelling state interest in punishing the promiscuity of one group and not punishing other groups for similar behavior).
184 Brest, In Defense of the Anti-discrimination Principle, 90 Harv. L. Rev. 1 (1976); see, e.g., Korematsu, 323 U.S. at 214 (discriminatory statute justified in wartime).
185 See generally Craig v. Boren, 429 U.S. 190 (1976) (case applies a standard above that of rational basis but below strict scrutiny in determining that a statute forbidding the sale of 3.2% beer to males under twenty and to females below age
protection review which utilizes neither strict scrutiny nor the rational basis standards. This level of scrutiny eliminates the presumption of constitutionality which appears in the rational basis standard, but requires that legislation be substantially related to an important governmental objective.

Finally, courts apply a rational relationship or rational basis test to some equal protection issues. The Court does not subject cases reviewed under this standard to any significant examination. Using this standard of review, the court will determine if it is possible that the classification has any rational relationship to an end specified by the government that is not prohibited by the Constitution. Specifically, the Court has held, "[a]lthough no precise formula has been developed, . . . [t]he constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective." While it is possible to render a statute invalid using the rational basis standard, rational basis review upholds many statutes.

4. Equal Protection and Child Restraint Systems

The Federal Aviation Regulations regarding safety seat regulations involve a clear statutory classification. The regulations statutorily include the class of adults and chil-

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186 See infra notes 188-192 and accompanying text.
187 NOWAK, supra note 156, at 531; see also Alabama State Federation of Teachers v. James, 656 F.2d 193, 195 (5th Cir. 1981)(court described the traditional two tier approach involving the standards for strict scrutiny and rational basis as somewhat unsettled because of recent Supreme Court usage of a middle tier approach in decisions involving discrimination because of gender or illegitimacy).
188 Craig, 429 U.S. at 197.
189 NOWAK, supra note 156, at 532.
190 Id. at 530.
191 Id.
192 McGowan v. Maryland, 366 U.S. 420, 425 (1960). "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Id. at 426.
193 STONE, supra note 160, at 496.
dren over the age of two, but exclude the class of infants and children under the age of two. In the aviation safety restraint regulations, the federal government denies passengers under the age of two the protection afforded the class of passengers over the age of two years of age—the requirement of wearing seat belts. Consequently, the statute is underinclusive; it excludes a group in need of the benefit and burden of its requirements. Essentially, "equal protection is not provided to all aircraft passengers." 

Equal protection principles are applicable to this underinclusive federal regulation. In accordance with the Supreme Court ruling that minors are "persons" within the definition of person under the fourteenth amendment, children under the age of two are entitled to equal protection of all United States laws. Two approaches can be used to apply equal protection theory to the regulations precluding children from equal protection on aircraft.

First, the Court might determine that the regulation deserves strict scrutiny review. As stated, strict scrutiny applies to statutory classifications which infringe on fundamental personal rights. Denying adequate safety requirements for young children denies them the right most fundamental of all—the right to life. The Supreme Court labels a right as fundamental by making "a judicial deter-

194 14 C.F.R. § 121.311, supra note 16, §§ (a)-(b); id. § 91.14, supra note 16 §§ 2-3. Susan Coughlin, Vice Chairman of the NTSB, stated "unrestrained infants and small children are not being offered the same level of protection as other occupants, and objects... on an airplane...." Child Restraint Hearings, supra note 7, at 38.

195 An underinclusive classification "includes a small number of persons who fit the purpose of the statute but excludes some who are similarly situated." NOWAK, supra note 156, at 527.

196 Snyder, supra note 4, at 94.

197 See supra notes 166-172 and accompanying text.


199 See supra notes 179-184 and accompanying text.

200 See supra notes 180, 182 and accompanying text.
mination that the text or structure of the Constitution evidences the existence of a value” that should be closely guarded.\textsuperscript{201} It is obvious that life is a fundamental personal right which is worthy of being closely guarded, and the fourteenth amendment enforces this by forbidding “any state [to] deprive any person of life, liberty, or property, without due process of law . . . .”\textsuperscript{202} Further support for the notion that life is a fundamental right comes from the Declaration of Independence. This great document refers to “all men being created equal, possessing inherent, inalienable rights, that among these are life, liberty, and the pursuit of happiness.”\textsuperscript{203} The founding fathers presumed that protection should be afforded to each individual’s life, stating “every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.”\textsuperscript{204} Clearly, the protection of human life constitutes a fundamental right\textsuperscript{205} and, thus, any law infringing on the right to life or putting the right to life in danger must be examined under the strict scrutiny standard.

Federal Aviation Regulations 121.311 and 91.14\textsuperscript{206} put the life of a child in danger by not requiring adequate safety restraints. This violates equal protection because a class of people is excluded from a fundamental protection mandated upon a larger class. In order to be constitu-

\footnotesize
\begin{itemize}
\item \textsuperscript{201} NOWAK, supra note 156, at 532 n.21.
\item \textsuperscript{202} U.S. CONST. amend. XIV, § 1 (emphasis added); U.S. CONST. amend. V.
\item \textsuperscript{203} Declaration of Independence, prologue (U.S. 1776).
\item \textsuperscript{204} Karst, supra note 167, at 548 (quoting Daniel Webster) (emphasis added).
\item \textsuperscript{205} The Supreme Court has labeled many rights and privileges as fundamental. The Court has termed the right to vote a “fundamental matter in a free and democratic society.” Harper, 383 U.S. at 667. Also, the Supreme Court has labeled the right to procreate as fundamental, calling marriage and procreation fundamental to the very existence and survival of the race. Skinner v. Oklahoma, 316 U.S. at 541. Further, marriage has been held to be a fundamental right in itself. Loving v. Virginia, 388 U.S. 1, 12 (1967). In each of these cases, legislation denying these rights was overturned using the strict scrutiny standard of review. Harper, 383 U.S. at 670; Skinner, 316 U.S. at 541; Loving, 388 U.S. at 11. Surely, since voting, marriage, and childbearing are deemed fundamental, the right to life is fundamental as well.
\item \textsuperscript{206} See supra note 16 and accompanying text.
\end{itemize}
tional, this law must support a compelling state interest. However, it does not appear that there is such an interest inherent in this law. The history of the law does not indicate any governmental reason for excluding children from its application. Instead, the law states that its purpose is to save lives. The law’s denial of safety requirements to infants is obviously arbitrary. There is no scientific research supporting the 1953 decision to exclude those aged two and under from seat belt regulations. There is no government interest explaining why “infants and small children [were not] afforded equal or greater protection from death and injury during crash impacts and turbulence as afforded other persons on board commercial and general aviation aircraft.” Clearly, the absence of any government interest for an arbitrary, discriminatory, and dangerous rule precludes a finding of a compelling state interest. Federal Aviation Rules 121.331 and 91.14 are unconstitutional in that they deny equal protection of the laws to children by threatening their fundamental right to life.

In the unlikely event that the Court does not label the protection of a child’s life as a fundamental right, Federal Aviation Rules 121.311 and 91.14 will not receive review using a strict scrutiny standard. However, the classification inherent in Federal Aviation Rules 121.311 and 91.114 will still receive scrutiny using the rational basis

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207 See supra note 183 and accompanying text. In other cases, justifications such as administrative ease, convenience, reducing intrafamily conflict, and traffic safety have been rejected as justifications for classifications. Craig, 429 U.S. at 198.

208 NTSB, supra note 1, at 4; Safety Recommendation Urges, supra note 15, at 1.

209 Cohen, supra note 30.

210 Cohen, supra note 30. In fact, the law was a random, discretionary choice in which the age of two was simply drawn “from the sky.” Id. A classification must not be arbitrary. Reed v. Reed, 404 U.S. 71, 76 (1971). See generally Child Restraint Hearings, supra note 14, at 84 (statement of Walter S. Coleman, Vice President, OATA).

211 Child Restraint Hearings, supra note 14, at 84 (statement of Walter S. Coleman).

212 NTSB, supra note 1, at 6-7.

213 Nowak, supra note 156, at 537.
standard. Federal Aviation Rule 121.311 and 91.114 contain an age discrimination factor in that children under the age of two are denied the protection that the law offers those of other ages. Age discrimination has been subject of meaningful Supreme Court review. In order for a federal classification which results in age discrimination to be labeled constitutional, the rule must be rationally and reasonably related to a legitimate state goal. The Supreme Court does not seem willing to strike down legislation using this standard of review "as long as it is conceivable that the classification might promote a legitimate governmental interest." As stated previously, there is no government interest served by Federal Aviation Rule 121.311 and 91.114's denial of mandated safety precautions to children under two. Even using the rational basis review, Federal Aviation Rules 121.311 and 91.114 are likely to be deemed unconstitutional.

5. **Equal Protection and Handicapped Travellers**

Recently Congress has enacted legislation to provide equal protection aboard aircrafts to another class of passengers: disabled travelers. The Air Carrier Access Act of 1986 includes a variety of requirements to "ensure that handicapped persons receive adequate air transportation

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214 See supra notes 189-193 and accompanying text. "The Court employs the traditional rational basis test when the classification to be tested does not involve a fundamental right, and does not employ the characteristics of race, national origin, citizenship, sex, or legitimacy of birth to define the benefited or burdened class." Nowak, supra note 156, at 537.

215 See Carey, 431 U.S. at 691-96 (Supreme Court invalidates a law prohibiting the sale of contraceptives to persons under the age of sixteen on the ground that it discriminates against minors).

216 Oreskes, Judge Voids State's Age Limit for Police, N. Y. Times, Oct. 31, 1984, at B3, col. 4 (citing Judge T. Curtin, D.C. of Buffalo); see also, Izquierdo v. Mercado, 894 F.2d 467 (1990)(court examined an aged-based demotion in terms of its rational relationship to a legitimate goal—the government need only show a rational basis for applying age related criteria).

217 Nowak, supra note 156, at 537.

218 See supra notes 206-212 and accompanying text.

service, without unjust discrimination based on handicap, and to implement section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.”

Prior to the passage of this law, disabled individuals challenged instances in which they were discriminated against because of their handicap and not afforded the same access to aircraft and the same safety precautions offered to other passengers.

In 1976, the Supreme Court decided a case, United States Department of Transportation v. Paralyzed Veterans of America (PVA), which led to the passage of the Air Carrier Access Act. In PVA, the Supreme Court refused to hold that certain Civil Aeronautics Board regulations which violated section 504 of The Rehabilitation Act of 1973 were discriminatory. The Supreme Court held that section 504’s prohibition against discriminating against the handicapped applied only to organizations receiving direct federal financial assistance. The Paralyzed Veterans of America contended that the aviation industry received such assistance through federally funded airports and federal air traffic control systems. However, the Supreme

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220 Id. at § 382.1.
221 See Hingson v. Pacific Southwest Airlines, 743 F.2d 1408 (9th Cir. 1984)(court held that handicapped passengers who are discriminated against by air carriers may recover damages); Angel v. Pan American World Airways, 519 F. Supp. 1173 (D.C. Cir. 1981)(court noted a handicapped traveler was discriminated against by being denied access to an air carrier). These cases involved the criteria of Section 504 of the Rehabilitation Act of 1973 [hereinafter Act 504], an act which provides special protection for the disabled from discrimination by a program receiving federal money. S. Rep. No. 400, 99th Cong., 2d Sess. 2 (1986). The decisions examined aspects similar to those in the child safety equal protection issue, for example reasonableness, arbitrariness, and safety. Since the Air Carrier Access Act purports to give effect to Act 504, these cases offer some authority.
223 S. Rep. No. 400, supra note 221, at 1.
224 See supra note 221 and accompanying text.
225 PVA, 477 U.S. at 603.
226 Id. at 605.
227 Id. at 597, 606-7, 611.
Court did not label this assistance direct federal financial assistance.\textsuperscript{228} This case effectively, "free[d] large air carriers from the discrimination prohibitions of the Rehabilitation Act\textsuperscript{229} of 1973."\textsuperscript{230} The practical effect of \textit{PVA} was to authorize unequal, discriminatory treatment of handicapped travelers by the air carriers.\textsuperscript{231} The Air Carrier Access Act of 1986 mitigated the harm that the unequal protection authorized in \textit{PVA} caused by prohibiting discrimination "in the provision of air transportation against an otherwise qualified handicapped individual by reason of such handicap."\textsuperscript{232} Basically, the handicapped are now assured the same access to aircraft and safety while aboard aircraft which are available to other travelers.

Like the disabled, small children deserve the same rights aboard aircraft as are afforded to other air travelers. These rights include the safety precautions mandated to others travelling by air. As stated during a summary by Senator Bond on the floor of the Senate:

\textquote{[c]urrent policy gives airlines the discretion to allow or prohibit the use of child safety seats for children under the age of two. As a result, most toddlers and infants travel in a parent's lap. And when they do, they face a much higher risk of injury or death because the force of a crash or even severe turbulence completely overwhelms the parent's ability to restrain him. Why do we require restraints for an infant's family—his parents and brothers and sisters—but not for him? Why are airlines required to tie down and secure every single item in the cabin before takeoff—luggage, liquor, food, and coffee pots—but not babies? I

\begin{footnotes}
\footnote{\textsuperscript{228} Id. at 609, 612.}
\footnote{\textsuperscript{229} See supra note 221 and accompanying text.}
\footnote{\textsuperscript{230} S. REP. No. 400, supra note 221, at 2.}
\footnote{\textsuperscript{231} Id.}
\footnote{\textsuperscript{232} 14 C.F.R. § 382 supra note 219, § 382.1(1).}
\footnote{Otherwise qualified individual is intended to . . . [mean] one who tenders payment for air transportation; whose carriage will not violate FAA regulations; and who is willing and able to comply with reasonable, safety requests of airline personnel or, if not, is accompanied by a responsible adult passenger who can ensure compliance with the requests.}
\footnote{S. REP. No. 100, supra note 221, at 4.}
\end{footnotes}
find it outrageous that this helpless group of travelers is
denied the same protection as adults and inanimate
objects.233

Today's technology provides parents with excellent in-
fant and child safety seats, making it possible to provide
every child, regardless of age with the "same level of pro-
tection which is provided to adults" while flying on an air-
craft.234 The proposed Congressional legislation seeks to
eliminate parental discretion with regard to restraining
their young children by making restraints mandatory for
young children.235 In this manner, the aviation industry
will comply with the Constitution by providing equal pro-
tection from death and severe injury to all air travelers.
Indeed, "[i]f infant seats are not required, we will con-
tinue to treat our children as second class citizens."236

V. THE OPPOSITION TO CHILD SAFETY RESTRAINTS

A. The Argument Concerning Cost Effectiveness

The major opponent to a law mandating the use of
child restraint systems aboard commercial aircraft is the
FAA.237 The FAA cites several reasons why requiring chil-
dren to be restrained aboard aircraft is not a good idea.
The proponents of mandatory child restraint systems
counter each of these arguments.

The focus of the FAA's objection involves the economic
cost allegedly inherent in the proposed mandate.238 The
FAA's "preliminary analysis of the potential costs of a
mandatory rule indicates a significant economic cost."239

234 ATA Petition, supra note 3, at 2.
235 Id. at 3.
236 Child Restraint Hearings, supra note 7, at 15 (statement of Sen. Christopher
Bond).
237 Id. at 21 (statement of Rep. Jim Lightfoot).
238 Id.
239 55 Fed. Reg. discussion, supra note 35, at 7416. The FAA estimates the an-
nual cost of a child restraint requirement to be over two hundred million dollars.
Child Restraint Hearings, supra note 7, at 67 (statement of Anthony J. Broderick,
Associate Administrator for Regulation and Certification, FAA); NTSB Probe Raises
Anew the Question of Child Safety Restraints, supra note 7, at 2.
There are several aspects to this economic cost.

First, the FAA believes that the rule requires the families with children under the age of two years to pay for the cost of a seat while under present law, these children ride for free on the laps of their parents. Estimates of the increased cost per family per trip range from $62.50 by the FAA to $185.00 by other economists. In response to this argument the proponents of child restraint systems make several points. First, any cost analysis estimations by the FAA are speculative; it is extremely difficult to predict if or how much the airlines will charge for children under two to occupy a restraint seat on board a plane. An ATA official expected an array of different fares to be offered, "I can’t imagine they won’t take a close look at what effect charging for those seats might have on family travel. You don’t want to price yourself

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241 Id. The FAA estimate reads as follows:

The FAA estimates that the average price for a U.S. scheduled domestic flight is $103.78 (in 1989 dollars) and a U.S. scheduled foreign flight is $281.82. The weighted average for these two is $118.30 per flight. The FAA assumes that half of the average price would be charged for children under 2, which is the same as the policy followed by some airlines for children between 2 and 5 years of age. Half of the $118.30 per flight is $59.15 per flight, and this would be the most significant additional cost for children 2 and under because of a mandatory child restraint rule.

Id. The FAA includes in this cost basis a three dollar fee for the use of a child restraint seat, noting that the major automobile rental companies charge an average of three dollars a day for the use of a child restraint. 55 Fed. Reg. discussion, supra note 35, at 7416. The FAA estimates the total family fare to equal two full fares and one half fare. Using the average 1989 fares, this will cost $295.75. Adding three dollars a day for a mandatory child restraint, the price per family will increase by $62.15, with the total family price jumping to $357.90, a twenty one percent price increase. Id.

242 Waters, supra note 15, at 70. Waters discusses a cost analysis similar to that in note 241, but involving the use of larger numbers. See also, Child Restraint Hearings, supra note 7, at 66 (statement of Anthony J. Broderick, Associate Administrator for Regulation and Certification, FAA).
243 Child Restraint Hearings, supra note 7, at 17, 21 (statement of Rep. Jim Lightfoot). Lightfoot argues that House Resolution 4025 is "intentionally worded in the least intrusive manner possible for a mandatory rule. . . ." It does not address the question of charges for the child under the age of two. Id. at 22.
out of that." The proposed legislation does not address what amount airlines should charge for a seat occupied by an infant. However, it is in the airlines' best interest to keep family flying affordable. The airlines might institute family fare plans or establish a scale of different fares for the same aircraft. Even FAA administrator James B. Busey admits "airline marketing strategies would probably play a role here."

Second, the FAA contends that mandating child restraint systems will require the airlines to purchase the restraint systems at a considerable cost to the airline industry. In this regard, the FAA considered the costs

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246 NTSB Recommends FAA Require Child Safety Seats on Aircraft, supra note 244, at 117. The airlines have a history of offering incentive programs and fares so that families can fly together. There is no evidence to suggest this will not continue in the event that child restraint seats become mandatory. Child Restraint Hearings, supra note 7, at 88, 94 (statement of Walter S. Coleman, Vice President, OATA). Presumably, the airlines will make available special option packages, including family rates, the half price option presently offered to infants age two to three, and even a continued free policy. Id. at 7 (statement of Sen. Christopher Bond). At present, many U.S. airlines will permit children under the age of two to fly using child safety seats in an unoccupied seat free of charge. Id. This may continue. Id. However, a simple continuation of this policy will not be appropriate for solving the overall child restraint problem. Often flights are full to their capacity and parents do not have the option of waiting for the next flight. So, they risk their child's life by not restraining him. Mortality among Infant Passengers on Airlines, 72 Am. J. Pub. Health 497 (1982). When child safety restraints become mandatory on aircraft, the airlines will seek to keep families flying through innovative pricing. Child Restraint Hearings, supra note 7, at 59 (statement of Susan M. Coughlin, Vice Chairman, NTSB).

It is interesting to examine the argument that legislation is unnecessary today because air travel has become much safer in recent years and few children fly as proposed by those who oppose mandatory child restraints aboard aircraft in light of their corresponding argument that airlines will lose money if restraints are required. See infra notes 276-296 and accompanying text. If so few children fly that this problem is obsolete, why will the airlines not let the children continue to ride for free with their child restraints? It is entirely possible, that the airlines will make this pricing choice. Child Restraint Hearings, supra note 7, at 7 (statement of Sen. Christopher Bond). The proponents of mandatory child restraints contend that the problem is far from obsolete, but the apparent contradiction inherent in arguments espoused by the legislation's opponents is interesting nonetheless.

247 Airline Infant Safety Seats Required, supra note 3, at 17.
of putting two or three child restraints on each of 2,500 commercial aircraft, incurring a cost of approximately $250,000 to $375,000 per year. The proposed legislation does not purport to place this burden on the airline industry. House Resolution 4025 leaves the manner in which the restraints are provided for each applicable passenger to the discretion of the airline. The most logical solution appears to be that each parent will provide his or her own safety seat, utilizing the FMVSS approved seat used when travelling by automobile. Indeed, this is the intention of the FAA's proposed ruling which makes the use of safety seats optional. This solution costs the airlines nothing. Pet transportation aboard aircraft is analogous. Many airlines transport animals. Under most regulations, each pet owner must provide his or her own "approved" pet carrier. Most owners already own a carrier and may use it aboard the aircraft. This requirement has not prohibited airlines from allowing people to transport animals. Ironically, "an on board pet is safer in the protective confines of a required pet carrier than is an unrestrained child." The same regulatory framework which allows passengers to transport their animals safely can be successfully applied to child safety restraints. Parents who already own a FMVSS car seat can simply bring it on the plane. Because most parents already own an approved restraint, neither the airline nor the passengers will have to purchase a safety seat.

250 FAA, COST RESTR AINT SYSTEMS ACCEPTABLE FOR USE IN AIRCRAFT MEMORANDUM (June 10, 1982).
251 House Resolution 4025, supra note 7; S. 1913, supra note 7. The proposed legislation seeks to restrain children; it does not seek to have the airline acquire child restraints for aircraft seats. Child Restraint Hearings, supra note 7, at 89 (statement of Walter S. Coleman, Vice President, OATA).
254 Child Restraint Hearings, supra note 7, at 78 (statement of Jan Brown, flight attendant, United Air Lines Flight 232).
Third, the FAA emphasizes the alleged huge revenue loss House Resolution 4025 will mean to the commercial airline industry. The FAA estimates that approximately four million children age two and under travel aboard U.S. airlines yearly. The FAA assumes that the average infant is accompanied by two adults and at least one sibling. With the introduction of the proposed legislation, the FAA estimates that the annual number of travelling children will be 3,310,000, a loss of 700,000 young travelers. This loss will result in a $211,716,500 loss in ticket revenues from the family members who would ordinarily accompany the 700,000 children as paying passengers. In addition, the FAA argues that families who will not be able to afford to fly will experience a non-monetary loss if House Resolution 4024 becomes law. Again, these estimates are speculative. Moreover, the proposed legislation appears to adequately address the alleged financial consequences to the airlines. The cost to the airlines should not be a factor precluding the passage of child restraint legislation, primarily because family programs and incentives will allow families to continue flying. The support of the Air Transportation Association, an organization composed of commercial airlines, suggests that airlines generally support mandatory child restraints. Surely their support indicates that solutions to any alleged ticket price increases exist, and, thus, that loss to the industry is unlikely.

Id. This is a large generalization and probably an incorrect one on the part of the FAA. Documented statistics show that the nuclear family used by the FAA in its calculations is no longer the typical family type in the United States.  
Id.  
Id.  
See supra note 243 and accompanying text.  
See supra notes 246-47 and accompanying text.  
ATA Petition, supra note 3, at 3. In fact, some opponents of this legislation indicate that “the airline industry’s support of the proposed regulation is understandable, although objectionable. If adopted, the new regulation would enable airlines to suppress important competitive forces and sell millions more seats each year.” McKenzie & Lee, supra note 11, at 1. It is unlikely that the airlines will
In addition to the specific arguments already mentioned, proponents of House Resolution 4025 raise several general objections to the preceding arguments espoused by the FAA. The foremost issue is safety, not cost. 264 The United States legal system has already measured the value of human life against cost saving measures. In *Grimshaw v. Ford Motor Co.*, 265 the court held that the value of even one life far outweighed any efforts or cost it took to save that life. 266 In *Grimshaw*, the producers of the Ford Pinto hatchback eliminated certain safety measures in order to produce an inexpensive car. 267 These producers were fully aware of tests showing that the car's design was dangerous. 268 However, relying on statistics showing low incidents of motor vehicle accidents and a supposedly slight chance of someone suffering a fatal accident, Ford decided to save money by sidestepping a safety precaution. 269 In a resulting wrongful death case, the court found Ford liable for injuries incurred by passengers in a Pinto hatchback. 270 The value of even one life was cited as more important than any economic benefits. 271 This theory applies equally to infants and small children travelling by air. 272 Even if only one infant is enjoy this windfall since they are more likely to work out package deals enabling families to keep flying. See *supra* notes 246-47 and accompanying text. Still this is an interesting contradiction among the opposition to House Resolution 4025. Some opponents argue that the airlines will lose money, others argue the airlines will make money.

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264 Child Restraint Hearings, supra note 7, at 21 (statement of Rep. Jim Lightfoot). "If cost is the major concern, I think we are placing a price tag on a small child's head and engaging in a game of Russian Roulette." *Id.* at 80 (statement of Susan Bianchi-Sand, President, Association of Flight Attendants).


266 *Id.*

267 174 Cal. Rptr. at 360.

268 *Id.* at 360-61.

269 *Id.* at 361-62.

270 *Id.* at 358, 363.

271 *Id.* at 368.

272 Representative James Obestar, chairman of the Subcommittee on Aviation remarked,

We are trying to balance costs against benefits, but in this case, in [sic] one thing to balance costs/benefit of an FDA regulation, or a USDA regulation, or a 404 permit or a discharge permit under EPA,
saved through proper safety precautions, the cost and effort expended has been deemed worthwhile.\textsuperscript{277} As James L. Kolstad, NTSB Chairman stated, "I don't think that the economic cost for protecting an infant's life is too much to ask."\textsuperscript{274}

It is unlikely that cost will inhibit the passage of legislation making child restraint systems mandatory aboard aircraft. However, should cost become a legitimate issue, saving a human life far outweighs any economic considerations involved.\textsuperscript{275}

B. The Argument of Obsolescence

The opponents of mandatory child restraint systems on aircraft contend that the risk presented by air travel to unrestrained infants is not severe enough to warrant legislation. In support of this view, opponents make several arguments suggesting that the risk to unrestrained infants aboard aircraft is obsolete.\textsuperscript{276} For example, they observe that as a result of the efforts of the NTSB and other safety experts, air travel by commercial airlines grows safer each year,\textsuperscript{277} and that severe aircraft accidents involving loss of life are rare.\textsuperscript{278} James B. Busey, administrator for the

\begin{itemize}
\item but in this area we are talking about a commodity that shouldn't even bear that term, it is human life. What price tag do we put on human life?\textsuperscript{279} Child Restraint Hearings, supra note 7, at 39.
\item Grimshaw, 174 Cal. Rptr. at 348. "No cost is too high if it means protecting infants from injury and possible death." Bianchi-Sand statement, supra note 7, at 80 (statement of Susan Bianchi-Sand, President, Association of Flight Attendants).
\item Safety Recommendations Urges, supra, note 15, at 2.
\item Child Restraint Hearings, supra note 7, at 15 (statement of Sen. Christopher Bond). "The fact is, safety has a cost. However, I submit that the lack of safety carries the highest cost of all—loss of life." Id.
\item Voluntary Child-Restraint Regulation, supra note 72, at 4. FAA administrator James Busey sees only a slight statistical risk to unrestrained infants because there are a small number of babies travelling and because accidents are rare. Id.
\item Child Restraint Hearings, supra note 7, at 37 (statement of Susan M. Coughlin, Vice Chairman, NTSB).
\item Id. "The probability of survival following an air crash has improved in recent years." Id. ATA petition, supra note 3, at 5. The FAA contends that the use of child restraints should not be required aboard aircraft because accident and incident rates are so low that there is only a small risk of injury to unrestrained
\end{itemize}
FAA, contends that air travel constitutes “a small statistical risk to unrestrained infants. . . .” In support of this contention, Mr. Busey indicates that commercial airline crashes are infrequent and that they involve few children. According to the projections of researchers evaluating the proposed effectiveness of child seats on crashes over the past few years, baby seats will save the lives of three children over a five year period. These researchers do not address the issue of severe injury to unrestrained children. Calling this a small number of children being saved, opponents of House Resolution 4025 view the legislation as an unnecessary solution to an obsolete problem. They suggest that saving such a small number of infants’ lives is not worth the trouble of legislating and implementing a law.

An analogy to the argument that child safety on aircraft is an obsolete problem is present in the FAA regulation regarding oxygen. Rarely, if ever, is oxygen needed aboard flights. Yet, every commercial airline must have an oxygen system, must periodically check this system, and must provide instruction for its use on every flight. These rules are both time consuming and expensive for the airlines, and they address a problem which is surely as “obsolete” as the risk of an unrestrained child’s death. Still, despite the rarity of its use, federal
law requires oxygen on every flight. The proponents of mandatory child restraint systems aboard aircraft contend that child restraints should be similarly mandated.

Another analogy can be made between child and adult restraints. The Airline Passenger Association of North America President Richard E. Livingston notes that

[t]he FAA suggests that the use of child restraints should not be required aboard aircraft because of low exposure due to the safety of aviation; therefore, accident and incident rates are so low that there is only a small risk of injury to unrestrained infants. However, this same low accident rate applies equally to adults and surely the FAA would never consider removing seatbelts for adults.289

Taking the obsolescence argument literally, if few occurrences of an event rendered a safety precaution obsolete, many aviation regulations would be void.290 “If this line of argument was carried to its logical extreme, . . . we wouldn’t require oxygen masks, flame retardant seats or safety lights on airplanes. In fact, we could allow the airlines to sell standing-room only tickets.”291 Child restraints aboard aircraft are no more an obsolete issue than other safety regulations. Accordingly, supporters of mandatory restraint systems for children insist that child restraints should be federally mandated aboard aircraft.

Commercial airlines have a responsibility to every one of their passengers, including infants under the age of two, to transport them safely.292 The FAA must mandate safety procedures to insure that the commercial airlines can fulfill this duty.293 Infant/child safety restraint requirements are vital to protecting as many passengers as

289 Airline Passenger Groups, supra note 278, at 4.
290 Child Restraint Hearings, supra note 7, at 8 (statement of Sen. Christopher Bond).
291 Id.
292 Child Restraint Hearings, supra note 7, at 80 (statement of Jan Brown, flight attendant, United Air Lines Flight 232).
293 Id.
possible.  Perhaps this is best stated by FAA Administrator James Busey

[Although there is only a small statistical risk to unrestrained infants because their numbers are few and accidents are rare, forces generated by a crash can exceed a parent's ability to restrain a child safely, and, additionally, that in encounters with severe air turbulence, high forces pose a potential danger to unrestrained [air travelling] infants.]

The FAA itself admits that infants are best protected only when properly restrained.  One infant saved is a victory to mandatory child restraint proponents. Any contention of obsolescence offers no reason to discard House Resolution 4025 and with it, mandatory child restraints aboard aircraft.

C. Increased Auto Fatalities as a Result of Mandatory Child Restraints Aboard Aircraft

Opponents of mandatory child restraint systems concede that passage of House Resolution 4025 may reduce aviation fatalities.  However, they contend that automobile fatalities will increase in proportion to this reduction.  Basically, this contention arises from four studies

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294 Safety Recommendations, supra note 15, at 1-2; see also Airline Passenger Groups, supra note 278, at 4.
296 See FAA brochure, supra note 23; Child Restraint Hearings, supra note 7, at 64 (statement of Anthony J. Broderick, Associate Administrator, FAA); supra notes 22-23 and accompanying text.
297 Child Restraint Hearings, supra note 7, at 61 (statement of Anthony J. Broderick).
298 Id. at 62. The FAA bases this contention on four studies. These are:
3) Windle & Dresner, College of Business and Management, University of Maryland, Mandatory Child Safety Seats in Air Transport: Do They Save Lives? reprinted in Child Restraint Hearings, supra note 7, at 188;
4) Apogee Research, Inc., An Impact Analysis of Requiring Child...
which suggest that the increase in fare prices for families with young children which might result from mandatory child restraints\textsuperscript{299} will cause these families to travel by car rather than by plane.\textsuperscript{300} These studies suggest that twenty per cent of the families which now travel by air will be forced to either not travel or to travel in a "statistically more dangerous way" by driving.\textsuperscript{301} The research indicates that this alternative is problematic enough to negate any benefits obtained by requiring child safety seats on aircraft.\textsuperscript{302} "Statistical analyses . . . indicate that the proposal [House Resolution 4025] could endanger more children than it would save if the increased cost of airline travel put more families back on the highways."\textsuperscript{303}

This argument is based on the assumption that the passage of House Resolution 4025 will cause family airline fares to increase. Again, this is a very speculative assumption.\textsuperscript{304} In all likelihood, the airlines will devise different methods of charging families, since increased fares may otherwise lead to a decrease in business.\textsuperscript{305} However, should airline fares increase for families, this does not mean that highway deaths will increase.

In the McKenzie study, a project performed by the Cato Institute, the University of Mississippi, and Clemson Uni-

\begin{quote}
\textit{Safety Seats in Air Transportation reprinted in Child Restraint Hearings, supra note 7, at 210.}
\end{quote}

\textit{Id.}

Three of these studies, the McKenzie and Lee study (the McKenzie study), the Windle and Dresner study (the Dresner study), and the Apogee study focus on the issue of mandatory child restraint systems. These will be examined more fully later. See infra notes 303-314 and accompanying text. The McKenzie and Warner study does not really address infant child restraints. \textit{Child Restraint Hearings, supra} note 14, at 83 (statement of Walter S. Coleman Vice President, OATA).

\textsuperscript{299} See supra notes 240-248 and accompanying text.

\textsuperscript{300} \textit{Child Restraint Hearings, supra} note 7, at 62 (statement of Anthony J. Broderick, Associate Administrator, FAA).

\textsuperscript{301} \textit{Waters, supra} note 15, at 70.

\textsuperscript{302} \textit{Child Restraint Hearings, supra} note 7, at 61-64 (statement of Anthony J. Broderick, Associate Administrator, FAA); McKenzie & Lee, \textit{supra} note 11, at 3; \textit{see also} Waters, \textit{supra} note 15, at 70.

\textsuperscript{303} McKenzie & Lee, \textit{supra} note 11, at executive summary.

\textsuperscript{304} See \textit{supra} note 243 and accompanying text.

\textsuperscript{305} See \textit{supra} notes 244-248 and accompanying text.
versity, researchers conducted a statistical and economic analysis, concluding that if families are not able to buy airline tickets for their entire family, they will return to travelling by automobile. According to the study, this return will impose a danger upon family members thirty times greater than the danger that an unrestrained infant faces in an airplane. More specifically, the increase could translate into more than 1,600 additional automobile accidents each year, and the increase in accidents could result in more than 175 additional disabling injuries and just under five additional deaths each year. The additional automobile accidents could also add six million dollars to the country's total annual economic losses associated with automobile wrecks on top of the additional air fares that the FAA estimates families will have to pay.

This entire hypothesis rests on the assumption that air and highway travel are interchangeable and, therefore, increases or decreases in fare prices alter the level of traffic on the nation's highways. Another study, performed by Apogee Research, Inc. for the FAA, suggests that this interchange does indeed occur and that the occurrence can be expected to increase serious injuries to family travelers by 4.8 percent in the first year and the number of deaths

506 McKenzie & Lee, supra note 11, at 2-3.

507 Id. at 4. The researchers admit that their calculations are rough. Id. at 5. Indeed, the study report offers little in the way of procedure and data presentation.

508 Id. at 4.

509 Id. The study contends that an increase in highway travel is dangerous because “highway accidents, injuries, and deaths are highly correlated with the amount of highway travel and congestion.” Id. (citing McKenzie & Warner, The Impact of Airline Deregulation on Highway Safety, COMPETITIVE ENTERPRISE INST., Dec. 1987. But see McKenzie & Lee, supra note 11, at 4.

If the number of automobile trips by families goes up by a third of the estimated reductions in infant boardings and if the average length of the trips is four hundred miles one way (eight hundred miles round trip), automobile travel will increase by [only] one hundred eighty five million miles each year. That represents a very small percentage increase in automobile travel.

Id. Again, there is no proof that air fares will increase because of mandatory child restraint systems. See supra notes 243-247 and accompanying text.
among family travelers by 8.2 persons over a ten year period. There are no estimates of how many of these travelers would be infants or children. However, the study contends that at least some infants who might have been safe on an airplane will die on the highways.

A third study, the Dresner study, supports the contentions of McKenzie and Apogee. This study used existing travel statistics and fatality information in determining that mandatory child safety seats "will result in an increase in lives lost among the travelling public". The report concluded that air travelers will indeed be diverted to auto travel because of an increase in airfares caused by mandatory child safety seats. The Dresner study projects fatality numbers comparable to those of the Apogee study. It concludes that there are no benefits flowing from mandatory child safety seats.

The supporters of mandatory child restraints aboard aircraft answer the allegations of these studies with several arguments. First, the supporters do not accept the assumption that mandatory safety seats equal increased fares for families with small children. Basically, the supporters of this legislation contend that fares will not

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311 Id.
312 Id. at iv. More specifically the study indicates that mandatory child restraint systems would result in 9.5 non-infant fatalities over the first ten years of implementation, an increase of 8.2 deaths. Serious injuries to all family travelers during this ten year period would increase by over 2,300. Id.
313 The NTSB discovered some flaws in Apogee's assumptions inherent in the conclusions that they draw. Child Restraint Hearings, supra note 7, at 58. Further, the Board noted problems with Apogee's data base and analysis. Id. Essentially, the Board and others feel that Apogee, like others examining this issue, did not use solid data in making its assumptions and drawing its conclusions. Id. at 72.
315 Id. at 129.
316 Id. at 200.
317 Id. at 208.
318 See supra notes 244-248 and accompanying text.
drive families out of the skies and on to the highways.\textsuperscript{319} Instead, they assert that families "will continue to choose to fly because airlines, rather than risk the loss of one or more adult fares or perhaps an entire family unit, will offer a fare arrangement acceptable even for families traveling with infants who previously would have flown free."\textsuperscript{320} The researchers themselves admit that if the fare increase does not occur, the correlated highway deaths will not occur.\textsuperscript{321}

Second, a study done by General Motors Research Laboratories suggests that air travel is not any more safe than car travel, negating the opposition's argument even if families were to drive instead of fly.\textsuperscript{322} This study concludes that there are several reasons why automobiles are just as safe as aircraft for a travelling family.\textsuperscript{323} First, in studies comparing the death rate for air travel with the death rate for car travel, researchers arrive at the rates in incongruous ways, making them incomparable.\textsuperscript{324} The airline rate is established as passenger fatalities, per passenger mile, but the road travel rate is calculated using all fatalities, including those of pedestrians and bystanders, and is expressed in terms of fatalities per vehicle mile.\textsuperscript{325} Second, the automobile travel that competes with airline

\textsuperscript{319} See Child Restraint Hearings, supra note 7, at 46.  
\textsuperscript{320} Id. at 84 (statement of Walter S. Coleman, Vice President, OATA).  
\textsuperscript{321} APOGEE, supra note 310, at iv. For example, if fares for infants were set at one half of the average coach fare, the change in fatalities of all family travellers would decline from the base forecast of 0.9 increase in the first year to a slightly lower 0.5 increase, or 11.6 net fatalities over the first ten years. Likewise, net travel costs for families would decline from $252 million in the first year to $153 million while the net change in airline revenues, while remaining positive, would drop from $119 million to $80 million. Id. Presumably, if there were no substantial fare increase, there would be no air to auto interchange and thus, no increased highway fatalities.  
\textsuperscript{322} Evans, Frick, & Schwing, Is it Safer to Fly or Drive—A Problem in Risk Communication, GENERAL MOTORS RESEARCH LABORATORIES—OPERATION SCIENCES DEPARTMENT, June 19, 1989, at abstract [hereinafter Evans].  
\textsuperscript{323} Id.  
\textsuperscript{324} Id.  
\textsuperscript{325} Id.
travel often takes place on the rural interstate system, not on the average, dangerous, congested road. Finally, personal habits and traits, like vehicle characteristics, driver behavior, driver age, alcohol use, safety belt use, car mass, and roadway type, influence automobile travelers, but do not affect air travelers. This study concluded that car trips by many drivers involve lower fatality risks than those of airline flights. Specifically,

Forty year old, belted, alcohol-free drivers of cars 700 pounds heavier than average are slightly less likely to be killed in 600 miles of rural Interstate driving than in regularly scheduled airline trips of the same length. For 300 mile trips, the driving risk is about half that of flying.

The study reveals that parents of young children, the people allegedly being forced onto the highways, are considered more at risk by flying than driving. This increased risk occurs because parents of young children come closest to the GM study's profile of the most careful driver. Also, these people are generally more responsible and conscientious than those of other ages and lifestations.

Third, proponents of mandatory child restraints aboard aircraft question the validity of the studies relied upon by the FAA. Experts point to problems in the studies' data and analysis. Primarily, the proponents worry that the "FAA is vigorously defending highway safety based upon a bunch of assumptions on assumptions which no one re-

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\[526\] Id.
\[527\] Evans, supra note 322, at 14-15.
\[528\] Id. at 15.
\[529\] Id.
\[530\] Id. at 14-15. The proponents of mandatory child restraint systems on aircraft contend that the studies that the FAA relied upon failed to consider that parents travelling with young children have considerably lower accident risks than do other groups of drivers. Child Restraint Hearings, supra note 7, at 86 (statement of Christopher J. Witowski, Sececutive Director, Aviation Consumer and Action Project). This oversight may render the FAA studies defective. Id. at 88.
\[531\] Cohen interview, supra note 30.
\[532\] Child Restraint Hearings, supra note 7, at 88 (statement of Christopher J. Witowski.
\[533\] See supra note 312 and accompanying text.
ally can validate.”\textsuperscript{334} Finally, many transportation experts have a difficult time accepting the mixing of highway and aviation statistics.\textsuperscript{335} Susan Coughlin, vice chairman of the NTSB, contends,

I think we are confusing the issues when we start comparing aviation safety to highway safety. The FAA, the ones to whom we addressed this recommendation, are responsible for aviation safety. There is no one who is making the argument that we are not safer buckled in and restrained in those seats during the critical phases of flight.\textsuperscript{336}

Ms. Coughlin suggests that the air to automobile interchange on which the FAA grounds its argument is not an appropriate diversion to assume.\textsuperscript{337}

Basically, the proponents of mandatory child restraint systems stress that parents will not abandon air flight for travel by car because of House Resolution 4025. However, should parents choose to drive rather than fly, the General Motors Study indicates that they will not increase the risks of death or injury to themselves or their children by simply being on the highway.

\textbf{VI. CONCLUSION}

In today’s transient society, thousands of children embark daily upon the most popular form of long distance travel, flying. The danger inherent in infants and small children travelling by air without proper safety restraint mechanisms remains uncontroverted. Scientific research and dramatic, real life tragedies demonstrate the danger children face when they fly unrestrained. The fact that children are allowed to travel by aircraft without standard safety devices contradicts basic safety principles.

Strong arguments support legislation mandating child restraint systems on all aircraft. Professional safety ex-

\textsuperscript{334} Child Restraint Hearings, supra note 7, at 73 (statement of Rep. Jim Lightfoot).
\textsuperscript{335} Id. at 39 (statement of Susan B. Coughlin, Vice Chairman, NTSB).
\textsuperscript{336} Id.
\textsuperscript{337} Id.
Experts insist that mandatory child restraint systems are the only way to protect children from serious injury or death while travelling by air. In addition, the experience of the automotive industry demonstrates the need for child restraint systems on board aircraft. It seems obvious that if children need restraints while travelling on the ground at sixty miles per hour, they need restraints while travelling thirty thousand feet in the air at six hundred miles per hour. Finally, constitutional equal protection demands that young children travel in the same safe manner in which adults travel—restrained. Children deserve to enjoy the same level of safety that the rest of the air travelling population experiences. Child restraint systems are apparently an unavoidable necessity aboard all aircraft.

However, the FAA has some cogent arguments opposing such mandatory child restraint systems. The FAA contends that mandatory child restraint systems will result in insurmountable costs both to families and the air carrier industry. According to FAA studies, these higher costs will cause families to seek a less expensive, but less safe means of travel—the highways. After examining the FAA's arguments, it is apparent that they can be countered. It is not clear that mandatory child restraint systems will increase anyone's expenses or result in a loss of profits to any industry. Evidence suggests that families will not be forced to give up flying and turn to driving. Moreover, even if families were to do so, the General Motors study indicates that the projected increase in fatalities among such families would not come to pass, because highway driving for families with young children is no more dangerous than flying.

The FAA also suggests that the child restraint legislation is unnecessary and will result in extraordinary costs to the airlines. This suggestion is contradictory. If the legislation is not needed because few children fly, families will not need to buy tickets; airlines will not lose revenue which they never had.

The need for child restraint systems on all aircraft has
not been rendered obsolete. Without mandatory child restraint legislation, it appears that children will continue to suffer needless injuries and deaths in air incidents from which they might have emerged unscathed. Saving the life of just one infant makes the proposed legislation worthwhile. Those favoring this legislation indicate that mandatory child safety restraints can be implemented with little monetary cost. However, even if some monetary sacrifices are involved, the real issue is not cost but the lives of innocent, helpless children. Children deserve to be protected from life threatening forces that they cannot control. Accordingly, child restraints must be mandatory on all aircraft.