Transportation

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Mobility for both people and goods is one of a modern economy's most important needs. The COVID-19 pandemic revealed how sensitive the nation's supply chains are to transportation disruption. A serious train derailment in East Palestine, Ohio has also led to calls for rail reregulation while unnecessary efforts to reauthorize the Surface Transportation Board would give it too much authority.

Congress has also incentivized a move to electric vehicles without proper consideration of the implications for highway maintenance, currently funded by the gas tax. Congress needs to re-examine all of these issues carefully with a view to ensuring that America's people and goods keep moving. Specifically, Congress should:

- Resist calls for rail reregulation and in particular not pass the Railroad Safety Act or The Freight Rail Shipping Fair Market Act;
- Remove barriers to easier transportation of goods by raising the weight limit for interstate trucking to at least 91,000 lb., starting with an opt-in multistate pilot program;
- Help ensure that the long-term upkeep of highways is proportionate with their use by shifting all transportation revenue and expenditure programs toward funding mechanisms, such as mileage-based user fees, that reflect the user-pays–user-benefits principle; and
- Repeal the Jones Act.

Railroad regulation: The deregulation of railroads spearheaded by President Carter in the late 1970s has proved to be extremely successful, allowing for significant investment in new rail infrastructure. Nevertheless, a strong lobby exists in the form of shippers for reregulation, which takes every opportunity to call for greater restrictions on what railroads can charge them. Railroad regulators' 2024 rule on reciprocal switching fell short of what this lobby desired, so attentions have turned to granting the Surface Transportation Board more powers over common carriage (see, for instance, bills from previous Congresses such as the Freight Rail Shipping Fair Market Act).

This would be a mistake. Common carriage works best as a common law, case-by-case approach allowing common carriage rules to evolve according to circumstances. Giving regulators more powers to define, interpret, and adjudicate common carriage rules would disrupt this evolutionary process and separate common carriage from its common law origins. Moreover, there is evidence that existing common carriage rules in areas like hazardous materials put all the burden of risk on the railroads when it should belong on the companies shipping the hazardous goods, or at least be shared more equitably.

Shipping of hazardous materials also gave rise to other overbearing proposals for regulation, such as the Railway Safety Act and its variants that were introduced after the East Palestine rail accident. The subsequent National Transportation Safety Board investigation reveals that most of the RSA proposals for regulation were either overblown or irrelevant. Indeed, the NTSB found that virtually all of its recommendations could be implemented under existing authority. However, rail unions among others continue to push for mandated crew sizes, which were shown not to be an issue in the accident. Congress should reject the Railway Safety Act and the Railroad Safety Enhancement Act of 2024.

Interstate trucking: Current federal limits for interstate truck gross vehicle weight (GVW) are set at 80,000 lb. with a maximum of five axles. However, all 50 states allow higher GVW trucks to transport goods within their borders, mostly via state or local roads. The lower interstate limit increases the number of trucks needed to carry goods, demand for drivers in a tight labor market, emissions, and traffic congestion.

All of these factors lower the trucking industry's competitiveness against freight rail. Many current trucks are capable of hauling higher weights but instead run only partly full for part of the routes, a fact that underscores the inefficiency of the current weight limits.

To alleviate this, Congress should authorize an opt-in pilot program for states to test the effects of increasing the federal GVW to at least 91,000 lb. on six axles. The pilot program would enable the federal government and the states to assess the safety implications of higher GVW, although a 10-year pilot program in Idaho found no evidence of decreased safety. Moreover, several European countries allow 44-metric ton (97,000 lb.) trucks with no appreciable safety concerns. In fact, the European Union, which is well known for a precautionary approach, is considering increasing its current 40-metric ton weight limit to 44 metric tons across the continent.

The pilot program would immediately reduce strain on the supply chain, lessen the need for more truck drivers, and reduce congestion. According to the Rocky Mountain Institute, which places a considerable premium on emissions reduction, it will also significantly reduce carbon emissions. As such, it represents a "no regrets" emissions policy—one that reduces emissions but is worth doing even if emissions do not present a threat.

As for infrastructure concerns, studies have found that the addition of a sixth axle reduces wear and tear on road surfaces by 37 percent. The current federal bridge standard is already compliant with a 91,000 lb. weight limit.

The opt-in pilot program should accommodate all states that show willingness to participate, to maximize the collection of useful data.

Highway funding: The starting point for sound transportation policy should be adherence to the user-pays–user-benefits principle. Transportation infrastructure and operations should be paid for by the users who directly benefit from them. Despite some spillover effects, the vast majority of benefits accrue to the transportation network's users.

Compared with general revenue funding of government-owned infrastructure and services, user-pays offers the following advantages:

1. **Transparency:** Unlike tax dollars that wind through convoluted bureaucracies, charges "follow" users.
2. **Fairness:** Users pay and benefit directly from improvements generated from their payments; users who use the systems more pay more.
3. **Signaling of investment:** Operating revenues generally track use, and popular systems can be identified for targeted improvements.

Unfortunately, many federal transportation programs do not adhere to the user-pays principle. In those cases, the programs should be reformed to meet the user-pays principle through methods such as tolling. If that proves not to be possible, it suggests that the program has high costs and low value and should be eliminated.

This principle is particularly important as Congress considers what to do about the federal gas tax and the Federal Highway Trust Fund for which it provides revenue. As more and more drivers turn to electric vehicles, the gas tax will be paid disproportionately by owners of older vehicles who are likely to be less affluent. To ensure that the Trust Fund has a consistent source of revenue and to ensure fairness for all road users, a replacement will need to be found. It is particularly important that Congress consider this given the subsidies made available for electric vehicle transitions in recent legislation.

Mileage-based user fees (MBUFs) are in many ways a direct replacement for the gas tax, reflecting the same user-pays–user-benefits principles. Congress should expand existing pilot programs to better assess the feasibility of this mechanism and to address drivers' privacy concerns and insist that the executive branch deploys those programs (the current Transportation Department has slow-walked them).

Congress should be wary of attempts to impose MBUFs in addition to the gas tax. The fees are unlikely to be seen as acceptable if they simply increase the cost of travel.

Jones Act: Congress should repeal the Jones Act of 1920, a Buy American bill for maritime shipping that forbids foreign-flagged vessels from shipping goods between US ports. They may carry goods to and from the United States, but not from one US port to another. As result, Jones Act-compliant shipping is multiples more expensive than it would be in a freer market.

The Jones Act raises the cost of living in Alaska, Hawaii, and American territories such as Puerto Rico. It raises energy costs on the mainland, especially in New England. It hampers disaster relief efforts nearly every hurricane season. It gives dockworkers' unions more power to resist automation. And by making trucking relatively more expensive, the Jones Act contributes to highway congestion throughout the country.

Domestic maritime shippers, legally insulated from competition, often charge triple or more the rates of foreign shippers on comparable routes. The Jones Act's price differential is so out of whack with world markets that oil refineries, especially near the East Coast, often find it cheaper to ship in oil from places such as Russia than from Houston or New Orleans. The diplomatic and national security implications are obvious.

Furthermore, the Jones Act has nearly destroyed the US shipbuilding industry. Only about 90 oceangoing vessels remain in the Jones Act fleet. The few shipyards that can build commercial oceangoing vessels are being kept afloat only by defense contracts. American shippers are forced to use aging, inefficient ships that would be unacceptable in a competitive market. It is well past time to repeal it.

Experts: Iain Murray, Ryan Young

For further reading:

Iain Murray, "East Palestine Report: Congress Should Rethink Its Reaction," National Review Online, July 22, 2024. https://www.nationalreview.com/2024/07/east-palestine-report-congress-should-rethink-its-reaction/

Iain Murray, "East Palestine Derailment Reveals a Lot of What Is Wrong With Our Politics," Inside Sources, March 16 2023. https://cei.org/opeds_articles/east-palestine-derailment-reveals-a-lot-of-what-is-wrong-with-our-politics/

Iain Murray, "Keep Driving Fees Flat No Matter the Vehicle," The Philadelphia Inquirer, April 20, 2021.
https://cei.org/opeds_articles/keep-driving-fees-flat-no-matter-the-vehicle/

Mario Loyola, "America Last: The Grim Reality of the Jones Act," *Issue Analysis* No. 5, Competitive Enterprise Institute, June 2020, https://cei.org/studies/america-last/.