AIRLINE BAILOUTS AND CLIMATE CHANGE RE-REGULATION

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1. INTRODUCTION

COVID-19 is wreaking havoc around the world and is likely to continue doing so for the foreseeable future. The virus virtually brought airline travel around the world to a standstill soon after it broke out. In the United States, the airline industry was quick to ask for, and get, a sizeable bailout from the U.S. Senate. But the other global killer¹ that has unfortunately taken a back seat to the coronavirus pandemic remains climate change.

In 2018, United Nations scientists determined that the world had to cut greenhouse gas emissions in half by 2030 to maintain a climate that resembles what it is today.² But even that looks like a conservative estimate. In November 2019, a paper published in Nature warned that a “point of no return,” at which human-caused warming triggers uncontrollable releases of natural greenhouse gases and rapid, violent climatic changes, is more “dangerously close” than previously believed.³ New research published in Nature Communications found that the tipping point at which irreversible changes ravage the world’s ecosystem could come in a matter of years, far sooner than expected.⁴ A few years ago, climate scientists from the Intergovernmental Panel on Climate Change (IPCC) warned that the window of opportunity for meeting the internationally established goal of limiting global warming to 1.5–2 degrees Celsius (°C) over pre-industrial

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times⁵ is closing very soon and that the world has only twelve years until carbon emissions reach “a point of no return.”⁶ Others, however, have clarified that the IPCC report in which the twelve years were mentioned did not state that we have only twelve years left to save the world.⁷ Rather, “[t]he hotter it gets, the worse it gets, but there is no cliff edge.”⁸ The IPCC scientists gave the world twelve years “to speed-up and scale-up the actions” to cut emissions before they start “spiraling out of control.”⁹

The debate between “a decade or so” and “very soon” to curb climate change is largely irrelevant; we know that we have to act expeditiously to avoid potentially disastrous climate change. All industries, sectors, and nations play a role in this. That includes the American airline industry as well.

Aircraft account for 12% of all U.S. transportation greenhouse gas (GHG) emissions and 3% of total U.S. GHG emissions.”¹⁰ The United States, though, accounts for 24% of all global passenger flights.¹¹ A highly relevant problem is that air travel is growing many times faster than fuel efficiency gains, and emissions are growing even faster than predicted in previous projections.¹² In 2016, the Environmental Protection Agency (EPA) finalized findings that GHG emissions from certain classes of engines used in aircraft contribute to the air pollution that causes climate change, endangering public health and welfare under section 231(a) of the Clean Air Act. The EPA’s findings were done in preparation for a future domestic rulemaking process to adopt future GHG standards.¹³ Under

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⁷. Id.

⁸. Id.

⁹. Id.


¹². Id.

the current administration, such future rulemaking has, however, not been undertaken.

The American share of global transportation-related GHG emissions is a sizeable share and, moreover, one that some think could be avoided. For example, Swedish teenage environmental activist Greta Thunberg popularized the term “flight shame”\(^4\) and, in 2019, famously sought to set an example for better transportation choices by sailing 3,000 miles from the United Kingdom to a United Nations summit in New York City.\(^5\) In Europe, passenger numbers are steadily dropping on domestic and short-haul routes.\(^6\) Even airlines such as KLM are now encouraging passengers to use trains on shorter journeys to reduce the environmental impact from flying.\(^7\) European companies are giving extra time off to vacationing employees who opt to travel by train or other less-polluting transportation options.\(^8\) In Germany, the railway company Deutsche Bahn has recently reported record passenger numbers.\(^9\) Meanwhile, the German aviation industry group ADV reported a 12% decline in commercial aircraft passenger numbers for November 2019, which was the fourth straight monthly decline.\(^10\)

Does this development trend readily transfer to the United States? Probably not because of, among many other factors, the vastness of our nation and the generally poor state of affairs and unpopularity, at least in some geographical regions, of public transportation including trains. Fortunately, the vast majority of Americans need not be ashamed of getting on a plane to see grandma every so often.\(^11\) It is small groups of frequent fliers who are responsible for the largest share of air-related emissions: 12% of the Americans who make more than six round trips by air per year are responsible for two-thirds of all air travel and thus, by extension, two-thirds of aviation emissions.\(^12\) Business travel accounts for

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17. *Id.*


20. *Id.*


22. *Id.*
roughly 30% of air travel in the United States. The International Council on Clean Transportation estimates that if many more Americans start flying more than six times a year, the use of aviation jet fuel would increase with the risk of planes coming to surpass passenger cars as the largest source of carbon dioxide emissions. "Our climate just can’t tolerate widespread frequent flying," said Dan Rutherford, who directs the council’s aviation program. "At some level we need to figure out, collectively, which flights are necessary, and which are luxuries."

The airline industry is aware of the problem. In February 2020, for example, Delta Airlines—one of the largest airlines in the world—issued an ambitious statement committing $1 billion to become the first carbon neutral airline. However, this statement was leerily light on details. For example, Delta promised to reduce its carbon footprint “through enterprise-wide efforts to decrease the use of jet fuel and increase efficiency,” remove carbon by “[i]nvesting in innovative projects and technology to remove carbon emissions from the atmosphere that go beyond the airline’s current commitments,” and improve stakeholder engagement “to advance carbon reduction and removal goals and maximize our global impact.” This may have been an effort to improve the company’s public relations, on par, with the company’s 2019 Valentine Day’s promise to share $1.6 billion in profits with its employees. Given recent developments in the airline industry, time will tell what actually happens to this carbon reduction promise.

This Article proceeds as follows. The airline industry’s financial situation for the past ten years will be examined first as background for its request for bailout. The industry enjoyed a decade of profitability, but is not one known or expected,
so far, to set aside funds for worsening times such as the sudden problems brought about by COVID-19.

Next, other recent large-scale bailouts in the transportation sector, and beyond, as well as federal transportation rules in connection with the auto industry bailout after the 2008 financial crisis will be explored. This will show that the 2020 airline bailout was undertaken with few requirements imposed on the airline industry, and certainly none in relation to climate change. This is, of course, a problem in times of ever-worsening temperature increases and action necessary from all angles and at all scales of private and public governance.

This Article then lists requirements that could have been imposed on the industry for it to obtain the sizeable bailout that it did. Of course, this is too late at the time of this writing (April 2020), but if further bailout efforts or other government assistance is given to the airline industry in September 2020, when the first measures run out, or later, numerous ideas exist for how the industry could be required to take steps to mitigate, or at least help, the surrounding world adapt to climate change to which the industry contributes in significant ways.

This Article concludes that while the $60 billion bailout was bipartisan and, perhaps, had to be implemented in a fairly rapid manner because of the importance to our national transportation infrastructure for both private individuals as well as businesses, this would have been a perfectly opportune time to impose climate change regulations on an industry that still, despite its known contributions to the problem and the readily available knowledge about the extreme urgency of alleviating climate change, has largely ignored its role in this context. The airline industry has for decades benefited from the 1978 airline deregulations. Re-regulations for climate change are now in order.

II. THE STATE OF THE INDUSTRY

For a long time, airlines have been known for their “boom and bust” cycles.30 But even with reduced profitability in 2019, the global airline industry achieved something that it had never before managed to do; it logged ten consecutive years of profitability.31 In its 2019 outlook, the International Air Transport Association (IATA) estimated net profits of $35.5 billion, slightly ahead of 2018’s $32.3 billion; “[a]n industry first,” the Geneva-based trade group tweeted on December 27, 2019. “2019 forecast to be 10th consecutive year of profitability for the global


airline industry." Even as fuel costs rose, the trade war between the United States and China tanked the cargo business, and Boeing grounded its new 737 Max jetliner after two crashes, the industry still managed to reach approximately $28 billion in profits.

Airline executives have not suffered financially either. In 2018, United Airlines CEO Oscar Munoz earned a total compensation of over $10 million while President Scott Kirby took home roughly $5.5 million. Gary Kelly, CEO of Southwest Airlines, took home total compensation of close to $8 million in 2018. Delta Airlines’ CEO Ed Bastian topped this list, receiving total compensation of nearly $15 million in 2018.

Then COVID-19 hit, causing the airline industry to almost immediately ask for $50 billion in bailout funding to stay in business. This occurred despite making a fortune for more than a decade and only two years after American Airlines CEO told investors, “I don’t think we’re ever going to lose money again.”

Where did all the money go? And why did taxpayers once again have to bail out a transportation industry? The second question is the easiest to answer: because we had no choice if we want to maintain our travel infrastructure and modern way of life. Despite flight shaming and climate change, we have simply come to expect being able to visit family and friends around the nation and world, go on vacation, and even commute to work by plane. It is laudable that Greta Thunberg chose to sail across the Atlantic to speak at the United Nations

32. Id.


35. Id.


38. Id.

39. Id.
Headquarters in New York City, but travelling that way is just not realistic for the vast majority of us.

The first question—where did the money go?—is “also not so complicated. Over the past decade . . . U.S. airlines spent 96% of their cash profits on stock buybacks to enrich investors and their own executives, whose positions often come with stock holdings.”40

One would expect that, with the industry’s infamous profitability swings, airlines would have learned to behave more responsibly and with greater foresight, but that is simply not the case.

Investors see little reason for airline companies—or any other companies—to have cash on hand. In 2017, [financial] analysts . . . concluded that the 500 largest companies in the U.S. (excluding banks) had about 20 percent of their revenues in cash. That was too much, they thought. ‘While companies do need to hold some cash to do business,’ they wrote, ‘in the past we’ve found that companies can typically do with cash balances of less than 2 percent of revenues.’ (This cash is mostly held offshore, but that’s another story.)41

Thus, “at the end of a record decade in profits . . . American had [only] $7 billion on hand, United $4.9 billion, and Delta $2.9 billion”—not much for a capital-intensive industry.42

Providing taxpayer assistance to private industries is normally “anathema to a well-functioning market economy—even during a recession. But the United States is not simply facing a downturn in the business cycle. That will happen, too. Instead, the United States must take emergency measures to preserve critical infrastructure . . . .”43

It did so. On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES), a bipartisan bill granting nearly $60 billion in financial assistance to airlines.44 Twenty-five billion

40. Id.
41. Id.
42. Id.
will be given as loans and loan guarantees for passenger airlines, $4 billion for cargo air carriers, and $25 billion as grants to pay workers through September 2020. A separate $17 billion in loans is specified for companies “critical to maintaining national security.”

The financial assistance carries a few restrictions. For example, stock buybacks and share dividends are prohibited for at least a year after the loans have been repaid. Executive compensation is restricted. Dividends cannot be paid to shareholders while the companies receive assistance. Airlines are also prohibited from laying off or furloughing employees through September 2020.

Responses from the industry were, not surprisingly, appreciative. Delta CEO Ed Bastian said in a statement to Delta frequent flyer members: “[W]e are deeply grateful to members of Congress, the President and the administration for steps they have taken to provide emergency relief to airline employees nationwide.” Bastian did not go so far as to thank the President directly in media reports otherwise conveying largely the same message. The Association of Flight Attendants called CARES “an unprecedented win for frontline aviation workers and a template all workers can build from.”

Notably absent from the restrictions imposed on the airline industry bailout are, however, any rules addressing the industry’s contributions to climate change. The 2008 auto industry bailout led to stricter tailpipe emissions rules. Ten years later, with even more dire predictions about climate change and its potential deadly effects, it is unfortunate to the point of being shameless, that no earmarked funds or other rules were imposed in relation to anything that could have forced the airline industry to take significant steps in the right direction to help curb climate change.

45. Id.
46. Id.
47. Id.
48. Id.
49. Id.
51. Slotnick, supra note 44.
52. Id.
The transportation industry has seen extensive rule imposition before and could thus have expected it again. For example, the Airline Deregulation Act of 1978:

Deregulated the airline industry in the United States, removing U.S. federal government control over such areas as fares, routes and market entry of new airlines, introducing a free market in the commercial airline industry and leading to a great increase in the number of flights, a decrease in fares, and an increase in the number of passengers and miles flown.\(^5^4\)

Of course, the Deregulation Act was adopted before climate change became known as such a serious problem. But it did come after the oil crisis in the early 1970s. Still, airline deregulation was not intended to save fossil fuel, although it arguably should have. A major goal of airline deregulation was, instead, to increase competition between airline carriers, leading to price decreases and improved service.\(^5^5\)

After the airline deregulation, many airlines in the United States were purchased by other airlines and merged into fewer airlines.\(^5^6\) After almost four decades and hundreds of new startup airlines, hundreds of bankruptcies, liquidations, reorganizations, and mergers, just six major U.S. airlines (American Airlines, Delta Air Lines, Southwest Airlines, United Airlines, Alaska Airlines, and JetBlue Airways) control nearly 80% of the market.\(^5^7\) Many flights have been consolidated so travelers have fewer choices, resulting in increased fares.\(^5^8\) Thus, the current situation in the airline industry benefits the airlines by decreasing competition, increasing fares for passengers, decreasing employee pay and


56. Finger, supra note 55.


benefits, and creating an oligopoly of only six major airlines that was never intended by the drafters of Airline Deregulation Act.\textsuperscript{59}

This oligopolistic framework and decade of strong earnings, in a country that, at least under the Trump administration, applauds and supports precisely such development while not supporting regulations, did not exactly spur the imposition of climate change action on airlines. This is perhaps even more obvious given the recent composition of Congress and the resistance towards otherwise internationally accepted initiatives, such as the Paris Agreement and its call for national climate change initiatives. However, more consumer and environmentally friendly rules were imposed in connection with other recent transportation bailouts and federal legislation.

III. RECENT TRANSPORTATION BAILOUTS & FEDERAL RULE PROPOSALS

The airline industry received federal assistance after the 9/11 airline attacks just as the auto industry benefited from a large spending package helping it survive. President Obama required better fuel efficiency from U.S. airplanes during his administration. These three recent developments set precedent in the transportation sector for airline re-regulation. Combined with general calls for more climate change action, the airline industry was on clear notice that in order to receive federal financial assistance, should a need for this come about, as it did, environmental regulations could have been imposed. Unfortunately, they were not.

A. 9/11/2001 Terrorist Attacks

At the time of 9/11, the airline industry was already in financial trouble due to an ongoing recession.\textsuperscript{60} The 9/11 attacks severely compounded the industry’s financial problems by causing an abrupt drop in air travel.\textsuperscript{61} The federal government quickly responded: on September 22, 2001, President Bush signed House Rule 2926 (ATSSSA) into law.\textsuperscript{62} The ATSSSA included four major components: direct financial assistance to airlines, assistance to airlines in war and terrorist insurance, tax provisions, and compensation to victims of the hijackings.\textsuperscript{63}

\textsuperscript{59}. Finger, supra note 56.


\textsuperscript{62}. Gray, supra note 43.

\textsuperscript{63}. Id.
The direct financial assistance provision took two forms: $5 billion in direct grants for compensation for federal actions and subsequent losses, and up to $10 billion credit assistance in the form of loan guarantees.\textsuperscript{64} The ATSSSA also provided assistance to airlines in the form of subsidized insurance coverage in the wake of substantial disruption to markets for air-carrier war and terrorism insurance.\textsuperscript{65} Further, the ATSSSA provided tax assistance to airlines.\textsuperscript{66} Lastly, the ATSSA established the Victims Compensation Fund, a federal vehicle for providing compensation to victims of the 9/11 attack outside of a mass tort.\textsuperscript{67} While the grant program was fairly straightforward, the administration of the credit program was more restrictive and fell to the ATSB, not the airlines themselves.\textsuperscript{68}

Of note, the ATSSSA included provisions that required that the federal government be compensated for the risk of the credit assistance, in the form of warrants, options, or other financial instruments. The ATSSSA also imposed fees, compensation restrictions, and other reporting requirements on borrowers. Ultimately, the airlines only received $1.626 billion in credit assistance, substantially less than was initially expected. Owing to fees, improved credit conditions, and other factors, the subsidy cost of this credit assistance was ultimately negative, which is to say that the taxpayer made money.\textsuperscript{69}

The 2001 ATSSSA model has been said to be "a valuable case study for policymakers as they consider further measures to address the coronavirus crisis."\textsuperscript{70} It seems that with the large profits earned by airlines within the last ten years, and the resulting high salaries paid to airline executives, the industry could easily have been expected to face climate change regulations—even if they would lead to some decreased profits in the near future. But, as mentioned, no such regulations have been imposed on the industry, at least not at the time of this writing (April 2020).
B. 2008 Auto Industry Bailout

After the 2008 financial crisis, Congress authorized the Troubled Asset Relief Program (TARP), a $426 billion spending package to help banks and corporations survive.\(^7\) Twenty percent of those funds were a bailout to the auto industry.\(^7\)

In exchange for the TARP bailout, the companies and the trade union, United Autoworkers, were forced to accept concessions and restructure. “The companies reduced management ranks and executive pay; closed more than a dozen assembly plants; cut production capacity and discontinued brands; and reduced labor costs for current workers and retirees.”\(^7\) “To run the auto bailout part of TARP, the new Obama administration also created the White House Council on Automotive Communities and Workers.”\(^7\) But more importantly, the Obama administration leveraged the federal government’s stake in the car industry to enact historic new fuel-economy rules that required improved fuel mileage aimed at reducing annual oil consumption by an estimated twelve million barrels.\(^7\) The standards increased fuel economy to the equivalent of 54.5 mpg for cars and light-duty trucks, nearly doubling the fuel efficiency of those vehicles compared to then-new vehicles.\(^7\) This was an important step towards reducing GHG emissions while strengthening the economy.\(^7\)

The Obama-era program also included targeted incentives to encourage early adoption and introduction into the marketplace of advanced technologies to dramatically improve vehicle performance, including:

- Incentives for electric vehicles, plug-in hybrid electric vehicles, and fuel cells vehicles;

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72. Id.

73. Id.

74. Id.


77. Id.
• Incentives for hybrid technologies for large pickups and for other technologies that achieve high fuel economy levels on large pickups;
• Incentives for natural gas vehicles;
• Credits for technologies with potential to achieve real-world greenhouse gas reductions and fuel economy improvements that are not captured by the standards test procedures.\(^{78}\)

In contrast, the Trump administration spent the last three years undoing much of the Obama-era rules.\(^{79}\) Luckily, the trend towards fuel efficient cars caught on among the general public. Today, hybrid and fully electric cars have become relatively common in many places around the nation, demonstrating future market potential despite some continued financial struggles by, for example, Tesla.\(^{80}\)

C. Airline Fuel Efficiency Requirements Under the Obama Administration

The Obama administration did not stop with fuel efficiency requirements for cars. "Under the Obama administration, the Environmental Protection Agency proposed rules to require fuel efficiency from U.S. airplanes in line with the U.N. ’s recommendations."\(^{81}\) The Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) standard developed under the United Nations International Civil Aviation Organization (ICAO) "serves as a positive and sustainable contributor to global greenhouse gas emissions reduction. Aimed at curbing the growing climate impact of plane travel, it calls for international aviation to address and offset its emissions through the reduction of emissions elsewhere, outside of the international aviation sector."\(^{82}\) The standards also complement other attempts to "reduce CO2 emissions from international aviation including technical and operational improvements and advances in the production

78. Id.
and use of sustainable alternative fuels for aviation." However, the Trump administration quietly scrapped that initiative in 2017.

That brings us to today and the question of what can be done if the airline industry requests further financial assistance after at least some of the initial bailout package measurements run out and the risk of further financial industry setbacks after the coronavirus pandemic.

IV. AIRLINE REGULATION TO FORCE CLIMATE CHANGE ACTION

Given the extent of climate change, knowledge about its causes, and the very limited timeframe in which we can still avoid climate change “spiraling out of control,” climate-protective rules should be imposed on any further airline industry bailouts. If no such aid becomes relevant, the airline industry should nonetheless be regulated for climate change action. Some ideas follow.

First, there should be stricter limits on executive bonuses and stock buybacks. As middle- and low-income earners are seeing their personal incomes shrinking in general, or even disappearing outright, because of COVID-19, it makes little sense to expect these earners and other taxpayers to fund large executive bonus and other pay schemes via government bailouts. After the 2008 financial crisis, bailout funds went to many of the same banks that had caused the crisis in the first place. These banks had awarded their top executives nearly $1.6 billion in salaries, bonuses, and other benefits the year preceding the crash. 

A few years ago, IPCC scientists gave the world 12 years “to speed-up and scale-up the actions” to cut emissions before they start “spiraling out of control.” Edith M. Lederer, UN Climate Chief Warms Current Path Leads to “Catastrophe,” ASSOCIATED PRESS (Apr. 25, 2019) https://www.apnews.com/a~baaadl7de744ca875711d92e173442.

83. Id.
84. Kaufman, supra note 755.
86. A few years ago, IPCC scientists gave the world 12 years “to speed-up and scale-up the actions” to cut emissions before they start “spiraling out of control.” Edith M. Lederer, UN Climate Chief Warms Current Path Leads to “Catastrophe,” ASSOCIATED PRESS (Apr. 25, 2019) https://www.apnews.com/a~baaadl7de744ca875711d92e173442.
89. Id.
[an] AP review of federal securities documents found."\textsuperscript{90} This "executive largesse . . . amount[s] to a bribe to get them to do the jobs for which they are well-paid in
the first place."\textsuperscript{91} Compensation requirements were, as mentioned, imposed in
connection with the ATSSSA and should be for longer periods of time than the
year; that was the case with the spring 2020 airline bailout. Granted, the airline
industry (or other) executives had little, if any, reason to suspect the severity of the
coronavirus outbreak, but as the airline industry is always prone to extreme
performance cycles, some setback at some point could and should be expected.
The industry could, despite its resistance towards doing so, be required to set aside
funds for the rainy day that will inevitably come to it.

Similarly, more extended stock buyback options should be considered in
connection with any further bailouts. The one-year limit imposed in connection
with the spring 2020 bailout was conservative towards the industry. Time has
come to be more conservative with funds that should be directed towards climate
curbing action rather than the compensation of individual stockholders and
executives. It is up to lawmakers to identify methods of connecting executive pay
and shareholder rewards or buybacks to climate mitigation or adaption action by
airlines, but the time has clearly come for doing so. This was the case with the
auto industry under the Obama administration as well. Of course, different
political outlooks on regulations play a huge role in this context but denying the
necessity of all industries contributing to solving the problem of climate change is
extremely short-sighted.

Further, the airline industry—manufacturers as well as airlines—should be
required to funnel financial resources into research, into and the rapid development
of, more fuel-efficient airplanes. Over the past decade, the percentage of revenue
aircraft manufacturers spent on research and development plummeted by more
than half.\textsuperscript{92} This laissez-faire attitude does not match on-the-ground reality. The
airline industry already contributes significantly to climate change. Global air
travel is only expected to increase in the future. Airplane fuel efficiencies need to
be improved. Now is definitely not the time to decrease, but rather to increase,
research and development into how to do so.

Stricter emissions standards could and should be imposed on airlines. CO2
standards could, for example, be developed for airlines under the Clean Air Act.
One estimate holds that doing so could help improve fuel efficiency by 2.5% yearly.\textsuperscript{93} More research and development could help identify ways of increasing

\textsuperscript{90} Id.
\textsuperscript{91} Id.
\textsuperscript{92} Id.
\textsuperscript{93} CBS NEWS, supra note 88.
this percentage. In combination with alternative fuel source developments in the perhaps slightly longer timeframes, more significant progress could surely be made with currently available technologies.

Airline manufacturers could be required to produce a certain percentage of alternatively fueled airplanes, such as electric or hybrid engine planes. President Obama’s fuel economy standards for ground vehicles excluded demands that California regulators had made to require automakers to produce a certain percentage of all-electric vehicles per year.94 Some parties in the electric aviation industry had hoped that a federal bailout would not make the same compromise with airlines.95 It unfortunately did. But requirements for a minimum percentage of more sustainably fueled airline engines could and should be imposed on airline manufacturers in the future, bailouts or not. Technology in this arena is changing rapidly. As a shift is happening from traditional fuel-driven vehicles to electric or hybrid ones on the ground, so does a shift need to happen in relation to airplane fuel sourcing. This is not a distant dream. Electric and hybrid airplane technology is already in development. In the winter of 2019–2020, the world’s first commercial test flight of a fully electric plane was conducted in Vancouver, Canada.96 The EU is proposing new rules to start certifying the safety of electric and hybrid engines.97 In Norway, short-haul air travel must be by electric planes by 2040.98 Instead, the United States continues to focus on the development of supersonic airplanes which produce up to six times the CO2 emissions as regular planes.99

Tax incentives could also be created to retire older, less fuel-efficient airplanes. The federal government could subsidize the cost difference for using synthetic fuels or biofuels derived from plants or algae, which are more expensive but produce fewer total emissions than fossil-based jet fuel.100 Other incentives could focus on the manufacturing sector. Borrowing from a policy already under consideration for the seafaring cargo industry, the federal government could tax fuel and direct the revenues to fund research into electric engines or more fuel-efficient aircraft. Lawmakers could find ways to incentivize production of new plane

94. Id.
95. Id.
96. Id.
97. Id.
98. Id.
100. Id.
designs altogether, pushing the industry away from “re-engining,” the cost-saving strategy by which manufacturers make tweaks to existing models, as was the case with the grounded 737 Max.\(^\text{101}\)

In short, numerous “first steps” are viable. Surely, others could and would follow if these were taken. However, strong forces also oppose the development towards alternative fuel technologies. For example, the Trump administration itself has spent the last three years undoing much of the Obama-era fuel improvement rules, even as the administration struggles to defend the “shoddy math” behind its rollbacks.\(^\text{102}\) The impetus is not surprising to many of us: the nation’s oil industry pushed against fuel efficiencies all along.\(^\text{103}\) For example, a New York Times investigation found that, “Marathon Petroleum, the country’s largest refiner, worked with powerful oil-industry groups and a conservative policy network financed by the billionaire industrialist Charles G. Koch to run a stealth campaign to roll back car emissions standards.”\(^\text{104}\) Even the airline industry itself is said to “not want to provide a quo for the quid.”\(^\text{105}\) Given this sad state of influence by the wrong actors, as seen from a climate progressive point of view, Congress should act to demand climate action.

What would it take, though, for Congress to reach a mandate for action in this context? The 2020 election is right around the corner and offers some hope for promise. It is an uncontested fact that Democrats tend to favor regulations and, in particular, climate change regulations, more than Republicans (76% of Republicans opine that government regulation of business does more harm than good. Only 41% of Democrats agree).\(^\text{106}\) The same goes for young people, albeit to a much smaller extent (48% of millennials believe that the government should do more to solve problems, 37% say that the government is doing too many things that would be better left to businesses and individuals, and 15% are not sure).\(^\text{107}\) But will Democrats and, in particular, young people, vote in November, especially considering ongoing COVID-19 fears? In depth analysis of these issues is outside

\(^{101}\) Id.

\(^{102}\) Id.


\(^{104}\) Id.

\(^{105}\) Kaufman, supra note 755.


the scope of this article, but the following should be borne in mind both in the upcoming, as well as future elections.

Exit polling from the 2020 elections shows that youth turnout compared to 2016 is either flat, or down in a majority of states that have voted by the time of this writing (April 2020). This means that young voters both form a smaller share of the overall Democratic primary vote and turned out in smaller net numbers. The lack of enthusiasm among younger voters compared to older ones was especially pronounced by the increased by 33% from 2016 among every group, across Super Tuesday states. One might have expected that this also included more young voters, but that was not the case. For example, in North Carolina, overall turnout was up 17%, but youth turnout was down 9% percent.

In turn, the 2018 Democratic House gains were driven by a generally higher total turnout. This year could be the same. But according to academic research, “electing a Democrat[ic president] based on higher turnout would require a surge, especially among young voters, that would have to exceed the Obama surge among black voters in 2008.” However, research shows that is improbable. The lack of interest in voting in the United States, especially among young voters, may thus be a hindrance to climate change regulation. This may be even more so after Bernie Sanders withdrew in April 2020, as Mr. Sanders enjoyed broad popularity among young voters. As mentioned, the fear of another COVID-19 peak in the fall of 2020 (and beyond) could also lead to more voters simply staying at home instead of voting, at least in states where voting by mail is not possible.

In such cases, persuasion becomes a more critical factor. This is where pressure on all points from all angles becomes important. Climate change legislation and other action simply must be put at the forefront of the agenda, again where it generally seems like it has slipped to the background in relation to other crises, such as COVID-19, a threatening severe financial crisis, and rising


109. Id.

110. Id.

111. Id.


113. Id.

114. Id.
unemployment. Of course, climate change is only one of several dire threats to society right now, but it nonetheless remains a deadly serious one.

V. CONCLUSION

Bailing out airlines “goes against the grain of the open, capitalist economy where companies are supposed to be able to fend for themselves.”\textsuperscript{115} The future of airlines is, undisputedly, important in the United States and beyond. The industry should, however, not only be expected, but required to do much more about its contributions to climate change than what has been the case so far.

Different potential initiatives have been laid out above. For example, the industry could be required to make use of hybrid or electric airplanes as it becomes feasible to do so. Many other options exist or are being developed. In fact, the industry should be required to invest more money in the research and development of future airplane technologies. It is “[n]ot fair to signal to airlines that when things are great, you get to make all your money and any decision you want, even if it’s bad for the environment, but when things are tough, I’m going to help you and not require anything in return.”\textsuperscript{116}

As a world, and certainly as a nation, we should require that all sectors which contribute significantly to climate change—and that certainly includes the transportation sector—take steps \textit{now} to help move the world towards transportation infrastructures that pollute less and contribute less to climate change than what is currently the case. The airline industry should be re-regulated for climate change action.


\textsuperscript{116} \textit{Id.}