

Testimony

Of

Harry W. (Woody) Blunt, Jr.

Before the

United States Senate Committee on

Banking, Housing and Urban Affairs

**The Administration's Proposal for Reauthorization of the
Federal Public Transportation Assistance Programs**

SAFETEA

June 10, 2003

Good morning, Mr. Chairman and members of the Committee. My name is Harry Blunt and I am President of Concord Coach Lines, a private over-the-road bus company based in Concord, New Hampshire, that provides service in New England. Concord Coach Lines and its affiliate, Dartmouth Coach are one of the largest independent motorcoach companies in New England. We provide daily intercity service to Boston and Logan Airport from 34 cities and towns in Maine and New Hampshire. Thirty-one of these cities have no other form of intercity public transportation. Concord carried 670,000 passengers in 2002 and employs 134 full and part time personnel.

I am testifying on behalf of the American Bus Association. The ABA is the trade association of the over-the-road bus industry. ABA has 3400 members, of which some eight hundred are motorcoach operators and 200 are tour operators. The remaining members are hotels, tourist destinations and attractions. I am the immediate past Chairman of the ABA's Board of Directors and currently serve as Chairman of the ABA's policy committee. Before I begin speaking on our issues with SAFETEA, I'd like to present a few facts about the over-the-road bus industry.

The industry that I have served for over thirty years transports 774 million U.S. passengers each year. We transport more people than the airlines, and we transport more passengers in two weeks than Amtrak does in a year. Further, we serve more than five

thousand cities and towns in regularly scheduled service, again more than any other mode of public transportation. Between fixed route, intercity, commuter service, charter and tour and airport shuttle service the industry is involved in the life of virtually all Americans. For example, Eyre Bus Service, an ABA member, provides commuter service to D.C. for over 2500 Maryland residents every day; in addition, intercity bus companies provide fixed route, scheduled service to 79 communities in Alabama. This is far more than the combined number of communities served by air and Amtrak. (A map detailing this service is attached to the end of my testimony). ABA members provide these services without any meaningful subsidy from the government. At the end of my testimony is appended a copy of a report by Nathan Associates, Inc. which details the federal subsidies to passenger modes between 1960 and 2001. This report is dramatic evidence of the lack of subsidy given to intercity bus transportation. The industry buys its own buses, builds its own facilities, trains its own personnel and maintains its own equipment. And since the attack on America on 9/11 we have taken our share of losses.

My subject today is the Administration's bill to reauthorize the federal highway bill, the so-called TEA-21. The current bill is called SAFETEA. Whatever its name, it is a bill vital to the health and well being of the over-the-road bus industry and we at the ABA no less than you on the Banking Committee want to get this right. While there are many good provisions in the bill that we support, there are also sections of the bill within the jurisdiction of this Committee that are largely a disaster for the over-the-road bus industry.

Our first and most important problem with SAFETEA may be summed up in two words: "transit competition." The private bus industry is under assault. Today, we face illegal competition from transit agencies that ignore federal rules regarding the provision of transportation services provided by the private bus operators; from transit agencies that ignore Federal Transit Administration (FTA) cease and desist orders and continue to provide illegal transportation; from short sighted policies by local governments like that

of the District of Columbia which wants to spend over thirty million federal dollars to operate a tour bus service in a city which has three private sightseeing tour operators that have seen drastic declines in their own business.

In short, we face withering competition from transit agencies that are provided significant federal and/or local funding. Agencies that then take that money and use it against the private operators and ultimately against the public. The most blatant examples of this “competition” are found in the fight to provide “charter” service to the public. When I speak of “charters” I mean groups of people seeking to travel to some destination. Charters form a significant portion of our business. Indeed, nearly all ABA members provide some charter services to the public.

FTA regulations require federally funded transit agencies to notify the local private companies, ABA and FTA if there is a charter opportunity that it wishes to pursue. The ABA notifies its members and FTA regulations require that the publicly funded transit agency allow the private, unsubsidized operator to provide the service if it is “willing and able” to do so. If there is no private operator available or willing to provide the service, the transit agency is free to do so.

As ABA has documented, transit agencies often do not follow these rules. Some transit organizations fail to follow the notification procedures at all; others provide the service before the determination of a “willing and able” private provider is made. Further, publicly funded transit agencies often use their heavily subsidized fleets to charge prices well below cost to win charter work. Most egregiously, as I referred to earlier, at least one transit agency has ignored two FTA orders to stop operating its charter service. Not only has it continued to operate this service, the transit agency’s only penalty so far has been FTA’s willingness to overlook the continuing violation while working with it to find a way to allow it to continue to operate. Reportedly, FTA is accomplishing this by determining that transit agency’s charter service to an annual golf tournament event is a “regularly scheduled” service and therefore not charter service. In

the meantime, ABA member Kemp's Bus Service loses revenue from the event to an outlaw public transit agency and struggles to survive. A situation the charter rules are intended to prevent.

Where this issue is relevant to SAFETEA is embodied in Section 3020 of the bill. That section would give the Secretary of Transportation the authority to suspend the charter rules if the transit could say that it was providing service to the elderly or the disabled. This section is a dagger in the heart of the charter rules. The essence of private charters in the United States is the provision of service to the "elderly". To allow anyone to abrogate the "willing and able" test in this circumstance would be to throw out the charter rules. Creating an exception for "disabled" transportation from the charter rules is no less pernicious. ABA is aware of no instance where disabled citizens have been denied the use of public transportation. Indeed, the Americans with Disabilities Act (ADA) spurred Congress in TEA-21 to establish a fund for private operators to equip their coaches with wheelchair lifts. The fund has been oversubscribed each year and currently provides seven million dollars for this purpose. The public transit agencies cannot say that the private bus operators are failing to provide transportation to the disabled and the only remedy is to dispense with the rules.

On the contrary, the charter rules clearly provide that if there is no "willing and able" private operator the business opportunity is open to all bus operators public as well as private. Any suggestion that the charter rules are preventing the publicly funded transit agencies from meeting unmet needs is nonsense.

ABA has three remedies to correct the transit competition imbalance. First, SAFETEA's section 3020 must obviously not be enacted. Second, there must be penalties that make sense when a transit agency violates the charter regulations. At present, FTA says that its only remedy for such a violation is to bar the transit from receiving any of its federal funding. Not surprisingly, this penalty has never, and in my opinion, will never be used. In place of this nonexistent penalty we suggest a penalty of

a percentage of the transit's funding for the first violation of the charter rules, a greater percentage for a second violation, and so on. Second, the industry needs clear definitions of "charter service" and "sightseeing service". It cannot be that a once a year charter (for example, the Alabama-Mississippi football game) is a regularly scheduled event. If any agency can sustain such a definition than there are no charter rules.

At the end of my testimony I have appended ABA proposals to change SAFETEA's section 3004 and amend 49 U.S.C. 5302 and SAFETEA's section 3020 and revise 49 U.S.C. 5323(d). These proposals define charter bus and sightseeing bus transportation and add a complaint process and workable penalties to the FTA tool kit in addressing this problem. The "bright line" definitions are designed to eliminate the confusion that seems to overcome the public transit agencies when charter bus operations are offered, the complaint process and penalty provision will give parties a forum within which problems arising out of charter opportunities can be resolved.

An important problem for the bus industry and the nation is SAFETEA's halfhearted solution to equipping buses with wheelchair lifts. This problem is embodied in Section 3036 of the bill. TEA-21 authorized funding to meet the federal mandate requiring wheelchair lifts on all fixed route over-the-road and charter motorcoaches. The Transportation Research Board (TRB) has put the annual cost of the mandate at forty million dollars. However, the wheelchair lift program over the life of TEA-21 has been funded at approximately 15% of its annual cost. To put one wheelchair lift on a new or used bus costs between \$35,000 and \$40,000. In our industry, where the majority of our operators have ten or fewer motorcoaches, the cost of this mandate is prohibitive. As I noted previously, the wheelchair lift program is oversubscribed each year. An increase to at least 50% of the mandate's cost is warranted and necessary.

A second problem with SAFETEA is found in Section 3011, the "New Freedom" program. This program establishes a competitive grant program which will provide funds for "*new transportation services and transportation alternatives beyond those*

required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including motor vehicle programs that assist persons with disabilities with transportation to and from jobs and employment support services.”

While we obviously applaud more funds for transportation for the disabled, we believe the initiative is wrong in its insistence on “new transportation services and alternatives.” As drafted, it excludes the ability of any grant recipient to fund wheelchair lifts on buses, even while allowing the purchase of motor vehicles. Wheelchair lifts are the method by which the overwhelming majority of physically disabled citizens get to work; to not fund this tried and true method would, I believe, disadvantage many of our citizens in the service of this “new freedom.” In sum, ABA believes that funding for wheelchair lifts should be allowed under this section.

Also regarding the New Freedom Initiative, Section 3034 of SAFETEA allows the grants to be increased depending on increases in the efficiency of the transportation service offered. We suggest that the program be modified to allow the Secretary to consider cost reductions in determining efficiency.

In section 3002 of SAFETEA the term “mass transportation” is replaced with “public transportation”. We are concerned that the change could destroy the primary purpose of federal transit subsidies, which is to provide for local transportation services, and expand funding for those programs beyond that core focus to a broader array of services in direct competition with the intercity bus industry.

Our concern is due to the fact that “public transportation”, as that term is commonly understood, means “transportation to the public”. Thus, we believe it is possible to interpret the change as allowing transit funds to be spent, for example, on Amtrak, since the rail carrier provides public transportation; or to allow transit funds to be spent to compete with Greyhound Bus Lines in intercity service. By contrast, the term “mass transportation” has a thirty-year history of usage as denoting “local” transportation services with no opportunity to expand range of services a transit agency can provide.

There is a solution. Insert the word “local” before “public transportation” in Section 3002. This change would ensure that the revised Section 3002 would not broaden the range of allowed transit services into providing intercity bus or rail services but rather to concentrate on the transits’ core mission: “local transit service”.

Less this Committee believe that ABA has nothing good to say about SAFETEA, one provision we strongly support is Section 6002 and the bus industry’s counterpart HR 1394, the Intermodal Transportation Act. Both HR 1394 and SAFETEA propose the creation of a new competitive grant program for intermodal transportation centers. All modes of public transportation – intercity bus, intercity rail, urban mass transit and rural transit – should be linked by intermodal transportation centers so that seamless public transportation becomes a reality.

The intermodal transportation center fund, \$100 million annually under HR 1394 and \$85 million annually under SAFETEA, solves this problem by providing sufficient seed money to states and communities to make these intermodal projects happen. Some states, such as my home state of New Hampshire, have taken the lead in developing intermodal transportation centers, in cooperation with the private sector. Those centers, such as the ones in Concord and Portsmouth, have been tremendously beneficial in enhancing the attractiveness of public transportation. The proposed transportation center program would enable other states to do the same.

Another major component of creating a seamless, comprehensive public transportation system is the need to link rural communities with the nation’s aviation and rail systems. Thousands of rural communities need connections to the national air and rail system, yet only a handful receive such connecting service from the Essential Air Service program. Buses now provide unsubsidized service to thousands of rural communities; with relatively little federal support, existing or new bus service could link these communities to air and rail hubs.

HR 1394 creates a \$35 million per year essential bus service program, which

would provide states with funds to contract for public surface transportation services to link rural communities to airports and train stations. This program would provide a potential link to the air and rail systems for the thousands of communities without EAS service.

Integrating public transportation information systems is another important part of creating a seamless public transportation network. Such a system is needed so that with one call or Internet visit, consumers can access fare, schedule and location information for all public transportation modes. This is particularly important for people with disabilities. Some states and service providers are working towards this goal, but a coordinated federal effort is needed. Both HR 1394 and SAFETEA have such a program. Frankly, we prefer the HR 1394 model because it separates the information system program from the intermodal terminal program, which we believe would promote administrative simplicity.

ABA also strongly supports the SAFETEA proposal to increase the section 5311 rural transportation funding by roughly 50%. This means a comparable increase in the section 5311(f) rural intercity bus program. Overall, rural transportation providers have been very effective in providing a great deal of essential transportation with relatively little funding; the rural intercity bus providers particularly stand out in this regard. For example, in 2002, Greyhound provided at least daily, fixed route service to 332 communities with \$4.7 million in section 5311(f) operating subsidies. This is an exceptionally productive use of federal funds. Expansion of 5311(f) will enable states to do more contracting with intercity bus operators to connect many more of the thousands of rural communities that are not connected to the nation's public transportation network.

A matter related to the intermodal terminal development issue detailed above is FTA's insistence that FTA intermodal funds can be used for the transit and intercity rail portions of intermodal but not the intercity bus portions of such terminals. This is contrary to good intermodal policy and discriminates against rural communities that rely

on intercity bus service. Indeed, this interpretation is inconsistent with one of the stated purposes of section 5309 of the Federal Transit Act, which is to cover the capital costs of coordinating all forms of public transportation. HR 1394 provides language that clarifies that FTA funds can be used for all transportation portions of intermodal transportation centers.

SAFETEA proposes a variety of innovative financing mechanisms in order to enhance funding sources for new transportation investments, and there have been various congressional innovative financing proposals. We agree that innovative financing can play a role in providing additional sources of revenue for transportation projects in these tight budgetary times. One of the Administration's proposals is to broaden the eligibility for private activity bonds to include highway projects and surface freight facilities. We believe that intermodal passenger transportation centers and intercity bus facilities should also be included as eligible projects, given the important role that they play in our nation's passenger transportation network.

There are two final changes to SAFETEA that we urge on the Committee. First, we suggest that section 3012, which reauthorizes the major capital investment program, be amended. The Administration proposes that the program be limited to a "new starts" program to provide grants for capital costs incurred when coordinating public transportation with other transportation, the costs of introducing new technology though innovative and improved products into public transportation and the development of corridors to support public transportation. However, it is not certain as written that the capital investment funds can be applied to intercity portion of intermodal facilities. Again, at the end of my testimony, I have appended legislative language taken from HR 1394 that would eliminate this problem.

Second, Section 3010 provides additional "incentive" funding for rural transit agencies that are increasing ridership. The problem here is that private bus operators that also provide rural transportation services are not included in the incentive funding. Rural

transportation by private operators is provided under the 5311(f) program. Simple fairness would seem to insist that if, in providing service under the 5311(f) program, an operator shows increasing ridership, that operator should be eligible for such incentive funding. Moreover, not to do it the “fair” way could lead to transit agencies using their cost advantage to increase ridership at the expense of the private operators. Thus, private operators would be at a double disadvantage. First, by the transit’s use of its cost advantage to undercut the private operators and then its receipt of an incentive payment for increasing ridership at our expense.

It is fair to say that what has been presented here is a short list of the problems that SAFETEA presents for the private bus industry. However short the list, each problem is of enormous significance to the private bus industry. Like other modes of transportation the private operators have lost jobs, operators and revenue due to the effects of 9/11, the downturn in the economy and the failure of the American people to travel as they have in the past. Unlike other modes there is no significant private bus subsidy and no Congressional bailout of the industry. We seek none here.

However, we do seek to level the “playing field” that we share with the public transit agencies. We do seek to have FTA treat us in law and regulation as they do the public agencies. We do seek to provide the most service to the most people for the least cost. All of these can be achieved by the changes to the SAFETEA bill we outline here.

Thank you for your time and attention. I will be happy to answer any questions.

SUMMARY
Testimony of Harry W. Blunt
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Mr. Blunt, a private bus operator who provides public transportation service in New England, will testify on behalf of the American Bus Association as to the promises and perils of the Administration's SAFETEA bill for reauthorization of TEA-21.

Mr. Blunt testimony will include a detailed recitation of the problems faced by private bus companies with illegal competition from publicly funded transit agencies for the opportunity to provide charter service to the public. The testimony includes remedies for this problem that directly affect the Committee's consideration of SAFETEA.

In addition, Mr. Blunt will discuss the need for increased federal funding to provide privately owned motorcoaches with wheelchair lifts. This funding is needed so that the mandate in the Americans with Disabilities Act (ADA) that requires motorcoaches to be so equipped may be met.

The American Bus Association also supports SAFETEA's provision of seed money for states to build intermodal transportation centers. SAFETEA would provide \$85 million for this fund. A House bill, HR 1394, funds this effort at \$100 million Dollars. Finally, Mr. Blunt's testimony will detail ABA's support for an essential bus service program that would provide states with funds to contract for public surface transportation services to link rural communities to airports and train stations.