LABOR – Q & A on the JONES ACT

JONES ACT BASICS

Q: What is the Jones Act?

A: The Jones Act requires all goods shipped between two U.S. points (Jacksonville to San Juan, for example) be carried on American built, American crewed, and American owned vessels. The restrictions that the Jones Act imposes on the movement of cargo between two domestic ports is a form of *cabotage* policy that is neither unique to the United States nor limited to the shipping industry. The Act does not require goods from overseas be shipped to Puerto Rico on U.S.-flag vessels, does not slap taxes on foreign ships servicing Puerto Rico, and has not prevented the distribution of aid to Puerto Rico. It simply requires that when cargo destined for Puerto Rico originates in the United States it is carried on vessels that comply with the aforementioned requirements. In the event there are insufficient U.S.-flag ships to meet this need during an emergency, there is a waiver process to ensure the timely transportation of goods.

Q: What is the purpose of the Jones Act?

A: The Jones Act – section 27 of the Merchant Marine Act of 1920 (46 USC § 883) – ensures the U.S. has a domestic maritime industry capable of supporting U.S. national defense needs and serving domestic commercial purposes. Principally, the Act is critical to national defense because the shipyard industrial base and commercial mariner jobs it supports are used by the Armed Forces in wartime, both to build navy and civilian ships and to crew government-owned supply ships for the military. In addition, the Jones Act ensures that only DHS vetted, well-trained U.S. citizen civilian mariners are crewing ships moving on our inland waterways and in the trades to Hawaii, Alaska, and Puerto Rico, and Guam.

Q: Why do labor unions care so much about the Jones Act?

A: Our members are engaged in the crewing and shipbuilding industries supported directly and indirectly by the Act. Our members are also beneficiaries of related maritime cabotage laws, including the Passenger Vessel Services Act of 1886 and the Dredging Act of 1906, which support union jobs in the marine passenger transportation and dredging industries, respectively. Beyond employment, the Jones Act creates a framework for safe, good-paying jobs set against an increasingly exploitative international shipping paradigm that routinely ignores workers' rights and profits on inhumane employment practices.

Q: Why is the Jones Act such a hot-button issue related to Puerto Rico's recovery?

A: With Puerto Rico recovering from the devastation created by Hurricane Maria, incorrect information was reported about how the Jones Act applies to the territory. Most notably, a pervasive myth spread that the Jones Act excluded the shipment of goods from foreign countries on foreign-flag ships to Puerto Rico. This is completely false. The Jones Act <u>does</u>

not require that cargo from foreign countries destined for Puerto Rico be shipped on U.S. vessels – more than two-thirds of ships that service the territory are foreign-flag ships. In addition, myths have been spread about how the Jones Act increases the costs of goods. A 2013 GAO report on this specific topic determined that these claims had no clear evidentiary basis. Additional data recently submitted to Congress suggests that Jones Act rates are comparable, and sometimes lower, than foreign shipping rates to nearby Caribbean islands.

CABATOGE LAWS

Q: What are cabotage laws?

A: Cabotage is the transportation of goods and passengers between two places within a country. While restrictive practices began along coastal routes – coastwise trade as it is commonly known – in the maritime industry, today cabotage laws apply to the aviation and road transportation industries. In the U.S., laws regulating coastwise trade date back to 1789 as a means to encourage the development of merchant marine for defense auxiliary and commercial purposes.

Q: Do other countries have cabotage laws?

A: Yes. Most nations with seafaring histories have cabotage laws regulating coastwise trade, with requirements restricting foreign access to the crewing, building, and ownership of vessels engaged in point-to-point domestic trade. According to the U.S. Maritime Administration (MARAD), at least 47 nations have laws regulating aspects of coastal trade – including both developed and developing nations, such as Japan and China – regulating some aspect of coastal trade.

Q: Does shipbuilding operate in the type of free market that Jones Act opponents claim?

A: No. Claims that the Jones Act is a protectionist measure that impedes an otherwise free market environment ignores the subsidies other nation states provide to develop their shipbuilding industries. For example, the two leading shipbuilding nations by tonnage, China and South Korea, provide both explicit and implicit subsidies to lower the price of shipbuilding in order to increase worldwide market share. In China's state-owned shipyards, a combination of preferential interest rates, state managed mergers and acquisitions, state created investments funds, and the encouragement of bank financing have conspired to create a 20 percent subsidy to purchasers of Chinese vessels. This has created an overproduction of ships that outstrips demand, and today China and South Korea are both experiencing financial losses in this sector. In this context, it is clear that repealing the Jones Act would not create some magical free market in shipbuilding, but simply serve as a means to dump excess Chinese and Korean ships into the large U.S. coastwise market.

Q: Is the Jones Act still necessary to support U.S. military needs?

A: Yes. The law ensures the U.S. Armed Forces can access and use private sector vessels and civilian mariners to assist military and humanitarian efforts. Right now, the United States Transportation Command – which manages the country's global defense transportation system – finds that we are short approximately 2,000 mariners to meet U.S. sealift needs. According to testimony provided by the Obama Administration, repealing the Jones Act would exacerbate the mariner shortage and imperil defense-related shipbuilding, which in turn would endanger our national defense and increase the costs of maintaining military shipyards. In the words of Obama's Maritime Administrator: "without the Jones Act…I can't support DOD, I can't support national security."

THE SITUATION IN PUERTO RICO

Q**:** Is the Jones Act preventing relief supplies from getting to Puerto Rico?

A: No. The Jones Act does not force Puerto Rico to turn away relief supplies that did not come from the United States, nor does it require all cargo shipped to Puerto Rico come through the United States. By law, the Jones Act only regulates point-to-point activity between the U.S. and Puerto Rico; it does not regulate shipping between Puerto Rico and other destinations. According to the GAO, more than two-thirds of the ship visits to Puerto Rico are from foreign-flagged ships bringing cargo from foreign countries. In fact, most of Puerto Rico's fuel imports are transported to the territory on foreign flag vessels from Canada and Europe.

Q: So if the Jones Act is not preventing relief supplies, what is the problem?

A: The storm devastated the territory's infrastructure, making it difficult to distribute goods that sit at ports. Put differently, the problem is not inadequate ships; the problem is inadequate inland infrastructure, including impassable roads that make the distribution of goods nearly impossible.

Q: Is the Jones Act responsible for increasing the price of goods? Does it "double" costs?

A: No. Critics of the Act claim it increases shipping costs to Puerto Rico, and that this in turn increases consumer prices. Some have gone so far as to suggest the Jones Act doubles the price of goods. This is simply not true, and the answer is more complicated than the studies put forward by right-leaning think tanks suggest. Only two independent, nonpartisan sources have examined this issue, the U.S. International Trade Commission (ITC) and the Government Accountability Office (GAO). Following years of analysis, the ITC's most recent report on the matter found that it was "unable to estimate" the cost of the Act. The GAO more recently determined that "because so many other factors besides the Jones Act affect rates, it is difficult to isolate the exact extent to which freight rates between the United States and Puerto Rico are affected by the Jones Act."

Q: Why did they reach these conclusions?

A: First, comparing Jones Act rates with foreign-flag shippers is like comparing apples and oranges. Both the ITC and the GAO found that it is impossible to make a determination as to how repealing the Jones Act would affect shipping rates. This is because it is impossible to conclude which American laws would apply to foreign vessels if they were allowed to operate in domestic shipping trades. For example, if foreign ships were allowed to operate coastwise in the United States, it is likely that some laws – including tax, environmental, and complicated immigration laws – would apply. This would obviously increase the costs to foreign shippers and negate the freight benefits they advertise, all of which are predicated on escaping tax, labor and environmental laws.

Second, repealing the Jones Act would likely not result in magical freight and consumer price savings. The reason? Puerto Rico is a series of islands, which means shipping costs are unavoidable. In fact, the vast majority of transportation costs between the U.S. mainland and the territory are fixed items: containers/chassis, warehousing and inventory costs, fuel, port charges and other expenses unrelated to the Jones Act. To this point, a major carrier – Crowley Maritime – that provides both Jones Act and foreign-flag services to other Caribbean islands, has presented freight cost estimates to Congress showing that Jones Act transportation costs to Puerto Rico are comparable, and sometimes cheaper, than foreign-flag operations.

Q: Are there any shipping benefits that Jones Act provides to Puerto Rico?

A: Yes. The Jones Act provides a unique, dedicated and reliable supply chain to the territory that is unlikely to be replicated. The GAO found that "the law has helped to ensure reliable, regular service between the United States and Puerto Rico – service that is important to the Puerto Rico economy." This is noteworthy because many goods imported by Puerto Rico are perishables and require on-time delivery. The Jones Act meets the real-time demands of inventory managers who rely on prompt shipping to stock shelves and defray otherwise expensive Puerto Rican warehousing costs. According to the GAO, "[i]f the Jones Act were exempted, foreign carriers that currently serve Puerto Rico as part of multiple-stop trade route would likely continue this model to accommodate other shipping routes to and from other Caribbean destinations or world markets rather than provide dedicated service between the United States and Puerto Rico, as the current Jones Act carriers provide." In short, the foreign-flag operations that seek to replace Jones Act service would only reach Puerto Rico after long, multi-port trade routes that are more susceptible to delays, like weather, and would be unable to furnish goods as quickly.

THE JONES ACT AND THE U.S. VIRGIN ISLANDS

Q: If the Jones Act applies in Puerto Rico, why does it not in the U.S. Virgin Islands?

A: Puerto Rico and the U.S. Virgin Islands operate under different legal structures. Since the 1917 enfranchisement of citizenship, U.S. federal law has generally automatically applied to Puerto Rico, just as it would in any American state. Therefore, the Jones Act

applies in the same manner as it does throughout the United States. The U.S. Virgin Islands operate under an entirely different legal structure in which the application of federal laws are not automatic. Congress must enact legislation applying federal laws, including the Jones Act, to the U.S. Virgin Islands for them to take effect.

Q: Are there any other reasons that the U.S. Virgin Islands are treated differently?

A: Yes. First, Puerto Rico is considered a domestic destination under U.S. customs law, whereas the U.S. Virgin Islands are outside the U.S. customs territory, and therefore are treated as an international destination for the movement of goods, and the Jones Act does not apply. Second, historically the Jones Act has been applied to large U.S. territories. For example, both Hawaii and Alaska were subject to the Jones Act as non-contiguous territories before they became states. Puerto Rico has a population of 3.598 million, whereas the U.S. Virgin Islands has a population of 103,574. In 1936, Congress expressly gave the President discretionary authority to apply the Jones Act to the Virgin Islands – an authority the executive has never used. In fact, when making that decision, Congress specifically contrasted the Virgin Islands with Puerto Rico, determining "[t]hat the situation with reference to [Puerto Rico] being exempted from the coastwise shipping laws was entirely different from the Virgin Islands; because the Virgin Islands are not a producing country or a producing insular possession to any extent."

JONES ACT WAIVERS

Q**:** Does the federal government provide Jones Act waivers?

A: Pursuant to 48 USC § 501, federal law grants the Department of Homeland Security (DHS) the authority to waive the Jones Act for national defense purposes. For emergencies, the executive branch has granted waivers when insufficient U.S.-flag ships are available. This has included hurricanes Katrina, Rita, Sandy, Harvey as well as the Exxon Valdez and Deepwater Horizon oil spills.

Q: Why were waivers granted for other disasters and not immediately for Puerto Rico?

A: As mentioned above, there is not an absence of available ships to transport U.S. mainland goods to the territory. Destroyed internal infrastructure is the deterrent to goods distribution. More pointedly, waivers for the Gulf Coast were based on fuel and oil tanker shortages. To date, Puerto Rico has had no problems getting gasoline, diesel fuel and other supplies to the island, which is the reason for the different treatment and why a waiver is not appropriate right now.

Q: Does the labor movement support waivers, including for Puerto Rico?

A: Yes. Labor will support any waiver of the Jones Act when merited to ensure that supplies are provided in emergencies, including to Puerto Rico. The labor movement has donated supplies and sent workers by airplane to help rebuild Puerto Rico, and we stand with the territory in helping in whatever way possible to improve the short and long-term

recovery effort. This includes real solutions like debt relief, economic stimulus, and a long-term redevelopment of destroyed infrastructure. However, to date, the problems facing the territory have nothing to do with insufficient U.S. flag ships. Instead, destroyed inland infrastructure, including roadways, have been the barrier to the distribution of resources within Puerto Rico. Waiving the Jones Act, temporarily or otherwise, cannot change this central fact.

THE JONES ACT AND JOBS

Q: Does the Jones Act really create good jobs and have economic benefits for the economy?

A: Yes. For starters, the 40,000 Jones Act vessels operating in domestic trade support 500,000 American jobs and approximately $100 billion in annual economic output. The Act has a substantial multiplier effect, creating five indirect jobs for every direct maritime job, which results in more than $28 billion in labor compensation. Notably, many of these are the type of good, unionized jobs that are become increasingly scarce as income inequality, union-busting, and related forces undermine a strong middle-income labor market.

LABOR AND HUMAN RIGHTS ISSUES RELATED TO THE JONES ACT

Q: How are U.S. ships treated compared to most foreign-flag operations?

A: U.S. ships – and their crews – are held to higher standards and legal scrutiny than competing foreign ships that operate in international shipping. U.S.-flag ships are subject to stringent American labor, tax, safety and environmental laws, and because workers in the United States have the ability to form and join unions, these jobs offer good pay, decent benefits and safe working conditions.

Q: What are the rules that these foreign shippers operate under?

A: Under international law, and the admiralty laws of most states, commercial ships must be registered in a single country, which in turn exercises regulatory control over the vessels and certifies the safety of ships, their crews, and ensures compliance with environmental standards. Traditionally, shipowners registered vessels in their home country and retained legal responsibility for their actions. However, since the 1920s, under the prevailing "flags of convenience" (FOC) model, commercial vessels register in countries with "open registries" that are different from their true country of origin. Consequently, the ships contain virtually no link to the flag states in which they are registered. The FOC system has proven to be extremely profitable not only for the vessel owners and shipping companies that utilize open registries, but also for the countries that operate the lax registries.

Q: How does this model work and what are its implications?

A: FOC/open registry model serves as a form of regulatory arbitrage. Specifically, it allows the true shipowner to conceal their identity and prevent them from being held civilly or criminally liable for a ship's actions. According to the Organization for Economic Cooperation and Development **(**OECD), this model makes it easy to create "a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known," and makes true ship owners "almost impenetrable" to law enforcement. In fact, the most standardized definition of FOC states that "the country of registry has neither the power nor the administrative framework to effectively impose domestic or international regulations; nor does it wish to exert control over the companies."

Q: How much share of the shipping market do FOC operations have?

A: As of 2015, more than 71 percent of commercial cargo was assigned to open registries. Of this share, the open registry nations of Panama, Liberia, and the Marshall Islands – which feature incredibly lax adherence to regulations, labor and wage standards – account for almost 40 percent of the world fleet.

Q: What does this have to do with labor rights?

A: A major function and incentive of the FOC model is to allow ship owners to find cheap, exploitable crews to man ships without the traditional wage, human welfare, and safety benefits required in established, closed registry countries. Common issues on FOC ships include abandoning seafarers at distant ports and refusing to pay wages. As the International Transport Worker Federation notes, these ships "do not enforce safety standards" and often lack "minimum social standards or trade union rights." According to scholars, FOC ships, which carry an estimated 220,000 seafarers, have a fatality rate 1.2 times higher than the world average and three times higher than identified closed registry countries, such as England.

FOC, THE JONES ACT, AND PUERTO RICO

Q: What does all of this have to do with Puerto Rico?

A: As it stands, 67 percent of all goods that service Puerto Rico come on foreign-flag ships. Of these ships, the GAO finds the predominant foreign servicers of the territory are the notorious flag-of-convenience nations of Panama, the Bahamas, Antigua, Barbuda, and Liberia. For Panama – which is the largest open registry nation – crews are primarily from China and the Philippines.

Q: So what will happen from a labor standpoint if Puerto Rico is exempted from the Jones Act?

A: Thousands of good-paying domestic jobs in unionized industries would be endangered or eliminated. In place of these jobs, foreign-flag vessels – and particularly FOC – would service the entire Puerto Rican market, denying meaningful labor rights to workers who would serve under unsafe conditions and minimal salaries. As the Maritime Administration finds, foreign ships pay substantially less in wages and benefits than U.S.-flag ships and do not observe safety rules that restrict "the number of hours a mariner can work." As the Mercatus Center – an anti- Jones Act think tank funded by the Koch brothers – proudly notes, removing the Jones Act is about "the globalization of seamen's services…that has provided a supply of lower-wage seamen from low-income countries." Put more bluntly, this is about finding the most exploitable workers to pad shipping companies' profits.

FOC, THE JONES ACT, AND THE ENVIRONMENT

Q: What kinds of issues do flag-of-convenience carriers pose for the environment?

A: From an environmental standpoint, FOC ships are a major obstacle to alleviating the problem of maritime pollution due to lack of regulatory enforcement, and inexpensive, untrained crews. For example, FOC tankers are considered more prone to accidents and more likely to emit excessive operational discharge than tankers registered in traditional maritime nations. Given that FOC tankers carry most of the world's oil, this has led scholars to find FOC as a major culprit for oil pollution at sea.

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