September 18, 2019

Dear Representative:

When the Transportation and Infrastructure Committee meets to markup the Fair and Open Skies Act (H.R. 3632), on behalf of hundreds of thousands of U.S. aviation workers and millions of union members throughout the United States, we respectfully urge you to vote for the legislation. The bill requires the U.S. DOT to determine whether anti-worker employment models undermine the public interest, uphold labor standards enshrined in the U.S.-EU aviation agreement, and will help to ensure the U.S. airline industry remains a source of good jobs. A very similar bill passed this Committee last Congress, was included in last year's House-passed FAA bill, and enjoys wide, bipartisan and bicameral support.

Since the early 1990s, U.S. Open Skies policy has liberalized aviation services to increase market access opportunities for airlines, passengers, nation states, and employees. This policy framework has largely succeeded because it provided a fair and equitable opportunity for countries to compete, increased the marketplace for aviation services, and created good jobs for workers – both domestic and foreign. Labor unions have traditionally supported this model of growth; however, the success of the system is predicated on proper enforcement, fair terms for competition, and the protection of labor standards, rather than their diminishment.

Unfortunately, the dynamism of Open Skies is threatened by the incipient growth of flag of convenience airlines. This business practice, in which a company – in this case, an airline – establishes a subsidiary in a country other than its home country expressly to take advantage of other countries' more lenient labor, tax, and safety laws. These operations serve no business purpose other than to avoid collective bargaining rights, safety regulation, and high-road employment standards. By exploitatively playing different countries' regulations against one another, these air carriers are an affront to the very premise of Open Skies policy, which are predicated on a level playing field for all parties, including U.S. airlines and U.S. airline employees who observe stringent labor and safety rules.

This business model is nothing new. Flags of convenience largely decimated the U.S. maritime industry, reducing U.S.-flag shipping from 25 percent of world shipping tonnage to 2 percent while shrinking U.S. maritime employment by 88 percent. This drastic destruction of a U.S. industry was not the result of innovation or technology; instead, it was simply that shipping companies began pretending they were based in Liberia, Panama, and the Marshall Islands in order to avoid the application of any meaningful legal standard for employment, taxation, and safety.

The Fair and Open Skies Act seeks to prevent the airline industry from repeating the mistakes of the past. Specifically, the bill simply requires that the DOT uphold its time-honored, multi-factor public interest test, examine whether a new foreign air carrier is a flag of convenience, and requires that new entrant European carriers comply with the U.S.-EU Open Skies Agreement. These modest reforms will give the DOT the tools to protect U.S. workers and U.S. airlines against forum shopping for the lowest regulatory regime and violations of our aviation trade agreements.

We believe the record must reflect that the concerted effort to distort this bill's intentions are as unfortunate as they are misleading. First, the public interest test is a familiar, proven tool used by the DOT since before the inception of the Open Skies framework. In fact, the U.S. DOT has used this test for every foreign air carrier permit application for over 70 years except for the two instances in which a carrier was labeled as operating a flag of convenience. Second, the legislation would not bar any airline because of its labor practices. Rather, it would simply require the existing public interest test, which examines 16 items at present, to consider whether a carrier is operating a flag of convenience in its overall

analysis. Third, the legislation does not apply to existing carriers; it is prospective. Finally, the bill will not trigger retaliation from Europe. The bill merely requires European carriers to comply with the terms of the U.S.-EU Open Skies Agreement, which itself provides a formal consultation and mediation process for handling disputes if they arise, and it expressly prohibits unilateral retaliation.

The U.S. aviation industry has flourished under the Open Skies model because it drove employment, route and airline growth through fair market opportunities for nation states, carriers, and workers. Flags of convenience by their nature fly in the face of fair competition and a rules-based aviation trade regime. The Fair and Open Skies Act restores integrity to our foreign air carrier licensing process; it passed the House last Congress, and it simply gives the DOT the tools to uphold the standards at the heart of our international aviation system. Collectively, we ask that you vote in favor of this important legislation.

Sincerely,

Air Line Pilots Association, International
Allied Pilots Association
American Federation of Labor and Congress of Industrial Organizations
Association of Flight Attendants, CWA
Association of Professional Flight Attendants
Coalition of Airline Pilots Associations
International Association of Machinists and Aerospace Workers
International Brotherhood of Teamsters
International Organization of Masters, Mates & Pilots
Marine Engineers Beneficial Association
Maritime Trades Department, AFL-CIO
National Air Traffic Controllers Association
NetJets Association of Shared Aircraft Pilots
Professional Aviation System Specialists
Seafarers International Union
SMART Transportation Division
Southwest Airlines Pilots Association
Transportation Communications Union
Transportation Trades Department, AFL-CIO
Transport Workers Union of America
United Steelworkers
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