

July 18, 2022

The Honorable Jim McGovern  
Chairman  
Committee on Rules  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom Cole  
Ranking Member  
Committee on Rules  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman McGovern and Ranking Member Cole:

As you meet to consider amendments filed to the appropriations minibuss, H.R. 8294, the undersigned labor organizations urge you to rule in order the bipartisan Amendment 59 to Division A, offered by Representatives Kahele, Ferguson, and Berman. This bipartisan amendment helps to ensure new foreign airlines who seek a permit to the United States do so under conditions consistent with decades of U.S. policy concerning the interests of U.S. employees and competitiveness of U.S. airlines. As bad actor new entrants will continue to seek access to the U.S. market, it's crucial this amendment is included in the final bill passage.

Our labor organizations ask your assistance to prevent flag-of-convenience airlines, labor arbitrage, and evasions of our labor trade agreements through the licensing of foreign air carriers. The U.S. Department of Transportation (DOT) has — to date — failed to assert the statutory public interest items Congress has tasked it with, including those that affect U.S. employees, when granting foreign airlines access to our market. To end this evasion of the agency's mission and protect the rights of workers, Congress should limit funding for foreign air carrier licensing unless the DOT places conditions on prospective air carrier permits.

Since the early 1990's, 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 generally 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. Under this business practice a company — in this case an airline — establishes a subsidiary in a country other than the base of its majority ownership 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, the rules of fair competition, and high-road employment standards. Flags of convenience have resulted in the decline of the U.S. marine shipping industry and the subsequent growth of exploitive working conditions throughout the globe in that sector.

Beginning in 2013 Norwegian Air International (NAI), a deliberately constructed flag-of-convenience airline based its operations in Ireland and placed flight crews under contracts governed by the labor laws of non-EU countries, including Singapore and Thailand, to vitiate their collective bargaining rights. For decades, Congress has tasked the DOT with examining public interest criteria when determining a foreign airline's fitness for operation, including a prospective air carrier's effect on workers and the competitiveness of incumbent U.S. carriers. Despite DOT performing a public interest analysis for every foreign entrant for 75 years prior, the agency chose to ignore Congress and grant NAI an air operating certificate over the objections of Congress, labor unions, and many U.S. airlines.

In 2014, Democrats on both sides of the Capitol pushed for an aggressive provision in their respective FY 2015 transportation appropriations bills to curb the U.S. DOT from making a mistake, with the Republican-controlled House adopting and passing this reform. Unfortunately, the provision was watered down to have no effect during conference, and the DOT subsequently chose to ignore Congress and its own responsibility by granting a flag-of-convenience airline access to the U.S. We anticipate similar threats and believe it is necessary for Congress to revisit this issue and provide a remedy to protect U.S. workers in licensing matters on the horizon.

Specifically, Congress should require the DOT to apply close public interest scrutiny through imposing conditions on an air carrier permit that give meaning and effect to the public interest factors the legislative branch put into law. The Department's authority to impose such conditions is unquestionable, and indeed was recognized by the D.C. Circuit in litigation related to the Norwegian case. The DOT regularly imposes conditions on permits, and Congress has the right to tell the Department when to focus on certain criteria that it has previously tasked it with but for which the Department has refused to exercise.

The U.S. aviation industry has flourished under the Open Skies model because it drove employment and growth through fair and equitable 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. By using its authority over executive branch spending, Congress can restore integrity and balance to international aviation. Please rule in order this important amendment for American workers.

Sincerely,

Air Line Pilots Association, International  
Allied Pilots Association  
American Federation of Labor and Congress of Industrial Organizations  
American Train Dispatchers Association  
Association of Flight Attendants, CWA  
Communications Workers of America  
International Association of Machinists and Aerospace Workers  
International Brotherhood of Teamsters  
International Longshoremen's Association  
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 Safety Specialists  
Sailors' Union of the Pacific  
Seafarers International Union  
SMART  
SMART-Transportation Division  
Southwest Airlines Pilots Association  
Transportation Communications Union/IAM  
Transportation Trades Department, AFL-CIO  
Transport Workers Union of America  
UNITE HERE  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union

cc: The Honorable Nancy Pelosi  
The Honorable Rosa DeLauro