

## CATO'S JONES ACT ANALYSIS MISSES THE LAW'S NATIONAL, HOMELAND, AND ECONOMIC SECURITY BENEFITS

The recent policy analysis by the Cato Institute (“CATO”) about the Jones Act misstates the law’s national security benefits, ignores its contribution to homeland security, and mischaracterizes its economic contribution to our nation.<sup>1</sup> The Jones Act continues to enjoy broad bipartisan backing today because it supports American jobs and the U.S. economy, preserves our ability to defend our nation, and makes our nation more secure.

*1) CATO argues that the contributions of the Jones Act fleet to national security have been “trivial at best” without acknowledging that military leaders consider it vital to American sealift capacity.*

CATO asserts that the Jones Act is “irrelevan[t]” to national security. However, CATO fails to even mention that some of the strongest supporters of the Jones Act are military leaders. It is difficult to imagine how any serious paper analyzing the national security impact of the Jones Act could be written without at least acknowledging the strong support of the U.S. Department of Defense.

CATO sarcastically refers to “those who actually believe the law is essential to national security.” Notable vocal “believers” include Secretary of the U.S. Department of Defense James Mattis; Vice Chairman of the Joint Chiefs of Staff Gen. Paul Selva; former U.S. Coast Guard Commandant Admiral Paul Zukunft; multiple four-star generals who have led the U.S. Transportation Command, which oversees all military cargo logistics; multiple commanders of the U.S. Military Sealift Command; Secretary of the U.S. Department of Transportation Elaine Chao; and national security experts in Congress and beyond. For example:

- Gen. Selva said, “I am an ardent supporter of the Jones Act. [The Act] supports a viable ship building industry, cuts cost and produces 2,500 qualified mariners. Why would we tamper with that?”<sup>2</sup>
- General Darren W. McDew, Commander of U.S. Transportation Command, called the Jones Act “part of the overall readiness of our maritime industry and our ability to go to war.”<sup>3</sup>
- Congress adopted a resolution as part of its National Defense Authorization Act that

**“CATO fails to even mention that some of the strongest supporters of the Jones Act are military leaders who recognize the importance of the law to national security.”**

<sup>1</sup> Colin Grabow, Inu Manak, & Daniel J. Ikenson, *The Jones Act: A Burden America Can No Longer Bear*, CATO

<sup>2</sup> Gen. Paul Selva, then commander of the U.S. Transportation Command, now vice chairman of the Joint Chiefs of Staff (2015).

<sup>3</sup> Gen. Darren McDew, commander of the U.S. Transportation Command (2017).

described the Jones Act and the domestic fleet as “essential to national security.”<sup>4</sup>

Unbiased experts consistently have found that the Jones Act contributes to the security interests of the United States. The U.S. Government Accountability Office (“GAO”) said recently, “[T]he military strategy of the United States relies on the use of commercial U.S.-flag ships and crews and the availability of a shipyard industrial base to support national defense needs” and added that “the original goal of the [Jones] Act remains important to military preparedness.”<sup>5</sup> Even Adam Smith, the father of the free-market philosophy that the CATO think tank espouses, has described cabotage laws like the Jones Act as the rare exception to his free-trade principles. In *Wealth of Nations*, Smith called the British cabotage laws “the wisest of all commercial regulations” because of their importance to national security.<sup>6</sup>

**“In *Wealth of Nations*,  
Adam Smith called the  
British cabotage laws  
‘the wisest of all  
commercial regulations’  
because of their  
importance to national  
security.”**

CATO errs in its analysis of the national security benefits of the Jones Act by focusing mainly on the number of ships that enter a warzone. In fact, military leaders have historically emphasized the importance of the domestic shipyard industrial base, a highly trained mariner pool, an integrated domestic shipping logistics system, and a national maritime infrastructure that is undergirded by the Jones Act. U.S. Maritime Administrator and former Navy Admiral Mark Buzby could have been talking about this CATO analysis when he recently described critics who “have little to no understanding of the national security implications to the mariner pool, the shipbuilding supply chain, and the layer of internal security that would be lost if the Jones Act were to be abolished.”<sup>7</sup>

**2) *CATO ignores the vital role that the Jones Act plays in securing our homeland.***

Moreover, CATO simply ignores the Jones Act’s contributions to homeland security. The Jones Act requires crews of predominantly U.S. citizens aboard domestic vessels. In general, domestic seafarers are required to obtain a Merchant Marine Credential (“MMC”) from the U.S. Coast Guard and a Transportation Worker Identification Credential (“TWIC”) from the Transportation Security Administration. To obtain a MMC and a TWIC, seafarers must undergo extensive background checks by the U.S. government to protect the safety and security of vessels and the critical infrastructure such as ports that they are able to access throughout the nation. Allowing foreign-flagged, foreign-owned, and foreign-crewed vessels to operate through America’s navigational bloodstream would present a new and dangerous precedent and would place an extraordinary burden on federal agencies like the U.S. Coast Guard and U.S. Customs and Border Protection.

<sup>4</sup> Sec. 3503 of H.R. 4435: FY15 National Defense Authorization Bill, *Sense of Congress on the Role of Domestic Maritime Industry in National Security*.

<sup>5</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-13-260, PUERTO RICO: CHARACTERISTICS OF THE ISLAND’S MARITIME TRADE AND POTENTIAL EFFECTS OF MODIFYING THE JONES ACT (March 14, 2013). Publicly released on March 20, 2013, pp. 5, 29.

<sup>6</sup> ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (March 9, 1776)

<sup>7</sup> *Interview: Rear Adm. Mark Buzby, U.S. Maritime Administrator*, MARINE NEWS, November 2017, at 12.

In an age when homeland security has taken on a special importance in our nation, the Jones Act has proven to be an effective and important tool in securing America. Michael Hebert, a Customs and Border Protection official who heads the agency's Jones Act Division of Enforcement, said recently, "Our national security is a layered approach ... There's no way we could enforce our national security laws without the Jones Act."<sup>8</sup>

**3) *CATO argues that the Jones Act has "wrecked havoc on the U.S. economy" without any facts to support that statement and without any reference to the economic benefits it provides.***

A primary argument for CATO is that the Jones Act raises costs. CATO concedes that it does not have any *actual data* to show that costs are raised because of the Jones Act. However, the authors say that they hope to have some data sometime in the future.

CATO highlights a study by the International Trade Commission ("ITC") that estimates Jones Act costs in the billions of dollars. CATO says GAO reviewed the ITC study and found those estimates to be "reasonable." In fact, GAO called ITC's estimates "unclear,"<sup>9</sup> "uncertain,"<sup>10</sup> "unverifiable,"<sup>11</sup> "undeterminable,"<sup>12</sup> "incomplete,"<sup>13</sup> and "unpredictable."<sup>14</sup> GAO was so critical of the ITC study that the ITC no longer attributes a cost to the Jones Act. Nevertheless, opponents of the Jones Act like CATO still cite to ITC's estimates despite the agency's complete disavowal of them.

Without any actual data, CATO embarks on a quest to identify any possible "cost" associated with the Jones Act, no matter how attenuated. Everything from road repairs to irritating our trade partners to train derailments is attributed as a Jones Act cost. CATO recites a series of patently inaccurate anecdotes (e.g., cattle ranchers, hog farmers, salt) to argue its cost point. "Transportation costs," CATO says, "comprise a significant portion of the cost of consumer goods," a statement that is completely unsupported and factually wrong. In the end, CATO is left simply contending that the costs of the Jones Act are significant while conceding there is no data to actually prove it. Even the cherry-picked, misleading examples used to purportedly support its position related to crude oil movements along the East Coast compares apples (foreign-flag vessels operating free from the costs of compliance with domestic laws, e.g., U.S. taxes, immigration, wage and hour, labor) to oranges (U.S.-flag vessels subject to *all* U.S. laws).

CATO even finds a way to criticize the maritime industry for being "the world's most carbon-efficient form of moving goods." As result, according to CATO, the Jones Act industry contributes to pollution whenever merchandise moves on trucks and rail instead of vessels.

---

<sup>8</sup> Michael Hebert, director, U.S. Customs and Border Protection's Jones Act Division of Enforcement (2017).

<sup>9</sup> Letter to Sen. John McCain from Gerald L. Dillingham, associate director, Transportation Issues, GAO, regarding "an assessment of the International Trade Commission's 1995 Analysis of the Economic Impact of the Jones Act," (March 6, 1998), p. 7.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 10.

<sup>14</sup> *Id.* at 4.

Finally, CATO entirely ignores the economic benefits of the American domestic fleet to the United States. For the record, the industry supports nearly 500,000 jobs, generating nearly \$30 billion in labor income each year, and an annual economic impact of nearly \$100 billion. The American domestic fleet of 40,000 vessels is the envy of the world, providing stable, low-cost, and environmentally friendly transportation throughout the United States. Rather than wrecking the American economy, the domestic fleet is a key contributor to it.

***4) The Jones Act exists and enjoys strong support because it provides important national, economic, and homeland security benefits for our nation.***

After criticizing the Jones Act, CATO attempts to reconcile why the law has lasted so long and how it continues to enjoy the overwhelming support of the bipartisan Congress and the Trump administration, which “strongly supports” it. CATO offers a range of reasons, including a suggestion that the Jones Act survives because congressional committees and federal agencies are attempting to protect their own jurisdictional turf.

However, CATO misses the most obvious reason of all. Members of Congress and the Trump administration, like every administration in modern history, have not been interested in policy proposals that would undermine national security, outsource American jobs, transfer entire U.S. industries overseas, benefit foreign countries at the expense of Americans, and reduce U.S. homeland security. The Jones Act is a law that has not only survived but also thrived because it makes America more safe, secure, and strong.

**“Members of Congress and the Trump administration ... have not been interested in policy proposals that would undermine national security, outsource American jobs, transfer entire U.S. industries overseas, benefit foreign countries at the expense of Americans, and reduce U.S. homeland security.”**