

How the Jones Act Sparked Calls of Treason

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Good afternoon. Congress is out, so we've got a story a little off the beaten path for you today.

The Battle Over the Jones Act

In March 2020, a maritime shipping advisory panel offered a simple suggestion to the government: Charge all past and current members of two libertarian think tanks with treason.

It is certainly not the first time a bunch of libertarians angered members of a bureaucratic panel. But this backlash stemmed from criticism of the Jones Act, a century-old law that imposes requirements for shipping between American ports.

Under the rules, vessels shipping cargo between U.S. ports must be American-built, American-owned, and American-crewed. Proponents say the law ensures a hearty U.S. fleet and shipbuilding industry in times of war or other national emergencies. Critics—especially researchers at several libertarian and conservative institutions—argue the law has insulated American shippers and shipbuilders from international competition, leading to a dwindling and aging U.S. merchant fleet and higher prices for consumers.

Debate over the Jones Act today remains as intense as ever, and hurricane relief slowdowns in Puerto Rico have recently brought it to the fore.

The Cato Institute, among other think tanks, published plenty of papers decrying the Jones Act throughout the protectionism-friendly Trump administration. And by early 2020, at least some members of the International Shipping panel of the Maritime Transportation System National Advisory Committee thought consequences were in order.

The advisory committee includes a variety of representatives from the shipping industry, labor groups, state and local governments, and port and water stakeholders. The Transportation Department website notes that the body “does not exercise program management responsibilities and makes no decisions directly affecting the programs on which it provides advice,” yet it still provides a glimpse into the wider domestic shipping industry's concerns and priorities.

After a March 21, 2020 meeting, the international shipping subcommittee sent draft recommendations to the Transportation Department's Maritime Administration, according to a

document the Cato Institute recently obtained from the government. The document, reviewed by *The Dispatch*, broadly discusses the problems of an aging U.S. fleet and insufficient shipping capacity.

Nestled among bullet points recommending policy changes to fix those problems is one labeled, “Unequivocal support of the Jones Act.”

Beneath it: “Charge all past and present members of the Cato and Mercatus Institutes with treason. The President inform the Heritage Institute that he will personally disavow them if they continue to advocate against the Jones Act.”

A Maritime Administration spokesperson confirmed receiving the document from a member of the subcommittee but did not comment on the substance of the recommendation.

The treason idea didn’t make it into the advisory committee’s final recommendations that year. (And no libertarians have been charged with treason on account of criticizing the Jones Act—yet.)

More than two years later, Cato learned about the document through a Freedom of Information Act request. It is unclear whether the recommendation was serious, a joke, or isolated wishful thinking from one or two subcommittee members. Two members of the advisory panel at the time told *The Dispatch* they don’t remember discussing treason charges. One, who asked to remain anonymous, laughed when he heard the recommendation and said it was “totally new” to him. The other, maritime attorney Lindsey Brock of Florida, theorized it was tongue-in-cheek.

But, Brock added, there were strong Jones Act supporters on the panel: “There are probably some who feel that way,” he said of the treason recommendation.

Matthew Boyer, director of media relations for the Mercatus Center, said it “stands by our scholars’ work.”

“American consumers and businesses—especially those in the path of hurricanes—routinely face higher prices and supply shortages due to the Jones Act,” Boyer continued. “Obviously, this was a glib comment in poor taste, but the underlying cost of economic protectionism is anything but funny.”

Members of the Cato Institute point out the rest of the subcommittee’s document is written seriously, leading them to take the treason bullet point seriously. And the second sentence apparently calling for then-President Donald Trump to pressure the “Heritage Institute,” presumably the Heritage Foundation, to support the Jones Act makes that section appear more intentional. A spokesman for the Heritage Foundation did not respond to requests for comment.

Other documents reviewed by *The Dispatch* include emails from Maritime Administration officials broadly signaling frustration with the Cato Institute’s criticism of the Jones Act. (Cato Institute scholar Scott Lincicome writes the **Capitolism** newsletter for *The Dispatch*.)

One email exchange between several officials discusses whether to send a representative to speak at a 2018 Cato conference about the Jones Act. Sending someone to speak at the event was “a bad idea as it would only validate the debate,” one internal email says leaders of the agency decided. “Not to mention 10-to-1 odds in the room and CATO would control what gets messaged to the press.”

Maritime Administration officials may not have wanted to “validate the debate,” but it has nonetheless picked up steam on Capitol Hill. Lawmakers of both parties are broadly supportive of the Jones Act, but Russia’s invasion of Ukraine sparked discussion about loosening the rules to boost energy supply chains and reduce American dependence on Russian oil.

Jones Act requirements most affect consumers in American states and territories that rely heavily on maritime shipping for goods, such as Hawaii and Puerto Rico, especially after natural disasters like September’s Hurricane Fiona. Last month, a foreign-flagged tanker carrying 300,000 barrels of diesel from Texas waited off the coast of Puerto Rico, unable to deliver the cargo until the federal government waived the Jones Act rules.

Over the weekend, President Joe Biden approved a second Jones Act waiver for deliveries to Puerto Rico, which should make liquefied natural gas (LNG) more readily available as recovery efforts continue. Due to a lack of American-flagged and crewed ships capable of transporting LNG, American oil is largely exported on foreign ships.

Eight Democratic lawmakers called on the Department of Homeland Security last month to waive the Jones Act for Puerto Rico for a year to boost the hurricane recovery.

A bipartisan bill, introduced by Rep. Nydia Velázquez and Sen. Mike Lee, would require the government to suspend Jones Act rules for one year for vessels that show their intention to provide disaster relief to Puerto Rico. Velázquez previously introduced a five-year moratorium on Jones Act rules for Puerto Rico in 2017, after Hurricane Maria.

“Too many times, the Jones Act has plagued recovery efforts for certain areas of the United States that have been devastated by natural disasters,” she said in a release.