

NYC Bar Assoc.: Exempt Puerto Rico from the Jones Act Permanently, City Bar Urges

May 11, 2018

The New York City Bar Association is urging Congress to support a permanent exemption from the Jones Act for Puerto Rico, “just as the U.S. Virgin Islands has been exempted from that law’s requirements.”

Independent studies indicate that the Jones Act costs the Puerto Rican economy hundreds of millions of dollars every year, and in 2010 alone cost \$537 million. That’s because, as an island, Puerto Rico imports approximately 85% of its food, a percentage which is likely to increase after the decimation of 80% of its crop value post-Hurricane Maria. In addition to food, Puerto Rico imports chemicals, oil, electrical appliances, machinery and equipment, transport vehicles, and plastics.

The Jones Act requires that all goods shipped between two points within the United States be transported on a vessel at least 75% owned by U.S. citizens, with a crew of at least 75% U.S. citizens, and built in the U.S. By having U.S. consumers indirectly subsidize the domestic shipping industry (in addition to direct subsidies by the U.S. Navy) through these restrictions requiring use of domestic rather than international vessels, Congress sought, in 1920, to bolster the creation of a domestic fleet of ships that could be made available to provide essential support to the U.S. military for transporting cargo by sea in times of war.

The ten-day waiver of the Jones Act the U.S. Department of Homeland Security implemented post-Maria was not sufficient, according to the report. “As the Niskanen Center astutely observed, that was ‘a window that was too short to organize effective transportation of relief supplies by non-American ships.’ What’s more, this ten day waiver took effect at a time when only a few of the island’s 22 ports were usable, with literally ‘thousands of shipping containers’ held up at San Juan due to the ‘heavy damage to roads, computer systems and other critical infrastructure’ necessary to distribute goods from the ports to their ultimate destinations,” states the report.

A 2012 report from the Federal Reserve Bank of New York, titled “Report on the Competitiveness of Puerto Rico’s Economy,” found that the shipping cost for a twenty-foot container from the mainland United States to Puerto Rico was twice as much as the same container from the mainland United States to the Dominican Republic.

“The Jones Act raises the price of energy on the island at a time when Puerto Rican families are suffering through an energy crisis, and it raises the price of food when over 44% of the island is

living in poverty,” the City Bar states in its report signed by its President, John S. Kiernan, and the Chair of its Task Force on Puerto Rico, Roger Juan Maldonado.

“It is important to emphasize that repealing the Jones Act’s restrictions on Puerto Rico would not cost anything for U.S. taxpayers,” the report adds, citing 2016 testimony by Empresarios Por Puerto Rico to The Congressional Task Force on Puerto Rico that it would increase exports from the U.S. to Puerto Rico, directing some \$341 million towards U.S. companies annually, and would therefore generate approximately \$13.5 million in tax revenues.

The report explains that exempting Puerto Rico from Jones Act restrictions “would have little to no effect on the overall scope and purpose of the law and the ability of the U.S. to maintain an effective marine reserve force,” and “limiting the Jones Act exemption to Puerto Rico would not harm national security.” And it adds that “we do not wish the hard-working men and women of the maritime industry any harm, and believe that amending the Jones Act to exempt Puerto Rico—a territory that is roughly the size of Connecticut—will not cause the industry to suffer in any substantial way.” Rather, the report notes that it is “the widely-held understanding that the Jones Act remains law because a group of commercial interests have engaged in an extensive lobbying effort to support the law.” In addition to reaping the legal benefits of the Jones Act, the report states that “shipping companies that are meant to serve the people of Puerto Rico have also resorted to *illegal* antitrust conspiracies to further take advantage of their captive market. By granting monopoly powers to such a small group of shipping companies, the Jones Act made it possible for these entities to engage in illegal price fixing...As long as the Jones Act remains in place, there will be a risk of further antitrust conspiracies.”

The report lists two dozen members of Congress from both parties who support exempting Puerto Rico from the requirements of the Jones Act in whole or in part. A separate list shows a diverse group of economists, Puerto Rican business organizations, human rights groups, political commentators, and consumer rights advocates that have all called for exempting Puerto Rico from the restrictions of the Jones Act. Among these, Colin Grabow of the CATO Institute said last October, “The Jones Act is a swamp creature that’s strangling Puerto Rico.” Mark J. Perry of the American Enterprise Institute, in an op-ed last June, called the Jones Act “obsolete and outdated,” “protectionist,” “anti-competitive,” and a “legislative relic.” Kelly Johnson, VP of Government Affairs at the Campbell Soup Company, last summer wrote to Senator Orrin Hatch, Chairman of the Task Force on Economic Growth in Puerto Rico, “This lack of competition and the regulatory stranglehold raises the cost of food on an island where the poverty rate exceeds 46 percent and the population is experiencing a serious decline.”

Linda Ayala, Executive Director of Asociación Farmacias de Comunidad de Puerto Rico, said, “The provisions imposed under the Jones Act have resulted in an increase in drug prices in Puerto Rico, thus hindering healthcare. The cabotage laws affect small businesses like the community pharmacies we represent, making drugs more expensive in Puerto Rico than stateside. Considering Puerto Rico is in an economic crisis and in the aftermath of Hurricane Maria, we ask and demand that Congress grant a permanent exemption on the Jones Act to lower transportation costs, which will lead to lower prices and a more competitive market.”

Former New York City Council Speaker and current Director of the Power 4 Puerto Rico campaign, Melissa Mark-Viverito, said, “We commend the New York City Bar Association for releasing a comprehensive study that shows what we have known all along: the Jones Act is

costing consumers in Puerto Rico too much and has been crippling the Island's economy for too long and thus an exemption for Puerto Rico is long overdue."

Kathryn S. Wylde, President and CEO of the Partnership for New York City, said, "Puerto Rico's economic future depends on Congressional action to repeal the provisions of the Jones Act that encumber shipping to and from the island. The City Bar Association's report is a valuable contribution to the fight to open up the ports of Puerto Rico for global trade."

The City Bar's report also cites a petition "to waive the Jones Act for Puerto Rico" that gathered half a million signatures in just five days.

The report concludes that "[e]xempting Puerto Rico from the Jones Act, much like the U.S. Virgin Islands, would be a way for Congress to help Puerto Rico's economy at no additional cost to American citizens. The New York City Bar urges a permanent exemption to allow the global markets to help Puerto Rico and remove impediments to its economic growth. There is broad bipartisan support for this exemption from the Jones Act. The time to take action to help those in Puerto Rico is now."

The report can be read [here](#).