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INDIGENOUS PEOPLES OF THE UNITED STATES

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STATEMENT OF CONGRESSMAN ED CASE INTRODUCING BILLS TO MODERNIZE THE JONES ACT

Madam Speaker, today I introduce three bills to end a century of monopolistic closed market domestic cargo shipping to and from my isolated home state of Hawai‘i as well as the other island and separated jurisdictions of our country not part of the continental United States. In doing so, we will break the stranglehold on the peoples and economies of these exposed communities and their resulting sky-high costs of living which results from just a few domestic shipping companies controlling the lifeline of commerce upon which we absolutely depend.

These bills all amend the Merchant Marine Act of 1920, also known as the Jones Act. That federal law mandates that all cargo shipping between U.S. ports occur exclusively on U.S., not foreign, flagged vessels. Additionally, the law requires that these vessels are built in the U.S. and owned and crewed by U.S. citizens.

The Jones Act was enacted in a protectionist era under the guise of preserving a strong national merchant marine. But today it is just an anachronism: most of the world's shipping is by way of an international merchant marine functioning in an open, competitive market. And those few U.S. flag cargo lines that remain have maneuvered the Jones Act to develop virtual monopolies over domestic cargo shipping to, from and within our most isolated and exposed locales - our island and offshore states and territories – that have no alternative modes of transportation such as trucking or rail.

My Hawai‘i is a classic example. Located almost 2,500 miles off the West Coast, we import well over 90 percent of our life necessities by ocean cargo. There are plenty of international cargo lines who could and would compete for a share of that market. Yet only two U.S. flag domestic cargo lines—Matson Navigation and Pasha Hawai‘i—operate a virtual duopoly over our lifeline.

While they are nominally subject to federal regulation, the fact of the matter is that cargo prices have gone in only one direction--up, fast and repeatedly, despite a surplus of international shipping--and it is indisputable that there is no downward market pressure which would otherwise result from meaningful competition. These accelerating cargo prices are not absorbed by the shipping lines, but passed through all the way down the chain, to the transporters, wholesalers, retailers, small businesses, mom-n-pops and ultimately consumers, of all of the elementals of life, from food to medical supplies, clothes, housing and virtually all other goods.

The result is a crippling drag on an already-challenged economy and the very quality of life in Hawai‘i.

The broadest, deepest effects of the Jones Act on Hawai‘i result from its impact on westbound imports from the continental United States to Hawai’i. But Hawai‘i is an export location as well, in key products such as agriculture and livestock. Here the Jones Act also effectively stifles meaningful competition in getting those products to their primary markets on the U.S. Mainland. Because the producers of these products and all that rely for their own livelihood on their successful export have to eat inflated shipping costs, these export industries, which any economist knows are the ultimate key to any economy's prosperity, are also crippled.

Let's take a concrete example: Hawaii's once-prosperous ranching/cattle industry, which is so key to the economic health and the very lifestyle of so much of areas like the rural Big Island, where I was born and raised. That industry depends on getting its product, young cattle, to West Coast pens and transportation hubs in a cost-efficient manner.

There are foreign cargo carriers that specialize, through custom cattle ships and overall sensitivity and adjustment to rancher timetables and needs, in such transport, but the Jones Act outright excludes them from the Hawai‘i-Mainland market. As a result, Hawaii's ranchers are reduced to two crippling, cost magnifying options.

The first is to ship their cargo by foreign carriers to Canada, where they have to go through a myriad of bureaucratic, cost-magnifying gyrations to get their product eventually to their U.S. markets. The second is to beg for the goodwill of the domestic carriers, to whom this is simply a hindrance rather than a major commitment, to ship directly to the West Coast.

And it shows: most of the cattle are first shipped from Hawaii's Neighbor Islands, where the bulk of the cattle industry is located, to O‘ahu, in small “cow-tainers,” where they sit for days in Honolulu Harbor awaiting the return to the Mainland of one of the massive cargo ships designed and utilized for quite another purpose. The result (besides associated higher costs) is in-harbor cattle waste disposal challenges, higher in-transit cattle mortality and lower-weight cattle delivery to market. That's what happens when you try to squeeze a square peg into a round hole.

More broadly, there is much evidence about the direct impact of the Jones Act on shipping prices to noncontiguous areas. At a basic level, the everyday goods that we rely on in Hawai‘i cost much more than on the Mainland, a difference which largely cannot be attributed to anything other than shipping costs.

Last year, the Grassroot Institute of Hawai‘i published a thorough and first-of-it-kind report, “Quantifying the Cost of the Jones Act to Hawai‘i.” The report found that:

- The median annual cost of the Jones Act to the Hawai‘i economy is $1.2 billion.
- The annual cost of shipping to Hawai‘i is estimated to be $654 million higher and prices $916 million higher.
- The Jones Act annually costs each Hawai‘i resident more than $645.

- Thanks to the Jones Act, Hawai‘i has approximately 9,100 fewer jobs, representing $404 million in wages.
- Hawai‘i families across all income groups would benefit from Jones Act reform. In the absence of Jones Act restrictions, those making between $15,000 and $70,000 annually would see an annual across-the-board economic benefit ranging from $78 million to $154 million.
- Annual tax revenues would be $148.2 million higher.
- Focusing solely on the Jones Act requirement that vessels be built in the United States, they found that the build provision results in a 1.2% shipping cost increase for Hawaii. This translates annually to an added cost of $531.7 million to the state's economy, or about $296 per resident. It also means a loss of 3,860 jobs, and $30.8 million less in state and local tax revenues.

In 2012, the Federal Reserve Bank of New York studied Puerto Rico's economy and found that "the high cost of shipping is a substantial burden on the Island's productivity." The New York Fed found that, "[i]t costs an estimated $3,063 to ship a twenty-foot container of household and commercial goods from the East Coast of the United States to Puerto Rico; the same shipment costs $1,504 to nearby Santo Domingo (Dominican Republic) and $1,687 to Kingston (Jamaica)—destinations that are not subject to Jones Act restrictions." There is only one reason why costs are double to ship from the continental United States to a domestic port in Puerto Rico as compared to foreign ports in the Dominican Republic and Jamaica: there is international competition on the latter routes, none on the domestic route and the shipping companies take full advantage of that lack of competition.

The three bills I introduce today say: enough is enough. If you, the continental U.S., wants to continue the Jones Act as to shipping between your locations, that's your business. But don't penalize us island and other noncontiguous locations by throwing us to the monopoly wolves you've created.

The first bill, the Noncontiguous Shipping Relief Act, exempts all noncontiguous U.S. locations, including Hawai‘i, from the Jones Act. The second, the Noncontiguous Shipping Reasonable Rate Act, benchmarks the definition of a "reasonable rate" that Jones Act shipping can charge to within ten percent of analogous international shipping rates. And the third, the Noncontiguous Shipping Competition Act, prevents monopolies or duopolies in noncontiguous Jones Act shipping. Essentially, the bills are intended to lay out options for providing relief for our U.S. noncontiguous areas. We can resolve the issue in many ways, but we must change the status quo which has had such a deep, broad and negative impact on my state and the other jurisdictions beholden to the Jones Act.

The Noncontiguous Shipping Relief Act would allow the noncontiguous jurisdictions to be serviced by non-Jones Act vessels and increase, or in some cases create any, competition in these critical shipping lanes. Again, this is a small portion of the total national Jones Act shipping where it is particularly destructive in application.

Let me address directly the argument offered up by the domestic shippers in defense of the Jones Act: that it contains important labor and environmental protections that would be lost upon repeal. My bill would retain these important protections. Specifically, it provides that all foreign shippers operating under the bill's Jones Act exemptions must comply with the same labor, environmental, tax, documentation, U.S. locus and other laws as are applicable to non-U.S. flag ships and shippers transiting U.S. waters today.

The Noncontiguous Shipping Reasonable Rate Act would define a "reasonable rate" for the noncontiguous domestic ocean trade as no more than ten percent above the rate set by a comparable international rate recognized by the Federal Maritime Commission. Currently, the Surface Transportation Board technically has the authority to adjudicate and set precedent on what a "reasonable rate" is for Jones Act shipping, but it has almost never been used and never to a clear conclusion on what is a reasonable rate. My bill would define reasonable to remove uncertainty. Current Jones Act shipping rates vary widely and there is no central compilation of these rates. The ten percent benchmark would allow for variance but also ensure that Americans in our noncontiguous areas are not forced to pay exorbitant rates way above shipping rates which would otherwise be provided through international competition were the Jones Act not applicable.

The Noncontiguous Shipping Competition Act would exempt shipping routes to noncontiguous jurisdictions from the Jones Act requirements if a monopoly or duopoly exists on those routes. The Jones Act has resulted in the blossoming of monopolies and duopolies in our noncontiguous jurisdictions. To ensure that these communities, which are the most reliant in the country on shipping to receive necessities, are not held hostage to these dominant companies, my bill would give Jones Act exemptions to routes that are not serviced by at least three companies with separate ownership. In short, if a domestic route is in fact in a competitive environment, the Jones Act is less of a problem, but if there is no competition, then the route should be opened up to international competition by rescinding the Jones Act.

Madam Speaker, these long-overdue bills are of the utmost importance to the localities which have long borne the unfair brunt of the Jones Act. It is often difficult to pierce the veil of longstanding custom and understanding to see the real negative impacts of a law and what should instead be. It is even more difficult to change a law which provides a federally created and endorsed monopoly under which no competition exists to hold down prices. Yet clearly the time for these measures is overdue. I urge their passage.

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