September 7, 2017

The Honorable John Thune  
Chairman, Committee on  
Commerce, Science & Transportation  
United States Senate  
511 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Bill Nelson  
Ranking Member, Committee on  
Commerce, Science & Transportation  
United States Senate  
716 Hart Senate Office Building  
Washington, DC 20510

The Honorable Deb Fischer  
Chair, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security  
United States Senate  
454 Russell Senate Office Building  
Washington, DC 20510

The Honorable Cory Booker  
Ranking Member, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security  
United States Senate  
359 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Thune, Chair Fischer, and Ranking Members Nelson and Booker:

As you return to work following the August recess, we write today on the forthcoming process to appoint and confirm two new members of the Surface Transportation Board (STB). Most notably, we believe that you should vet nominees to ensure they have a sound understanding of the economic principles surrounding the freight railroad sector and who will reject misguided efforts to re-regulate our nation’s freight rail industry.

As evidenced by the signers of this letter, the issue is not ideological—it is just common sense. But given the importance of the railroad industry to the national economy, it is nonetheless imperative to install Board members who will carry out their congressional charter, not embark on wholesale policy changes supported only by those seeking backdoor price controls—the same sort of over-regulation and government meddling that nearly drove the industry to ruin four decades ago.

As you know, partial freight rail economic deregulation, which culminated in the Staggers Rail Act of 1980, represents one of the most significant economic policy successes in the history of the United States. These reforms for pricing and routing independence must be preserved, not reversed.
Since 1980, the industry has invested more than half a trillion dollars of its own funds into its networks, with annual investment averaging more than $26 billion over the last few years. According to Towson University’s Regional Economic Studies Institute, major U.S. railroads in 2014 alone supported approximately 1.5 million jobs, $274 billion in annual economic activity, nearly $90 billion in wages, and $33 billion in tax revenues. Moreover, average inflation-adjusted freight rates are down more than 40 percent since 1980.

Unfortunately, some powerful industrial shipping interests have succeeded in opening a proceeding before the STB framed in the language of promoting “competition.” The proposed rule regarding revised reciprocal switching rules that was opened by the STB would reverse three decades of precedent. The STB shockingly argues that its inability—and the inability of the Interstate Commerce Commission before it—to uncover any evidence of anticompetitive conduct on the part of the railroad industry justifies its call for eliminating the post-deregulation requirement that anticompetitive conduct be found before mandatory reciprocal switching could be imposed. The STB is in essence proposing to convict freight railroads for crimes the STB itself concedes they did not commit.

Many industry observers have expressed concern that imposing forced reciprocal switching and reducing rate flexibility will come at the expense of network investment. This unprecedented action threatens railroads, shippers, and consumers with degraded service quality and higher prices on goods, which would naturally follow the resulting reduction in operational efficiencies and private railroad investment.

Over the last 20 years, Congress has repeatedly rejected railroad re-regulation, regardless of political control. On numerous occasions, it has explicitly rejected attempts to eliminate the anticompetitive conduct requirement, recognizing that reducing private railroad investment is not in the public interest. We strongly urge the Committee and Subcommittee to put the re-regulation of freight railroads to bed for the foreseeable future by empowering new Board members who understand this basic economic reality.

Sincerely,

Marc Scribner, Senior Fellow
Competitive Enterprise Institute

James L. Martin, Founder &
Chairman
60 Plus Association

Phil Kerpen, President
American Commitment

Steve Pociask, President
American Consumer Institute

Lisa B. Nelson, CEO
American Legislative Exchange Council (ALEC)

Ashley N. Varner, Executive Director
ALEC Action
Steve Forbes  
Americans for Hope, Growth & Opportunity  
Norman Singleton, President  
Campaign for Liberty  
Andrew F. Quinlan, President  
Center for Freedom and Prosperity  
Timothy Lee, Senior Vice President for Legal & Public Affairs  
Center for Individual Freedom  
Tom Schatz, President  
Citizens Against Government Waste  
Matthew Kandrach, President  
Consumer Action for a Strong Economy  
Hycall Brooks, President  
FaithWorks  
Jason Pye, Vice President of Legislative Affairs  
Freedomworks  
Carrie L. Lukas, President  
Independent Women’s Forum  
Heather R. Higgins, President & CEO  
Independent Women’s Voice  
Andrew Langer, President  
Institute for Liberty  
Seton Motley, President  
Less Government  
Harry C. Alford, President/CEO  
National Black Chamber of Commerce  
Pete Sepp, President  
National Taxpayers Union  
Brady J. Buckner, Director  
Partnership for Innovation & Empowerment  
Ian Adams, Associate Vice President of State Affairs  
R Street Institute  
Karen Kerrigan, President & CEO  
Small Business & Entrepreneurship Council  
David Williams, President  
Taxpayers Protection Alliance  
Judson Phillips, Founder  
Tea Party Nation