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 2051

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

Steve Pociask, President
American Consumer Institute

James L. Martin, Founder & Chairman
60 Plus Association

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

Phil Kerpen, President
American Commitment

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