

# Congress of the United States

Washington, DC 20515

March 2, 2023

The Honorable Joseph R. Biden, Jr.  
The President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20006

Dear Mr. President:

We write to you today regarding the pending nomination of Phillip Washington to be Administrator of the Federal Aviation Administration (FAA). As explained in detail below, Mr. Washington fails to meet both the letter and spirit of the law regarding qualifications to serve as Administrator of the FAA. As such, we urge you to withdraw this nomination immediately and put forward a qualified, competent individual for this critical position.

Congress created the Federal Aviation Agency, the precursor to the modern FAA, in 1958 to “provide for the regulation . . . of civil aviation . . . as to best foster its development and safety, and to provide for the safe and efficient use of the airspace . . . .”<sup>1</sup> That law required, and current law continues to require that, among other things, the FAA Administrator “must be a civilian.”<sup>2</sup> Congress has interpreted “civilian” with exceptional rigidity. Indeed, the conference report for the Federal Aviation Act of 1958 stated “The requirement . . . that the Administrator be a civilian at the time of his nomination means that he shall be a civilian in the *strictest sense of the word*. Thus at the time he is nominated he may not be on the active or *retired list* of any regular component of the armed services . . . .”<sup>3</sup> (emphasis added)

Through the years, Congress and the President have repeatedly put this strict interpretation of the law’s “civilian” requirement into practice when retired military members have been nominated to serve as FAA Administrator. On no less than six occasions, including four occasions during your service in the Senate, Congress has required the passage of legislative waivers, or similar actions, to allow retired military members to serve in the role of Administrator without violating the law.<sup>4</sup> This interpretation is also a bipartisan one; each

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<sup>1</sup> Pub. L. 85-726, 72 Stat. 731.

<sup>2</sup> 49 U.S.C. § 106(c)(2).

<sup>3</sup> H.R. REP. NO. 2556, at 87 (1958) (Conf. Rep.).

<sup>4</sup> See Pvt. L. No. 86-177, 73 Stat. A77 (authorizing appointment of FAA Adm’r Quesada); Pub. L. No. 89-46, 79 Stat. 171 (authorizing appointment of FAA Adm’r McKee); Pub. L. No. 98-256, 98 Stat. 125 (authorizing

previous waiver has been insisted on by a Democratic majority in the House of Representatives as well as Presidents and Senators of both parties. When examined through the lens of the statute’s legislative history and the clear precedents Congress has set with prior FAA Administrators, it is obvious that Mr. Washington, who is a retired member of the Army, is not a “civilian” under the statute. Thus, his appointment requires a change in law, i.e., a waiver, passed by both the House and Senate.

According to the *Wall Street Journal*, your White House spokeswoman recently suggested that a lengthy period of separation from the military post-retirement somehow addresses the civilian requirement in law, with the article stating, “The White House spokeswoman said Mr. Washington has served in civilian roles for more than two decades since retiring from the Army.”<sup>5</sup> The law and congressional precedent are explicitly clear, however. There is no length of time after which a retired member of the military is considered a civilian for the purposes of this statute, as is the case with the statute governing the appointment of the Secretary of Defense. It would not matter if Mr. Washington had served in civilian roles for 50 years—given his status on the Army’s retired list, he would still not be considered a civilian for the purpose of the law and thus require a waiver. Any suggestion to the contrary represents a flagrant disregard for the rule of law. When considering whether to grant a legislative waiver of this requirement, it is incumbent on Congress to examine whether, on balance, the qualifications and experience of the nominee outweigh the concerns of undermining the law. Unfortunately, in the case of Mr. Washington’s record, it is very clear that it does not.

In addition to the requirement that the FAA Administrator be a civilian, the law also requires that the Administrator “have experience in a field directly related to aviation.”<sup>6</sup> Mr. Washington’s resume shows extensive experience in several modes of transportation and it would be fair to say that he has experience in light rail, commuter buses, the electrification of mass transit fleets, and the implementation of “equity” initiatives consistent with the radical social justice movement on the political left. However, his “experience in a field directly related to aviation” is rather lacking.<sup>7</sup> In fact, Mr. Washington’s only experience in a field directly related to aviation is his current position as chief executive officer of the Denver International Airport (DIA). Incredibly, had the Senate acted on his nomination when it was submitted last Congress, Mr. Washington would have had barely 12 months at DIA before becoming the leader of the world’s foremost aviation safety organization.

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appointment of FAA Adm’r Engen); Pub. L. No. 101-47, 103 Stat. 134 (authorizing appointment of FAA Adm’r Busey); Pub. L. No. 102-308, 106 Stat. 273 (authorizing appointment of FAA Adm’r Richards); Pub. L. No. 102-223, 105 Stat. 1678 (authorizing appointment of FAA Adm’r nominee Curry).

<sup>5</sup> Micah Maidenberg & Andrew Tangel, *Biden Pick for FAA Chief Questioned on Experience, Plans for Agency*, WALL ST. J., (Mar. 1, 2023), available at <https://www.wsj.com/articles/biden-pick-for-faa-chief-to-field-questions-on-aviation-experience-3ae83b52>.

<sup>6</sup> 49 U.S.C. § 106(c)(3).

<sup>7</sup> Mark Walker, *Biden’s Pick to Lead F.A.A. Faces Murky Road to Confirmation*, NEW YORK TIMES, (Dec. 26, 2022), available at <https://www.nytimes.com/2022/12/26/us/politics/phil-washington-faa-senate-confirmation.html>.

While airports are undoubtedly part of the aviation field, the contention that less than two years as an airport CEO is “experience in a field directly related to aviation” for the purpose of becoming the FAA Administrator is dubious at best. It is not just that Mr. Washington lacks sufficient aviation experience, but critically he lacks experience in matters of aviation safety. Safety in aviation and the safe use of the national airspace were top of mind during the debates surrounding the Federal Aviation Act of 1958 and, rightfully, continue to be today.<sup>8</sup> When watching the news or following the aviation industry, we are faced with daily reminders of how vitally important aviation safety is to the economic vitality of this country and how the maintenance and enhancement of aviation safety must be the FAA’s top priorities. Unfortunately, Mr. Washington’s total lack of experience on this front is disqualifying.

Finally, there is the matter of Mr. Washington’s other experience. We are told by your Administration that while Mr. Washington lacks extensive aviation experience, he does have extensive experience leading and managing large organizations, and that this is exactly the kind of leadership the FAA so desperately needs. While FAA certainly does need strong management and leadership, Mr. Washington’s time at LA Metro and the Denver Regional Transportation District call into question even this most basic premise. His time in leadership at these organizations left them, at best, in much the same shape he found them. At worst, it left them entangled in legal troubles, corruption investigations, and public embarrassment.<sup>9</sup> This is hardly the vision of bold, transformational leadership.

It is clear from the examination of the relevant statute and legislative history that Mr. Washington would need a legislative waiver, passed by both the House and the Senate and signed by you, in order to be confirmed as FAA Administrator. As stated previously, when considering whether to grant a waiver, Congress must weigh the qualifications and experience of the nominee against the concerns of undermining the law. While this has been a difficult balancing act for some nominees, Mr. Washington is not among that group. From his lack of aviation safety experience to his lackluster management experience to the legal and ethical scandals he has found himself entangled in, it is clear that Mr. Washington is not qualified to be the next Administrator of the FAA. As a result, a legislative waiver required for him to be confirmed and serve will not pass Congress.

We urge you to withdraw this deeply flawed nomination immediately and instead nominate an individual who both meets the statutory qualifications for the position and has the temperament, judgement, and experience necessary to be successful at this pivotal time for the

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<sup>8</sup> S. REP. NO. 1811, at 7-8 (1958).

<sup>9</sup> Steve Scauzillo, *Biden’s pick for FAA chief entangled by sheriff’s probe of LA Metro contract*, L.A. DAILY NEWS (Sept. 19, 2022), available at <https://www.dailynews.com/2022/09/19/bidens-pick-for-faa-chief-entangled-by-sheriffs-probe-of-la-metro-contract/>; Bill Melugin, *LA Metro hotline costing taxpayers thousands per call; whistleblower alleges cronyism*, FOX11 L.A., (Sept. 23, 2020), available at <https://www.foxla.com/news/la-metro-hotline-costing-taxpayers-thousands-per-call-whistleblower-alleges-cronyism>; *Goldstein Investigation: Metro Proposed Spending \$200K On Saunas, Steam Rooms*, CBS L.A., (May 2, 2019), available at <https://www.cbsnews.com/losangeles/news/metro-saunas-steam-rooms/>.

FAA and aviation more broadly. The success of the Nation's aviation system, and the safety of the flying public, are too important to risk on an inexperienced, unqualified nominee.

Sincerely,



Sam Graves  
Chairman  
Committee on Transportation  
and Infrastructure



Ted Cruz  
Ranking Member  
Committee on Commerce  
Science, and Transportation

cc: The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure

The Honorable Maria Cantwell  
Chairwoman  
Committee on Commerce, Science, and Transportation