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Statement on Signing the FAA Reauthorization Act of 2018

October 5, 2018

Today, I have signed into law H.R. 302, the "FAA Reauthorization Act of 2018" (the "Act"). The Act reauthorizes the Federal Aviation Administration's programs through Fiscal Year 2023, further integrates unmanned aircraft systems into the Nation's airspace systems, and enacts one of my Administration's reorganization proposals by creating a United States International Development Finance Corporation.

This Act, however, raises a number of constitutional concerns.

Four provisions of the Act (sections 1305, 1413, 1421, and 1905) require the appointment of officers of the United States in a manner that does not comport with the Appointments Clause.

First, section 1305 of the Act requires the Secretary of Commerce to appoint the members of the Concrete Masonry Products Board (Board), who would be inferior officers, from a list of nominees submitted by concrete masonry product manufacturers. It also provides that, if the Secretary fails to appoint someone from that list within a specified period, "the first nominee for such appointment shall be deemed appointed." The Secretary's failure to make a timely appointment from the list will result in the appointment of an inferior officer by a private party, which would violate the Appointments Clause. Furthermore, the requirement to appoint from a list of nominees, if the list is too limited, may unduly limit the Secretary's constitutional discretion in appointing the members of the Board. In those circumstances, my Administration will treat these requirements as advisory and non-binding.

Second, section 1413 of the Act requires the President to appoint, with the advice and consent of the Senate, certain members of the Board of Directors of the United States International Development Finance Corporation, who would be principal officers, from a list of individuals submitted by members of the Congress. It also requires the President to consult with congressional committees on those appointments. The Appointments Clause, however, gives no role to the Congress in the appointment of officers beyond providing advice and consent for principal officers. Furthermore, mandatory consultation with members of the Congress would violate the anti-aggrandizement principle of the separation of powers. I hope to work with the Congress on these appointments, but will treat the restrictions in these provisions as advisory and non-binding.

Third, section 1421 of the Act requires the President to consult with the Congress in appointing directors of the enterprise funds established by the United States International Development Finance Corporation, who would be inferior officers, to help it carry out its economic development projects. The Appointments Clause, however, gives no role to the Congress in the appointment of officers beyond providing advice and consent for principal officers. Furthermore, mandatory consultation with members of the Congress would violate the anti-aggrandizement principle of the separation of powers. I hope to work with the Congress on all of these appointments, but will treat the restrictions in these provisions as advisory and non-binding.

Fourth, section 1905 of the Act requires the Administrator of the Transportation Security Administration (TSA) to appoint inferior officers with responsibility for significant TSA

functions. Because the TSA is a component of the Department of Homeland Security, the TSA Administrator is not the head of a department authorized to appoint inferior officers under the Appointments Clause. I am therefore directing the Secretary of Homeland Security to ensure that the TSA Administrator only appoints inferior officers with the approval of the Secretary, or else to ensure that the TSA Administrator only designates individuals who are already duly appointed officers and exercising authorities germane to those they would exercise in their new roles.

The Act also raises other constitutional concerns. Section 1910 of the Act requires the TSA Administrator to transmit reports, legislative proposals, and other communications directly to the Congress. If understood to prohibit further supervisory review of these communications, this provision would inhibit the President's constitutional authority to supervise the unitary executive branch, particularly with respect to the dissemination of privileged information and legislative recommendations. My Administration will interpret this provision in a manner consistent with the constitutional authority and obligations of the President.

Several other provisions of the Act (e.g., sections 304, 333(e) and (g), 562(2) and (3), 753(c)(9), and 1959(a)(1)) require the executive branch to adopt a particular foreign policy or to direct negotiations with foreign governments and international organizations. My Administration will implement these provisions in a manner consistent with the President's constitutional authority to conduct foreign affairs.

Finally, certain provisions of the Act (e.g., sections 364(b)(4), 574(c)(2)(I), 1220(b)(3), 1230(b), and 1804(1)) require executive branch officials under the President's supervision to recommend certain legislative measures to the Congress. My Administration will treat those provisions in a manner consistent with Article II, section 3 of the Constitution, which provides the President the discretion to recommend to the Congress only "such Measures as he shall judge necessary and expedient."

DONALD J. TRUMP

The White House,
October 5, 2018.

NOTE: H.R. 302, approved October 5, was assigned Public Law No. 115–254.

Categories: Bill Signings and Vetoes : FAA Reauthorization Act of 2018, signing statement.

Subjects: Aviation Administration, Federal; Congress : Senate :: Presidential nominations, confirmation process; Legislation, enacted : FAA Reauthorization Act of 2018; Presidency, U.S. : Constitutional role and powers.

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