

July 12, 2019

Hon. Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Hon. Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

The undersigned organizations, concerned with government accountability and whistleblower protection, urge you to delay the vote on the nomination of Mr. Stephen Dickson for Administrator of the Federal Aviation Administration (FAA) pending a decision in a whistleblower retaliation case that implicates the nominee.

The Nominee's Role in Alleged Whistleblower Retaliation

Mr. Dickson is personally implicated in a whistleblower retaliation case involving disclosures made by Delta pilot Karlene Petitt.¹ According to Dr. Petitt and her attorney, Dr. Petitt blew the whistle on several matters relating to Delta's non-compliance with federal aviation standards, at least one of which has been substantiated by reviewing authorities.²

In the course of blowing the whistle, Dr. Petitt met with Mr. Dickson, who was then senior vice president of Delta's flight operations, and presented him with a written safety report describing numerous violations of federal aviation standards relating to Safety Management Systems (SMS) policy, pilot training mandates, pilot fatigue programs, and maximum pilot duty limitations mandated under 14 C.F.R. Part 117. After their meeting, Mr. Dickson ordered that Dr. Petitt undergo psychiatric evaluation. That evaluation resulted in a diagnosis of bipolar disorder, prohibiting Dr. Petitt from flying for over a year. Doctors performing subsequent examinations have since found that Dr. Petitt does not have bipolar disorder and have reinstated her right to fly.

While the law permits Delta to refer pilots to psychiatric evaluation when warranted, they cannot do so as reprisal for protected whistleblowing.³ In his deposition to the case, Mr. Dickson confirmed that the ultimate decision in whether to refer Dr. Petitt to psychiatric evaluation was made by him.⁴

While it is indeed possible that his decision to refer her was sound and was not made in retaliation for her whistleblowing, such a finding of fact should be left to the administrative court

¹ Rob Mark, "Second Whistleblower Pilot Speaks Out About Delta Air Lines," *Flying Magazine*, June 13, 2019. <https://www.flyingmag.com/second-whistleblower-speaks-out-about-delta/>

² Curt Devine and Drew Griffin, "FAA nominee OK'd retaliation against pilot whistleblower, lawsuit says," *CNN Politics*, June 3, 2019. <https://www.cnn.com/2019/06/03/politics/faa-nominee-delta-alleged-whistleblower/index.html> (Hereinafter, CNN Story)

³ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) 49 U.S.C. §42121(a)

⁴ CNN Story

to decide. This chamber should wait to advance Mr. Dickson's nomination until such a decision becomes available.

The Nominee's Lack of Candor with the Senate Commerce, Science, and Transportation Committee

Mr. Dickson's alleged role in this whistleblower's retaliation only became known to the Senate committee and the public after his public hearing.⁵ The nominee failed to disclose his involvement in the case despite having ample opportunity in both submitting his nominee questionnaire and in meetings with Committee staff.⁶

According to Mr. Dickson's deposition, he was directly responsible for ordering that Dr. Petitt undergo psychiatric evaluation.⁷ In responding to questions for the record, Mr. Dickson claims to have conferred with several authorities in deciding whether to include this information in his disclosure forms, demonstrating that he understood it could be of interest to the committee, but ultimately chose not to proactively address it.⁸ Even though Mr. Dickson is not a named party to the case, this information is certainly relevant to the committee's review of the nominee's character and treatment of whistleblowers and he should have disclosed it in good faith.

As the head of the Federal Aviation Administration, Mr. Dickson would have opportunity to directly influence the agency's treatment of whistleblowers. Advancing a nominee who made the ultimate decision to order what could be unlawful whistleblower retaliation could chill whistleblowers across the airline industry from coming forward—and the results from that chilling effect could be deadly for the flying public.

Currently, the case sits before an administrative tribunal at the Department of Labor. As the presiding administrative judge scolded Delta's counsel at the end of a hearing:

You can settle at any point you want to, but the facts in this case -- I'm going to lay it out -- I'm going to lay it out -- and from what I'm hearing it's not pretty...you have a pilot that was identified, went through, I'll call it a 'gauntlet,' get reinstated...And I am really troubled by some of these exhibits, about how this referral came to fruition. And I think that that's really -- it troubles me a great deal, I'll just tell you that.⁹

The administrative judge notes that this whistleblower has been put through a gauntlet. The person responsible for running her through this gauntlet is now nominated to lead the Federal

⁵ CNN Story

⁶ Stephen Dickson's submitted responses to Senate Commerce Committee Nominee Questionnaire, 116th Congress, April 19, 2019. <https://www.commerce.senate.gov/public/cache/files/6dab1400-cbf8-40c8-9ad9-d9ef65dde2e2/ED92EDDB8D1C78FFE00D34F7A97491F6.stevendicksonquestionnaire.pdf>

⁷ CNN Story

⁸ Mr. Dickson's written responses to the U.S. Senate Committee on Commerce, Science, and Transportation Committee Nomination Hearing for Administrator of Federal Aviation Administration Questions for the Record, May 15, 2019. <https://www.commerce.senate.gov/public/cache/files/4ce43875-5e5f-4049-8d28-144aa803a249/8B4E708A966CB49348E7C199B9FD6706.qfr-responses-to-minority-questions.pdf>

⁹ Hon. Scott R. Morris, Administrative Law Judge, *Karlene Petitt v. Delta Air Lines*, May 1, 2019

Aviation Administration and failed to disclose his involvement in an active whistleblower retaliation case to the committee during his confirmation process.

Now that it has come to light, we urge you not to advance Mr. Dickson's nomination until this matter has been properly adjudicated through the appropriate fora.

Sincerely,

Government Accountability Project

Project on Government Oversight

Public Citizen

Whistleblowers for America

Cc:

Senate Commerce, Science, and Transportation Committee

Senate Whistleblower Protection Caucus

House Whistleblower Protection Caucus