

9/26

STATEMENT OF THE HONORABLE C. DEAN MCGRATH, JR
ACTING GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION
before the
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION
CONCERNING AMENDMENT OF THE
METROPOLITAN WASHINGTON AIRPORTS ACT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THE DEPARTMENT OF TRANSPORTATION APPRECIATES THE OPPORTUNITY TO BE HERE TODAY TO DISCUSS THE IMPORTANT ISSUE OF RESTORING TO THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY ITS ABILITY TO UNDERTAKE SIGNIFICANT PLANS AND ACTIVITIES TO MAINTAIN AND INCREASE THE EFFICIENCY OF OPERATIONS AT NATIONAL AND DULLES AIRPORTS.

CONGRESS, IN THE "METROPOLITAN WASHINGTON AIRPORTS ACT OF 1986," AUTHORIZED THE CREATION OF THE AIRPORTS AUTHORITY, AND THE OPERATION OF NATIONAL AND DULLES AIRPORTS BY THAT AUTHORITY PURSUANT TO A LONG-TERM LEASE BETWEEN THE AUTHORITY AND THE SECRETARY OF TRANSPORTATION.

ON JUNE 17, 1991, THE SUPREME COURT HELD UNCONSTITUTIONAL THE PROVISION OF THE ACT THAT CREATED A BOARD OF REVIEW COMPOSED OF NINE MEMBERS OF CONGRESS. AS A RESULT OF THIS DECISION, THE AUTHORITY'S BOARD OF DIRECTORS CURRENTLY LACKS THE AUTHORITY TO:

- ADOPT AN ANNUAL BUDGET;
- AUTHORIZE THE ISSUANCE OF BONDS;
- ADOPT, AMEND OR REPEAL REGULATIONS;
- ADOPT OR REVISE THE AIRPORT MASTER PLAN; AND
- APPOINT A CHIEF EXECUTIVE OFFICER.

IT IS CLEAR THAT THE REQUIREMENTS OF SECTION 6007(f) OF THE TRANSFER ACT THAT WERE FOUND UNCONSTITUTIONAL MUST BE REMOVED AND ANY NEW ARRANGEMENT MUST MEET CONSTITUTIONAL MUSTER IF THE AUTHORITY IS TO FUNCTION EFFECTIVELY. WE WOULD LIKE TO SET FORTH THE REASONS WHY WE THINK CORRECTING THE STATUTORY PROVISION IS IMPORTANT.

THE DEPARTMENT OF TRANSPORTATION AND THE ADMINISTRATION REMAIN STRONG PROPONENTS OF LEAVING OPERATIONAL CONTROL OVER THE TWO AIRPORTS IN THE HANDS OF APPOINTEES REPRESENTING THE BROAD INTERESTS OF THE METROPOLITAN AREA, RATHER THAN PLACING AIRPORT OPERATIONS IN FEDERAL HANDS. AS ADMINISTRATOR OF THE FEDERAL LEASE UNDERLYING THE TRANSFER, WE BELIEVE THE AUTHORITY HAS ABLY CARRIED OUT ITS OPERATIONAL ROLE.

WHILE THE DAY-TO-DAY ACTIVITIES OF THE AIRPORTS HAVE BEEN, AND IN THE NEAR TERM ARE NOT LIKELY TO BE, DISRUPTED BY THE SUPREME COURT'S DECISION, WE ARE CONCERNED ABOUT THE

INABILITY OF THE BOARD TO ISSUE BONDS OR TO TAKE OTHER SIGNIFICANT MANAGEMENT ACTIONS. WITHOUT CORRECTIVE ACTION IN THE NEAR TERM, THE LIMITS ON THE AUTHORITY COULD COMBINE TO HAVE A DESTABILIZING EFFECT ON THE TRANSPORTATION FUTURE OF THIS REGION. IT IS, THEREFORE, DESIRABLE TO MAKE THE NEEDED STATUTORY CHANGES TO CONFORM TO THE SUPREME COURT'S RULING, AND TO MAKE THEM SOON.

WE WOULD MAKE TWO FURTHER OBSERVATIONS: FIRST, THIS COMMITTEE AND CONGRESS ALREADY HAVE A CLEAR BASIS FOR OVERSIGHT OF THE AIRPORT AUTHORITY'S ACTIVITIES BECAUSE THE DEPARTMENT OF TRANSPORTATION ADMINISTERS THE LONG-TERM LEASE WITH THE AUTHORITY. THAT LEASE CONTAINS MANY REQUIREMENTS BINDING ON THE AUTHORITY, INCLUDING AN AGREEMENT TO OPERATE AND IMPROVE THE FACILITIES FOR THE BENEFIT OF ALL USERS. THUS, CONGRESS CAN EXERCISE OVERSIGHT HERE AS IT MIGHT OVER THE OPERATION OF ANY LEASED FEDERAL FACILITY -- IN THIS CASE THE OPERATION OF FEDERAL FACILITIES THAT HAVE A SIGNIFICANT EFFECT ON INTERSTATE COMMERCE AND ACCESS TO THE FEDERAL GOVERNMENT.

SECOND, TO ELIMINATE UNNECESSARY LITIGATION, ANY CORRECTIVE LEGISLATION SHOULD EXPLICITLY RATIFY THOSE ACTIONS TAKEN BY THE AUTHORITY THAT WERE CALLED INTO QUESTION BY THE COURT'S DECISION. THIS WOULD BE DESIRABLE IN THE INTERESTS OF STABILITY AND FUTURE PLANNING FOR ALL

INTERESTED PARTIES. IT WOULD END SPECULATION ABOUT THE EFFECTS OF PRIOR ACTIONS UNDERTAKEN BY AUTHORITY ITSELF.

IN CLOSING, MR CHAIRMAN, I WOULD EMPHASIZE THE ADMINISTRATION'S INTEREST IN PASSAGE OF CORRECTIVE LEGISLATION AS SOON AS POSSIBLE. WE APPRECIATE THE OPPORTUNITY TO PLACE OUR VIEWS BEFORE THE SUBCOMMITTEE. THIS COMPLETES MY STATEMENT, AND I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS.