

nominated her to be United States Ambassador to New Zealand. I am sure her tenure as Ambassador will only add to this long and distinguished career.

The overwhelming and bi-bipartisan vote in favor of her nomination by the Senate Foreign Relations Committee should answer any critic that questions her qualifications to be the next ambassador to New Zealand.

New Zealand is an important ally and a vital part of our relations in the Asia-Pacific region. We need an ambassador who will be able to handle all aspects of United States-New Zealand relations and best represent our interests. Carol Moseley-Braun is the right person for that job.

Mr. President, I was proud to serve with Senator Moseley-Braun, I am proud to call her a friend and I am proud to support her nomination to be Ambassador to New Zealand.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Carol Moseley-Braun, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand and Samoa?

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. McCAIN), and the Senator from Arizona (Mr. KYL) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. KYL) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 361 Ex.]

YEAS—96

Abraham	DeWine	Kerrey
Akaka	Dodd	Kerry
Allard	Domenici	Kohl
Ashcroft	Dorgan	Landrieu
Baucus	Durbin	Lautenberg
Bayh	Edwards	Leahy
Bennett	Enzi	Levin
Biden	Feingold	Lieberman
Bingaman	Feinstein	Lincoln
Bond	Frist	Lott
Boxer	Gorton	Lugar
Breaux	Graham	Mack
Brownback	Gramm	McConnell
Bryan	Grams	Mikulski
Bunning	Grassley	Moynihan
Burns	Gregg	Murkowski
Byrd	Hagel	Murray
Campbell	Harkin	Nickles
Chafee, L.	Hatch	Reed
Cleland	Hollings	Reid
Cochran	Hutchinson	Robb
Collins	Hutchison	Roberts
Conrad	Inhofe	Rockefeller
Coverdell	Inouye	Roth
Craig	Jeffords	Santorum
Crapo	Johnson	Sarbanes
Daschle	Kennedy	Schumer

Sessions	Specter	Torricelli
Shelby	Stevens	Voinovich
Smith (NH)	Thomas	Warner
Smith (OR)	Thompson	Wellstone
Snowe	Thurmond	Wyden

NAYS—2

Fitzgerald

Helms

NOT VOTING—2

Kyl

McCain

The nomination was confirmed.

Mr. DURBIN. I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The President will be notified of the action taken by the Senate.

#### NOMINATION OF LINDA JOAN MORGAN, OF MARYLAND, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Linda Joan Morgan, of Maryland, to be a Member of the Surface Transportation Board for a term expiring December 31, 2003.

Mr. HOLLINGS. Mr. President, I rise in support of the nomination of Linda J. Morgan. Today we are considering the nomination of Linda Morgan to be reappointed as the chairman of the Surface Transportation Board. I am proud to say that I have known Chairman Morgan for many years. Although we may not always agree, I have a great deal of respect for her and know that two qualities she possesses in abundance are fairness and integrity. Those qualities, coupled with her commitment to public service, make her an outstanding chairman.

Before I discuss Chairman Morgan's abilities and accomplishments, I would like to comment briefly on the agreement reached between railroad management and labor this week on the cram down issue. As many of you know, the carriers and their employees have been working on the terms of an agreement which would create new rules pertaining to the abrogation of collective bargaining agreements. Yesterday, the parties agreed to a moratorium on the filing of section 4 notices while the negotiations take place to establish new rules. I am pleased that the parties were able to reach a compromise on this important issue and urge the STB to look favorably on this agreement. In addition, I expect to address this issue legislatively next year when we take up the STB reauthorization bill.

As many of you know, Linda Morgan served as counsel for the Surface Transportation Subcommittee for 8 years and then as general counsel for the full Committee on Commerce, Science, and Transportation for seven

years. During that time I found Linda Morgan to be one of the most intelligent and thorough professionals that I have worked with. She is smart and she cares about the issues—I know that she is committed to serving the public in her capacity as the chairman of the Surface Transportation Board.

Linda Morgan has served as chairman of the Surface Transportation Board (STB) since it was created in 1996. Prior to that, she served as chairman of the ICC. In 1996 she was responsible for implementing the changes that Congress envisioned in the Interstate Commerce Commission Termination Act. She pared down the ICC and established a new, more streamlined agency in its place, the STB.

Chairman Morgan is to be commended for her achievements and commitment to the mission of the STB during her first term. The STB operates with only 135 people, less than half the staff of its predecessor, but it is charged with regulating the entire railroad industry. Among her accomplishments, Chairman Morgan has facilitated creating a more efficient process for resolving rate disputes between shippers and carriers. Additionally, under her leadership, she has helped the private sector come to agreements on short line access and agricultural services arbitration which have benefited the entire transportation industry.

Chairman Morgan has done an outstanding job moving the agency through several different places. She successfully transitioned the agency from the ICC to the STB. She has seen the railroad industry through three very large merger transactions. She helped resolve the service issues in the west. And last year she ended the practice of using product and geographic competition in determining appropriate rates for shippers.

Linda Morgan has done a lot of heavy lifting during her tenure as chairman of the STB. She has my full confidence and I support her nomination.

Mr. BURNS. Mr. President, I rise today to oppose the nomination of Linda Morgan. During her tenure as the chairwoman of the Surface Transportation Board, Ms. Morgan has failed to achieve a primary goal of this independent agency—protecting the rights of shippers using rail transportation. Earlier this year, I along with a number of other colleagues, introduced a bill, S. 621, that would help to create competition among rail carriers where that competition does not currently exist due to regional monopolization.

This bill would resolve the economic inequities found around our nation. In my State of Montana, our farmers pay dramatically more for transportation costs than farmers anywhere else in the State. In fact, on a proportionate comparison, Montana's farmers pay more than most other shippers in the world.

Why? I'll tell you why—because nearly the entire State of Montana is captive to the Burlington Northern Santa Fe railroad. In the case of Montana farmers, Montana is captive to BNSF.

I cannot blame Ms. Morgan for this. The board's decision are based on misinterpreted statute that was legislated in the early 80's.

However, I can blame Ms. Morgan for not recognizing this as the case before the shippers asked me and several of my colleagues for assistance. It is inexcusable to treat the Nation's shippers so pitifully. It is arrogant on behalf of the railroads to think that they can take advantage of small shippers using strongarm tactics to determine shipping costs. It should not cost more to ship from Montana to the Pacific Northwest than it costs to ship from the Midwest to the Pacific Northwest—over the same tracks. This is an absurd manner in which to allow a railroad to operate.

Back to Ms. Morgan. It is about time for Congress to recognize the inequities in the rail industry. Competition is based on choice. Without multiple competitors to choose from, we are left with a monopoly. BNSF has a monopoly in Montana and the four behemoths that have evolved since the early 80s when we had over 40 large railroads have monopolies all across this Nation.

Let me quote Ms. Morgan from hearings held earlier this year:

Ms. Morgan has stated, "If Congress feels the statute doesn't work, it's up to Congress to provide a revision to the statute." Mr. President, Ms. Morgan is the chairwoman of the STB and a very intelligent woman. Ms. Morgan has recommended to this body that Congress would need to change the law in order to create an equitable environment. If the STB is saying this, if hundreds of shippers are saying this, if economists are saying this, why won't Congress react? I'll tell you why. Railroad interests in this city have a stronghold on legislation that would take away their ability to charge unchallenged rates.

Ms. Morgan has also stated the following:

"The role of the STB is to allow competition where it exists and protect those where it does not exist." Let me give you an example of where competition does not exist. Competition does not exist in the entire state of Montana. Competition does not exist in the entire state of North Dakota. With four major railroads in the country, regional rail monopolies are very common. Montana was one of the first—we've been captive since 1980.

Another statement from Ms. Morgan. "The board is there to make sure that no rate is unreasonable. The equalization of rates is not inherent in the statute." A goal of the STB is to make sure that no rate is "unreasonable". The STB could define as unrea-

sonable the rate paid by Montana's farmers. These rates are unreasonable! Lastly, Ms. Morgan has indicated that, "The statute does not make competition a priority." I agree with her and that is why I am sympathetic. Her's is a thankless job and until Congress gives the STB the proper tools to decide cases in an equitable manner, it will continue to be a thankless job.

Mr. President, we have an opportunity to do what is right for America. I will not support Ms. Morgan but I will support reform of the STB.

I yield the floor.

Mr. MOYNIHAN. Mr. President, I am pleased to vote to reappoint Surface Transportation Board, STB, Chairman Linda J. Morgan to serve another term on that panel even though I am troubled by some STB decisions concerning the CSX and Norfolk Southern acquisition of Conrail properties in New York State. I am encouraged, however, by Chairman Morgan's responsiveness to my requests, and those of my colleagues, to monitor the freight rail problems that have plagued New Yorkers since the June 1, 1999 implementation of the CSX/Norfolk Southern acquisition. Just last month, Chairman Morgan came to Buffalo to hear the concerns of local shippers.

As she begins her second term as Chairman of the STB, Linda Morgan has presided over the largest rail mergers in this Nation's history. Now the hard part begins. If service failures persist, Chairman Morgan must exercise her statutory authority to impose conditions upon the railroads. This will be no easy task. Revising one's work in the face of significant opposition requires courage. But I am confident that should the public interest so require, Chairman Morgan will respond boldly. Nothing short of the future of freight rail in the United States is at stake.

One additional thought is the role of organized labor in the freight rail industry. I would note that I do not find it fair that an interpretation of current Federal law permits the STB to revisit collective bargaining agreements dozens of years after a merger has been completed. There is a certain logic to providing the STB with the authority to abrogate local, State, and Federal laws to ensure the success of a merger. But the prospect that collective bargaining agreements—private contracts—can be the subject of renegotiation and mediation years after a merger has been consummated is troubling. In the 2nd session of the 106th Congress I will seek legislation to constrict the window of time following the approval of a merger in which unions can be compelled to renegotiate collective bargaining agreements.

In closing, Mr. President, the Surface Transportation Board faces extraordinarily difficult decisions in the next few years. I believe that Linda Morgan's experience as a trusted advisor

and counsel to the Senate Commerce Committee and her chairmanship of the STB have prepared her well for the challenges that lie ahead. I yield the floor.

Mr. LOTT. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Linda Joan Morgan, of Maryland, to be a Member of the Surface Transportation Board? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. McCAIN) is necessarily absent.

The result was announced—yeas 96, nays 3, as follows:

[Rollcall Vote No. 362 Ex.]

YEAS—96

Abraham	Enzi	Lincoln
Akaka	Feingold	Lott
Allard	Feinstein	Lugar
Ashcroft	Fitzgerald	Mack
Baucus	Frist	McConnell
Bayh	Gorton	Mikulski
Bennett	Graham	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grams	Murray
Bond	Grassley	Nickles
Boxer	Gregg	Reed
Breaux	Hagel	Reid
Brownback	Harkin	Robb
Bryan	Hatch	Roberts
Bunning	Helms	Roth
Byrd	Hollings	Santorum
Campbell	Hutchinson	Sarbanes
Chafee, L.	Hutchison	Schumer
Cleland	Inhofe	Sessions
Cochran	Inouye	Shelby
Collins	Jeffords	Smith (NH)
Conrad	Johnson	Smith (OR)
Coverdell	Kennedy	Snowe
Craig	Kerrey	Stevens
Crapo	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Voinovich
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Edwards	Lieberman	Wyden

NAYS—3

Burns Rockefeller Specter

NOT VOTING—1

McCain

The nomination was confirmed.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

#### UNANIMOUS CONSENT AGREEMENT—H.J. RES. 78

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to consideration of the continuing resolution just received from the House, that there be 15 minutes under the control of Senator EDWARDS, and following