

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