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Bush Board Fires David Gunn

BIPARTISAN HEAT OVER LEGALITY OF BOARD ACT

by Richard F. Tolmach

Four Bush appointees to the Amtrak Board of Directors apparently envisioned a bloodless coup November 9 when they suddenly fired Amtrak President and Chief Executive Officer David L. Gunn, widely viewed as the most competent manager of the national passenger railway in years.

However, early reaction from Congress seems to indicate the impetuous act has backfired. Meanwhile, a Republican-led house subcommittee on rail is investigating whether the Bush Administration has violated the Amtrak Reform Act with its appointments, and whether actions taken by the unconfirmed board are legal. The Amtrak Board seems to have made itself the issue, and initiated a major range war with Republicans in Congress over Amtrak governance. By having four Administration appointees the intent of having a nonpartisan board has been thwarted.

Gunn's sudden firing was a slap in the face to rail supporters nationwide, including many Republican members of Congress who think Gunn has done an excellent job in the past three years improving Amtrak's cost-effectiveness without cutting back service.

Only six days earlier on November 3, Senator Trent Lott, (R-MS) and the majority of Republicans led a bipartisan 93-to-6 vote to authorize \$11.6 billion for passenger rail service in the next six years. The strongest pro-Amtrak endorsement in decades, the vote was seen by many as a direct vote of confidence in Gunn's management. Gunn has managed to reduce Amtrak operating costs and improve ridership despite decades of disinvestment in rail infrastructure.

Insiders say the Bush appointees were angry about the Senate action and did not consult congressional Republicans in either house before the firing. "We were completely blindsided," said one House Republican aide, who declined to speak on the record.

It would not be an oversimplification to say that the Amtrak Board conflict with Gunn came about because of the progress Gunn was making in saving Amtrak, at the same time Bush appointees wanted to shut it down and privatize it, starting with the Northeast Corridor. In September, the board took steps to break off the Northeast

Corridor, make it a separate subsidiary and decentralize control of investment and safety.

"Obviously what their goal is, and it's been their goal from the beginning, is to liquidate the company," Gunn said shortly after he was fired. "I stood in their way ... that's why they fired me."

In reviewing the propriety of the firing, Congress has focused upon the board itself, which some legal experts believe has operated for years on shaky legal ground. Only one member of Amtrak's Board of Directors, Chairman David M. Laney, has received Senate confirmation and only four of the board's seven seats are filled.

Congressman Steven C. LaTourette, (R-OH), chairman of the railroad subcommittee of the House Transportation and Infrastructure Committee believes some directors who have served recently may not have been properly appointed under provisions of the 1997 Amtrak Reform Act. The issue is that the board cannot conduct business if it is not properly constituted.

The day after the firing, LaTourette scheduled a subcommittee hearing for November 15 on Amtrak board governance and its firing of Gunn.

LaTourette said Laney, chairman of the Amtrak board, recently provided a formal response to questions about the board's composition. "But I have more questions after reading it," LaTourette said in a *New York Times* article. "You don't want to have, compounding its well-documented financial difficulties, Amtrak entering into contracts and agreements illegally," he said.

LaTourette is an Ohio Republican who has used his seniority on the Transportation and Infrastructure Committee to obtain major transportation funding for the Cleveland area. At the start of the 109th Congress, LaTourette was named the new chairman of the Subcommittee on Railroads.

Transportation Secretary Norman Y. Mineta is also a member of the Amtrak Board but has not attended its meetings. He has instead designated DOT attorney Jeffrey A. Rosen to vote for him.

One congressional problem with the Amtrak Board is that the other two appointees, Floyd Hall and Enrique Sosa, were appointed by President Bush under Article

2 of the Constitution, which permits him to temporarily fill agency vacancies that occur when Congress is out of session. They serve only until the end of the Congressional session, in December. However, because Amtrak is statutorily set up as a public corporation, not a government agency, recess appointments may not be considered legal by the courts.

The *New York Times* implied in its article November 10 that Amtrak plans to run its board without a quorum after Hall and Sosa's terms end by appointing an executive committee. LaTourette, along with other legal experts doubt such a committee can act on behalf of a quorum after members' terms end.

"It appears what they're saying is, once they have four, the four can appoint two, and the two can do all the stuff that four could," said LaTourette. "I'm not so sure of that."

Mr. LaTourette also believes the Amtrak
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