

**Van Ness
Feldman** LLP

**“Tracks of Transition” – “The
DC Transition and What It
Means for Rail”
SWARS 2025 Annual Meeting**

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General Observations

- **Elections have consequences!**
- **Debt over \$36 trillion, deficit \$2 trillion, may grow to \$3 billion**
- **Interest on debt exceeding \$1 trillion/year, exceeding Defense and Medicare, and keeps growing -- \$310 billion in 1Q'FY25**
- **National security issues = need to increase defense preparation, but White House also wants one-time 8 percent reduction (while reallocating funds to new programs/projects)**
- **Musk/Ramaswamy “DOGE” effort is biggest story line**
- **Budget realities constrain all legislation – but reconciliation is key because there is no filibuster for reconciliation bills**

General Observations (Address to Joint Session of Congress)

- **President Trump -- “80-20” speech (Doug Schoen (Dem.)/Ruy Teixeira (former Dem.):**
- **Economy/inflation**
- **Border/immigration**
- **Crime**
- **Peace**
- **New Senator Slotkin (D. MI), a former CIA analyst, gave rebuttal, was impressive**
- **Suggested gov’t spending, border could be areas of agreement**

More General Observations

- **Senate 53-47, under new Republican Leader Thune**
- **Narrow Republican majority in House – 218-214 (but likely will be 220-215 after special elections)**
- **One or two “reconciliation” bills in 2025 (one/FY), because no filibuster – only need 51 Senate votes**
- **But – tax deal will be tough – Dec. 31, 2025 deadline**
- **Tariffs in effect on China (20-30 percent), steel and aluminum (25 percent), Mexico, Canada postponed until April 2, 2025; China retaliating**
- **Secretary Duffy supports two-person crew rule?**

General Observations -- STB

- **New STB Chairman Patrick Fuchs, Chairman Primus will stay**
- **Board may be 2-2 for several months**
- **Executive Order (14215) requires independent agencies to conform to President's, AG's determinations of law**
- **Court battles: "Final Offer Rate Review" struck down in Eighth Circuit; two-person crew rule, RRs challenged reciprocal switching service rules, Coalition CP-KCS merger**
- **Other major policy changes on hold– but STB adopted service emergency service rules, approved acquisitions by CSX and CP in AL, MS, approved CN-Iowa National merger**

Congress Is Dysfunctional

- **Speaker Johnson -- same problem Speaker McCarthy had with “Freedom Caucus” – House one-half of one branch of government; Trump weighed in, new rules make it harder to remove the Speaker**
- **Trump wants one reconciliation bill, but needs new tax bill to avoid tax increases, takes time – so two reconciliation bills may result**
- **President Trump wants immigration deal (Dreamers, H1-B), tax cuts, deregulation (esp energy and permitting), agency consolidation**
- **President Trump did not bring opposing sides together in his first term. But Dems (at least in the Senate) may want to cut a deal on taxes, spending, immigration, some did support Laken Riley bill.**
- **Ukraine is problematic, but could be a deal on Israel, China**

Congress Is Dysfunctional – But?

- **Speaker Johnson, Leaders Jeffries, Thune and Schumer are the deal-makers, because Senate needs 60 votes to act except for reconciliation bills**
- **CRs keep government open, for now. Separate appropriation bills would be the better approach, but Congress seems unable to enact those**
- **“Railroad Safety Act” seems unlikely to pass in 2025, unless another big derailment, but VP Vance sponsored same bill in previous Congress**
- **DOT prohibited one-person crews (with some exceptions), railroads fighting rule (11th Circuit, 24-11076); Trump may not want union fight**
- **STB Chairman Fuchs worked for Senator Thune (who served as a mediator in a rail-rate case before being elected to Senate), so may have more-than-usual influence on rail-related matters**

What Will Come Next?

- **Some funding likely for Israel, Taiwan, but Ukraine uncertain**
- **Deals on border funding? Tik Tok? Permitting?**
- **Grant money for freight railroads, ports, Amtrak likely drying up unless Senator Schumer makes a deal**
- **Highway Trust Fund – insolvent by 2028**
- **Social Security Old Age Trust Fund – insolvent by 2034**
- **Medicare Trust Fund – insolvent by 2036**
- **Individual tax rates increase in 2026 unless Congress acts**

STB Developments

- **Emergency service regulations revised (EP 762)**
- **Rail competition (Reciprocal Switching, EP 711 (Sub-No. 1)) is off the table for now**
- **Reciprocal Switching Rules for Inadequate Service (EP 711 (Sub-No. 2)) – Railroads challenging in Seventh Circuit (No. 24-1811)**
- **CP/KCS merger (FD 36500) approved with conditions – appellate review sought by Coalition to Stop the CPKC – Metra settled, Coalition continues (DC Cir. No. 23-1165)**
- **STB approved CSX, CP acquisitions in AL, MS (FD 36730-32)**
- **CN merger with Iowa National Railway approved, FD 36744 (Jan. 14, 2025)**
- **In a “minor transaction,” Norfolk Southern has sought approval to take control of Norfolk & Portsmouth Belt Line RR (FD 36836) –CSX is seeking rejection of NS petition**
- **So, most ongoing STB matters case-by-case, not policy proceedings**
- **How independent agency Executive Order (No. 14125) applies to STB will be seen**

More STB (Including in the Courts)

- **Former STB Chairman Primus issued a statement on January 16, 2025 attacking railroads for retaliation against shippers who seek relief at the STB**
- **Revenue adequacy (EP 766) – WCTL sought “to compel agency action unreasonably delayed,” which was denied, 108 F.4th 905 (DC Cir. 2024)**
- **WCTL sought reconsideration of the STB’s cost-of-capital methodology (EP 664) -- denied, 2024 WL 718727 (DC Cir., Feb. 21, 2024)**
- **Final Offer Rate Review – rules vacated by Eighth Circuit (Aug. 20, 2024) rehearing denied (Dec. 10, 2024) (22-3648), 2024 WL 5058697 -- concerning formal proceeding requirements; how will STB respond?**
- **So, the STB’s rate-challenge process does not work in most circumstances -- Chairman Fuchs acknowledges. What next?**

Notable Recent or Pending STB Adjudicatory Proceedings

- **Evergy complaint against BNSF for damages for delays in delivering coal; NOR 42180 (damages); settlement discs.**
- **Navajo Transitional Energy Co., LLC – Ex Parte Petition for Emergency Service Order (June 23, 2023); NOR 42178 (common carrier obligation); settled with BNSF**
- **Sanimax previously filed a complaint against Union Pacific for reducing service from 5 days to 3 days/week; NOR 42171 (common carrier obligation); settled**
- **Lake Providence Port Commission in LA, with support from North Louisiana and Arkansas Railroad, NELMMD, Madison Parish filed an amended “feeder line” application to take a line of railroad from Delta Southern Railroad; FD 36447 (in abeyance pending state court rulings)**

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- Shipper associations (North American Freight Car Ass'n, et al.) -- complaints against UP for charging for delivery of empty tank cars to/from repair facilities; STB denied reparations but, in the future, will require UP to compensate shippers for charges to/from repair facilities. NOR 42144, et al. (Jan. 15, 2025); Shippers have sought reconsideration, UP has sought judicial review (Eighth Circuit, No. 25-1121)
- Approval of new 88-mile rail line in Utah overturned by DC Circuit on environmental grounds, remanded. No. 22-1019 (D.C. Cir. Aug. 22, 2023), FD 36284; Supreme Court granted cert, heard arguments on Dec. 10, 2024 -- issue is whether an agency must consider impacts beyond its authority

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- **Savage Tooele R. Co. – Construction and Operation Exemption – Line of Railroad in Tooele County, Utah (FD 36616) – STRC seeking an exemption to be allowed to build a line of railroad to connect to UP; reconsideration denied (3/3/25)**
- **Soo Line R. Co. d/b/a Canadian Pacific R. – Acquisition and Operation Exemption – BNSF Railway Co. (FD 35068) – Board granted petition to reopen exemption allowing CP to acquire line of railroad previously owned jointly with BNSF to provide New Century Ag with the level of competition that was expected when STB approved transaction; further STB action pending**
- **Union Pacific R. Co. – Construction and Operation Exemption – In Maricopa County, AZ (FD 36501) – UP petition for exemption to allow construction of line to serve shipper facilities; issues concerning premature construction, disruption of tribal lands; further STB action pending following required UP filings**

Notable Recent or Pending STB Adjudicatory Proceedings (Cont'd)

- **Amtrak case involving restoration of service along the Gulf Coast, FD 36496 (settled).**
- **Amtrak complaint involving “Southwest Limited” on-time performance (NOR 42175), information from RRs being gathered**
- **See STB Press Release, dated Feb. 21, 2025, discussing other delayed STB proceedings, and stating intent to resolve such matters promptly; further update to be issued soon**

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