

**Brotherhood of Maintenance of Way Employes Division  
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**NEWS CLIPS**

January 22, 2010

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# Which Side are You On?

*By Roger Smith, President & CEO  
American Income, National Income Life Insurance Company*

This year, like last, I am choosing to stand with those in need, and there are plenty. I pride myself at being at the opposite end of the Chamber of Commerce, the moneyed on Wall Street, and the Fat Cat Bankers.

Which side are you on, is a question we need to ask, and re ask. Whether it is in the United States, Canada or New Zealand, we will ask the question. Elected officials, business associates, big banks and trade groups; all should be held accountable for the side they choose. Now is the time for accountability from those who; fight labor law reform, financial regulator reform, health care reform, or block change that brings shared prosperity to working families.

It is true that the greedy have chosen their side. The 6 largest banks in American handed out of \$140 billion to their top tier. That is enough money to keep every home out of foreclosure for the next several years. The Chamber of Commerce spent over \$100 million fighting EFCA, a public option for health care, and the creation of a consumer financial protection agency. Some elected officials chose to vote for special interests over the interests of the American public. It is time to ask the question, which side are you on?

In this New Year, I am most hopeful that there will continue to be organized outrage and action against those who are on the wrong side of working families. I am optimistic that we can create a foundation for a Fair Economy, one that puts people to work and works for people. I have seen the results of what can happen when we pull together for the cause of fairness and justice.

This last year, I was privileged to Chair the Business Leaders for a Fair Economy. This coalition of over 1000 business leaders, entrepreneurs and small business owners came together to counter the myth that the Employee Free Choice Act would hurt the business community.

I am proud to say that I, along with other outstanding business leaders Darren Horndasch, Damien Miller and Diana Ortiz, were presented the Eleanor Roosevelt Human Rights Award by American Rights at Work for our work on the coalition....

As business leaders we know that shared prosperity starts with putting real change in workers pockets. It starts with putting people back to work and closing the ever growing wage disparity between the top 1/10 of one percent, and the millions of workers who have lost their job or suffered from flat or declining wages.

These issues are personal for me because the American Dream is very real to me. Everyone should have the same opportunity to achieve their dreams as I did.

I started my career in Los Angeles: I learned how to sell insurance in L.A. and actually in order to sell insurance you had to obtain a license. That license was called a producer license.

So I got my producer's license and then moved to Oklahoma and onto other states. Being young and single I didn't want to tell women I was just meeting that I was an insurance salesman, so I told them I was a producer from Hollywood.

As we look at America today, you would think after 35 years of hard work and reaching the pinnacle in the life insurance industry, I would be proud to tell people that I am a CEO.

In reality, sometimes I am embarrassed to use those initials CEO.

For far too many, the initials "CEO" have come to signify choosing the wrong side; greed, corruption and disdain for hard working men and women, especially those who choose to belong to a union.

Our economic system fails when CEO's can bankrupt the companies they've been appointed to oversee. For a CEO to steal the dreams of a secure retirement from the very workers who built the company is unconscionable.

CEO's who squander corporate profits to hire union hating organizations to violate labor law and fire and intimidate workers for exercising their right to form a union are no better than common criminals.

My saving grace is I am proud to be the CEO of a company that is different.

Last year, AIL/NILICO negotiated a new contract with our employees who are members of OPEIU Local 277. That contract puts more money, pensions, better health care and improved benefits into our employee's pockets.

Our commitment to shared prosperity has paid off at the bottom line. AIL and NILICO experienced over 20% growth in 2009, added 1500 new sales agents, expanded the number of public relations professionals, and all of them are dues paying union members.

To flourish in 2010, we must put more money into the pockets of the unemployed, underemployed and underpaid workers. We must create good jobs, allow for workers to choose to organize and protect consumers from predatory lenders. We must create and advance an economy built on fairness for all.

Lastly, we must demand accountability for the answer to the question, which side are you on?

1/19/2010 Helping Haiti

## **Class Is, unions pledge donations to aid earthquake-ravaged nation**

A number of Class Is and rail labor unions are making donations or encouraging employees and members to do so to help earthquake-ravaged Haiti. On Jan. 12, a 7.0-magnitude earthquake struck the Caribbean nation, collapsing buildings and causing an estimated 200,000 fatalities.

CN announced it will donate \$100,000 to the Red Cross to support relief efforts and match employee donations dollar for dollar.

"We are reaching out — and encouraging our employees — to help the Red Cross address

some of the immense human suffering caused by this natural disaster,” said CN President and Chief Executive Officer Claude Mongeau in a prepared statement.

Canadian Pacific also will match workers’ donations through an employee match program, as well as donate \$50,000 to the Red Cross and Save the Children Funds.

“We are all aware that these are difficult economic times, but we also know that the situation in Haiti transcends fiscal consideration; it requires swift and comprehensive action,” said CP President and CEO Fred Green in a note to employees. “Simply put, this is the right thing to do.”

Meanwhile, the Norfolk Southern Foundation will provide a dollar-for-dollar match for active Norfolk Southern Railway employees’ contributions of at least \$25 made by June 30 to certain international aid organizations, such as the American Red Cross/International Response Fund, CARE and Salvation Army. In addition, NS will donate intermodal transportation for 10 containers (each holding up to 43,000 pounds) of relief supplies.

Union Pacific Railroad also will provide a dollar-for-dollar match for active employees’ donations to the American Red Cross, AmeriCares, Catholic Relief Services, Salvation Army, Save the Children, and University of Nebraska Medical Center’s Haitian Relief and Outreach Fund. CSX Corp. will match employees’ donations, too, and is determining whether to make other contributions, while Kansas City Southern is “considering the best way to make sure our contributions are used for humanitarian relief,” said spokesperson Doniele Kane in an email.

Labor unions are trying to pitch in, as well. The United Transportation Union (UTU) will donate \$1,000 to the American Red Cross in the name of members of Haitian descent.

“This is a small humanitarian gesture, and I hope others within our union donate what they are able to,” said UTU International President Mike Futhey in an item posted on the union’s Web site.

At the Transportation Communications Union, leaders are encouraging members to make donations to Partners in Health, Doctors Without Borders, the American Red cross International Response Fund, RN Response Network or United Way Worldwide Disaster Fund.

**January 20, 2010**

## **G.O.P. Senate Victory Stuns Democrats**

By [MICHAEL COOPER](#)

BOSTON — [Scott Brown](#), a little-known Republican state senator, rode an old pickup truck and a growing sense of unease among independent voters to an extraordinary upset Tuesday night when he was elected to fill the Senate seat that was long held by [Edward M. Kennedy](#) in the overwhelmingly Democratic state of Massachusetts.

By a decisive margin, Mr. Brown defeated [Martha Coakley](#), the state’s attorney general, who had

been considered a prohibitive favorite to win just over a month ago after she easily won the Democratic primary.

With all precincts counted, Mr. Brown had 52 percent of the vote to Ms. Coakley's 47 percent. "Tonight the independent voice of Massachusetts has spoken," Mr. Brown told his cheering supporters in a [victory speech](#), standing in front of a backdrop that said "The People's Seat." The election left Democrats in Congress scrambling to salvage a bill overhauling the nation's health care system, which the late Mr. Kennedy had called "the cause of my life." Mr. Brown has vowed to oppose the bill, and once he takes office the Democrats will no longer control the 60 votes in the Senate needed to overcome [filibusters](#).

There were immediate signs that the bill had become imperiled. House members indicated they would not quickly pass the bill the Senate approved last month.

And after the results were announced, one centrist Democratic senator, [Jim Webb](#) of Virginia, called on Senate leaders to suspend any votes on the Democrats' health care legislation until Mr. Brown is sworn into office. The election, he said, was a referendum on both health care and the integrity of the government process.

Beyond the bill, the election of a man supported by the Tea Party movement also represented an unexpected reproach by many voters to [President Obama](#) after his first year in office, and struck fear into the hearts of Democratic lawmakers, who are already worried about their prospects in the midterm elections later this year.

Mr. Brown was able to appeal to independents who were anxious about the economy and concerned about the direction taken by Democrats, now that they control both Beacon Hill and Washington. He rallied his supporters when he said, at the last debate, that he was not running for Mr. Kennedy's seat but for "the people's seat."

That seat, held for nearly half a century by Mr. Kennedy, the liberal lion of the Senate, will now be held for almost three full years by a Republican who has said he supports [waterboarding](#) as an interrogation technique for terrorism suspects, opposes a federal [cap-and-trade](#) program to reduce carbon emissions and opposes a path to citizenship for illegal immigrants unless they leave the country. It was a sharp swing of the pendulum, but even Democratic voters said they wanted the Obama administration to change direction.

"I'm hoping that it gives a message to the country," said Marlene Connolly, 73, of North Andover, a lifelong Democrat who said she cast her first vote for a Republican on Tuesday. "I think if Massachusetts puts Brown in, it's a message of 'that's enough.' Let's stop the giveaways and let's get jobs going."

Mr. Brown ran strongest in the suburbs of Boston, where the independent voters who make up a majority in Massachusetts turned out in large numbers. Ms. Coakley did best in urban areas, winning overwhelmingly in Boston and running ahead in Springfield, Worcester, Fall River and

New Bedford, but her margins were not large enough to carry her to victory.

In a concession speech before cheering supporters, Ms. Coakley acknowledged that voters were angry and said she had hoped to deal with the concerns.

“Our mission continues, and our work goes on,” she said, echoing well-known remarks by Mr. Kennedy. “I am heartbroken at the result, as I know you are, and I know we will get up together tomorrow and continue this fight, even with this result tonight.”

The crowd at Mr. Brown’s victory rally, upset by reports that Democrats might try to vote on the health care bill before he takes office, chanted, “Seat him now!” Mr. Brown, for his part, noted that the interim senator holding the seat had finished his work, and that he was ready to go to Washington “without delay.” And he effusively praised Mr. Kennedy as a big-hearted, tireless worker, and said that he hoped to prove a worthy successor to him.

Ms. Coakley’s defeat, in a state that Mr. Obama won in 2008 with 62 percent of the vote, led to a round of finger-pointing among Democrats. Some criticized her tendency for gaffes — in a radio interview she offended Red Sox fans when she incorrectly suggested that [Curt Schilling](#), a beloved former Red Sox pitcher, was a Yankee fan — while others criticized a lackluster, low-key campaign.

Mr. Brown presented himself as a Massachusetts Everyman, featuring the pickup truck he drives around the state in his speeches and one of his television commercials, calling in to talk radio shows and campaigning with popular local sports figures.

The implications of the election drew nationwide attention, and millions of dollars of outside spending, to the race. It transformed what many had expected to be a sleepy, low-turnout special election on a snowy day in January into a high-profile contest that appeared to draw more voters than expected to the polls. There were reports of traffic jams outside suburban polling stations, while other polling stations had to call for extra ballots.

The late surge by Mr. Brown appeared to catch Democrats by surprise, causing them to scramble in the last week and a half of the campaign and hastily schedule an appearance by Mr. Obama with Ms. Coakley on Sunday afternoon.

“Understand what’s at stake here, Massachusetts,” Mr. Obama said in his speech that day, repeatedly invoking Mr. Kennedy’s legacy. “It’s whether we’re going forwards or backwards.” He all but pleaded with voters to support Ms. Coakley, to preserve his agenda.

As voters went to the polls, [Robert Gibbs](#), the White House press secretary, made it clear that the president was “not pleased” with the situation Ms. Coakley found herself in. “He was both surprised and frustrated,” Mr. Gibbs said.

Although the race has riveted the nation largely because it was seen as contributing to the success or defeat of the health care bill, the potency of the issue for voters here was difficult to gauge. That is because Massachusetts already has near-universal health coverage, thanks to a

law passed when [Mitt Romney](#), a Republican, was governor.

Thus Massachusetts is one of the few states where the benefits promised by the national bill were expected to have little effect on how many of its residents got coverage, making it an unlikely place for a referendum on the health care bill.

On Capitol Hill, the fate of the health care legislation was highly uncertain as Democratic leaders quickly gathered to plot strategy in the wake of the Republican victory.

Sentiment about how to proceed was mixed, with several lawmakers saying the House would not accept the Senate-passed plan. Top officials had said that approach was the party's best alternative, and many members said they still believed it was crucial that Democrats pass a plan. "It is important for us to pass legislation," said Representative Baron P. Hill, a conservative Democrat from Indiana.

*Reporting was contributed by Katie Zezima, Danielle Osher and Bret Silverberg in Massachusetts, and Carl Hulse and David M. Herszenhorn in Washington.*

This article has been revised to reflect the following correction:

Correction: January 21, 2010

Because of an editing error, an article on Wednesday about the election of Scott Brown, a Republican, to fill the Senate seat from Massachusetts that was long held by Edward M. Kennedy, a Democrat, misstated the amount of time Mr. Brown will fill the seat until it is up for election again. Depending on how soon he is sworn in, Mr. Brown will serve almost three full years — not two. (The next election will be in November 2012, and the winner will be sworn in for a six-year term in early January 2013.)

## Railroad stocks recover faster than Dow Jones average



January 20, 2010

New proof of the railroad industry's investor appeal came Tuesday with the report that the Dow Jones Railroad Index has improved around 76% since its low point in March 2009, easily exceeding the 50% gain posted during the same time by the Dow Jones Industrial Average.

The comparison appears in a chart published in the *Wall Street Journal*, a Dow Jones newspaper, and it comes with a note of caution: While "the improving economy likely helped railroad companies deliver better fourth-quarter results ... there's been a recent slowdown in rail demand."

CSX will report its third-quarter results Wednesday, and the Thompson Reuters analyst poll expects the railroad to post its third consecutive quarterly increase in earnings.

## TSA nominee Erroll Southers withdraws

Updated 10:18 a.m. ET

President Obama's nominee to lead the [Transportation Security Administration](#) withdrew from consideration on Wednesday, saying his nomination was "obstructed by political ideology."

[Erroll Southers](#) had [faced fierce opposition from Republicans](#) ever since news surfaced that [he may have misled Congress](#) about an incident in the late 1980s involving a background check of the boyfriend of his ex-wife.

[As The Eye first reported in November](#), Southers told senators that he asked a co-worker's husband who worked for the San Diego Police Department at the time to run a background check on his ex-wife's boyfriend.

The incident did little to stop his confirmation by the [Senate Homeland Security and Governmental Affairs Committee](#). But a day after the panel referred his nomination to the Senate, Southers [told lawmakers](#) that he himself had twice conducted the database searches, downloaded confidential law enforcement records and then passed the information on to the police department employee.

"I was extremely excited about the opportunity to lead the Transportation Security Administration (TSA) and fulfill Secretary [Janet] Napolitano's objective to develop it into the best organization of its kind in the world," Southers said in a statement released by the White House on Wednesday. "However, it is apparent that this path has been obstructed by political ideology. I have decided, after deep reflection and in consultation with my family and friends to respectfully withdraw my name from consideration for confirmation as the assistant secretary for the TSA."

"It is clear that my nomination has become a lightning rod for those who have chosen to push a political agenda at the risk of the safety and security of the American people," Southers said. "This partisan climate is unacceptable and I refuse to allow myself to remain part of their dialogue. The TSA has important work to be done and I regret I will not be part of their success."

"The President believes that Erroll Southers would have been an excellent TSA administrator but understands his personal decision and the choice he has made," said White House spokesman Nicholas Shapiro.

"Southers was uniquely qualified for this job and it is with great sadness that the president accepted Southers' withdrawal. Fortunately the acting TSA Administrator is very able and we have a solid team of professionals at TSA doing vital national security work to keep us safe," Shapiro said.

Senate Majority Leader Harry Reid (D-Nev.) had planned to hold an up or down vote on Southers next week. But Republican opposition continued and requests for more information from the White House went unanswered, said Sen. **Jim DeMint** (R-S.C.).

"The Senate could have had an open and transparent debate this week to approve Mr. Southers, but apparently, answering simple, direct questions about security and integrity were too much for this nominee," DeMint said in a statement. "I hope the president will quickly put forward a new nominee that is fully vetted and that will put the safety of the American people first."

DeMint, who led GOP opposition to Southers, initially opposed him out of fear that TSA would eventually approve collective bargaining rights for airport security officers. TSA employees can join a union, but cannot collectively bargain. DeMint and other Republicans argued that union interference would jeopardize airport security.



Through a spokeswoman, Homeland Security Committee Chairman Sen. **Joseph I. Lieberman** (I-Conn.) expressed disappointment with Southers's decision. "The senator thought the combination of his law enforcement and aviation security skills uniquely qualified him to lead the TSA," a spokeswoman said.

Sen. **Susan Collins** (R-Maine), the panel's ranking Republican and the only lawmaker to ever publicly question Southers about the incident, said, "It is critically important that the White House act quickly to nominate someone with qualifications and reputation which are beyond reproach to lead this agency."

Shapiro could not say when Obama might name a new TSA nominee or whether the White House will just nominate Acting Administrator Gale Rossides to the job full-time.

Southers also testified before the Senate Commerce Committee, but the FBI censure issue never came up and it's unclear if Southers ever told the committee about the incident.

"Today our national security system lost a skilled law enforcement officer with needed expertise and leadership qualities because of political games – and that is a real shame," Commerce Committee Chairman **Jay Rockefeller** (D-W. Va.) said. "I urge my colleagues to more carefully focus on America's security not partisanship."

Southers's withdrawal comes on an already bad day for the White House, as it attempts to salvage health-care reform efforts following Tuesday's Republican victory in the Massachusetts Senate race. The Obama administration has also struggled in recent months to earn Senate confirmation for several top nominees.

## CSX adjusted 4Q earnings rise 23%, beating Street



January 21, 2010

CSX Corp. late Tuesday said its fourth-quarter earnings were up 23% compared with the same quarter a year ago, with earnings per share of 77 cents beating Wall Street analyst estimates by one cent. But analysts also acknowledged special circumstances for that gain and expressed some disappointment in the railroad's slumping volume, attributed primarily to weak demand for coal.

Jacksonville, Fla.-based CSX last year sold its famed Greenbrier Hotel located in West Virginia; excluding that action of one year ago, CSX earnings from operations fell 16%.

Morgan Stanley analysts William Greene and Adam Longson commented: "CSX's 4Q09 operating income shortfall vs. consensus and tepid views on both coal (likely to remain depressed through 2010) and domestic intermodal (pricing pressure continues) are likely to fuel bearish sentiment around rails."

Green and Longson added, "Though CSX reported a headline beat of \$0.77 vs. consensus of \$0.76, consistent with our model, an unexpected tax benefit of \$15 million accounted for ~\$0.04 of the result. In fact, CSX missed our operating income forecast by \$30 million or \$0.05 per share with lower than expected revenue (other revenue in particular) driving much of the miss, offset slightly by better than expected operating costs. In the earnings release, management set a marginally bearish tone by specifically noting that they expect utility coal demand to remain weak well into 2010 and that

competitive truck pricing continued to weigh on domestic intermodal yields.”

They concluded: “Looking forward, we see high likelihood of a pullback during the 4Q09 earnings season; however, we expect such an event will prove to be a buying opportunity, as it was during 3Q09 earnings, if it occurs. Long-term, we reiterate our Attractive View on rails as a result of growth driven by (1) pricing power, (2) productivity improvements, and (3) rebounding volumes.”

Said CSX Chairman, President, and CEO Michael Ward in a statement, "The economy continued to show modest, sequential improvement in the quarter." He added, "CSX worked aggressively on gaining operating leverage and further strengthening the fundamentals of our business for the future."

## **UTU fights Amtrak snow removal waiver**



**Wednesday, January 20, 2010**

The UTU, BLET, the Brotherhood of Maintenance of Way Employees Division, the Brotherhood of Railroad Signalmen and the American Train Dispatchers Association have asked the FRA to deny an Amtrak request to waive permanently the existing mandatory and safety-critical functions governing passenger-platform snow removal outside the Northeast Corridor.

The result would be the scrapping of on-track safety protection for Amtrak employees as well as contractor employees. Amtrak withdrew an earlier waiver request -- also opposed by the UTU and the others labor organizations -- that would have required a conductor to coordinate platform snow removal to the detriment of the conductor's other safety critical functions.

The existing roadway worker protection provisions Amtrak seeks to scrap are found in the Code of Federal Regulations, Volume 49, Section 214.335, which describe on-track safety procedures for roadway worker groups.

Amtrak now is asking that its employees and contractor employees be permitted to remove snow from station platforms with no real on-track safety in effect. If granted by the FRA, said the labor organizations, there would be "no means whatsoever for a roadway work group to establish on-track safety through the dispatcher or control operator, establish on-track safety through train coordination or train approach warning, or otherwise withhold trains from the work area.

"Amtrak seeks to permanently remove the mandatory and safety-critical functions of the roadway worker in charge from station platform snow removal operations and proposes to substitute minimal 'procedures' for roadway worker groups engaged in snow removal at high- and low-level passenger platforms nationwide," said the labor organizations in asking the FRA to deny the Amtrak waiver request.

"Under Amtrak's waiver request," said the labor organizations, "Amtrak employees and contractor employees will perform this dangerous work on passenger platforms in high-speed territory, utilizing both power tools and hand tools, all while unsupervised and unprotected by a

qualified roadway worker in charge.

"This work, by its very nature, is most often performed in extreme weather conditions that can affect a worker's alertness and judgment. These workers will necessarily be dressed in heavy winter clothing, which can adversely affect the workers' vision, hearing, agility, and ability to react to unanticipated danger. Such extreme working conditions underscore the need for full compliance with federal on-track safety regulations to protect roadway workers," the labor groups told the FRA.

Additionally, the labor organizations said, "by removing the roadway worker in charge, the waiver will severely impede the ability of roadway workers to make a good faith challenge. First-level good faith challenges are, in virtually all cases, presented to the designated roadway worker in charge, who is uniquely qualified and equipped to immediately rectify safety-related matters on-site and in real time.

"The waiver would set back our joint industry-wide efforts to reduce, and ultimately eliminate, the unacceptable death toll among roadway workers nationwide," said the labor organizations.

News Alert

08:32 AM EDT Thursday, January 21, 2010

New jobless claims rise more than expected

The number of newly-laid off workers seeking jobless benefits unexpectedly rose last week, as the job market recovers at a slow and uneven pace. The Labor Department said Thursday that initial claims for unemployment insurance rose by 36,000 to a seasonally adjusted 482,000. Wall Street economists had expected a small drop.

Breaking News Alert

The New York Times

Thu, January 21, 2010 -- 10:11 AM ET

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Supreme Court Rejects Campaign Spending Limits

The Supreme Court has ruled that corporations may spend freely to support or oppose candidates for president and Congress, easing decades-old limits on their participation in federal campaigns.

The court on Thursday overturned a 20-year-old ruling that

said corporations can be prohibited from using money from their general treasuries to pay for campaign ads. The decision almost certainly will also allow labor unions to participate more freely in campaigns and threatens similar limits imposed by 24 states.

The justices also struck down part of the landmark McCain-Feingold campaign finance bill that barred union- and corporate-paid issue ads in the closing days of election campaigns.

News Alert

11:21 AM EST Thursday, January 21, 2010

Pelosi rejects Senate version of health-care bill

Speaker of the House says she does not have enough votes to pass the Senate version of the health-care bill, leaving President Obama's most important domestic agenda item in grave jeopardy.

1/21/2010 4Q Financials

## **UP: Financial results a result of the recession, but operational results a matter of resolve**

Despite efforts to boost productivity and cut costs, [Union Pacific Railroad](#) couldn't overcome the recession's effects in the fourth quarter. Lower traffic volume led to less revenue, earnings and income.

However, UP's ongoing mission to provide an optimal "value proposition" paid off in several operational performance and service milestones, and a highest-ever customer satisfaction rating of 88 percent, said Chairman, President and Chief Executive Officer Jim Young during UP's earnings Webcast and teleconference held this morning.

"We're raising the bar in the eyes of our customers," he said.

In addition, cost-control and efficiency initiatives led to record-low quarterly and annual operating ratios, and traffic volumes began to increase during the quarter, especially in the intermodal, agricultural products and automotive sectors.

Although the outlook for volume remains unclear, the slight uptick in 4Q "points to stability," said Young.

For the quarter, UP reported diluted earnings per share of \$1.08, down 18 percent, and operating revenue of \$3.75 billion, down 12 percent compared with fourth-quarter 2008 figures. Analysts had expected earnings of \$1.04 and revenue of \$3.78 billion, according to *Thomson Reuters*. Operating income dropped 12 percent to \$1 billion, net income decreased 17 percent to \$551 million and volume fell 5 percent to 2 million units.

Automotive revenue dipped 1 percent to \$302 million, but traffic rose 1 percent; intermodal revenue dropped 3 percent to \$684 million although traffic increased 5 percent; agricultural revenue fell 7 percent to \$738 million, but traffic rose 3 percent; chemical revenue also declined 7 percent to \$539 million as traffic dropped 2 percent; energy revenue tumbled 22 percent to \$765 million as traffic fell 15 percent; and industrial products revenue plummeted 28 percent to \$513 million as traffic plunged 21 percent.

Highlights and lowlights among the commodity groups include: a 13 percent gain in ethanol traffic; a rise in auto inventory replenishment; a 28 percent jump in domestic intermodal traffic, helping domestic revenue surpass international revenue for the first time; a 16 percent decline in Powder River Basin coal traffic; and a 23 percent drop in lumber shipments.

In terms of costs, fourth-quarter operating expenses fell 12 percent to \$2.8 billion. Fuel costs plunged 26 percent to \$541 million as the average price per gallon dropped from \$2.46 in 4Q '08 to \$2.05 in 4Q '09 and fuel consumption declined year-over-year from 289 million gallons to 256 million gallons; compensation and benefit costs decreased 8 percent to \$1 billion as UP reduced its workforce 10 percent to about 42,000 and cut overtime; and purchased services/material costs declined 8 percent to \$421 million as crew transportation/lodging and facility costs decreased, said Executive Vice President and Chief Financial Officer Rob Knight.

UP registered a record quarterly operating ratio of 73.3 vs. a previous record of 73.4 in 4Q '08. The full-year ratio also dropped to a record-setting 76 compared with 77.3 in 2008. UP continues to post progress on reaching its goal of a low-70s operating ratio by 2012, said Young.

Other full-year results show operating revenue tumbled 21 percent to \$14.1 billion, operating income fell 17 percent to \$3.4 billion, net income dropped 19 percent to \$1.9 billion, diluted earnings per share declined 17 percent to \$3.75 and operating expenses plummeted 23 percent to \$10.8 billion compared with 2008 figures.

Knight also announced that UP has budgeted \$2.5 billion for 2010 capital spending, the same amount as last year but down from \$3.1 billion in 2007. The Class I expects to spend \$150 million to complete an intermodal terminal in Joliet, Ill., and \$200 million on positive train control (PTC).

UP will spend about \$1.4 billion to install PTC by the federally mandated deadline of Dec. 31, 2015, and millions more to maintain the system, said Young.

"The PTC mandate is an example of well-intended legislation with negative unintended consequences," he said

January 22, 2010

## Justices, 5-4, Reject Corporate Spending Limit

By [ADAM LIPTAK](#)

WASHINGTON — Overruling two important precedents about the First Amendment rights of corporations, a bitterly divided [Supreme Court](#) on Thursday [ruled](#) that the government may not ban political spending by corporations in candidate elections.

The 5-to-4 decision was a vindication, the majority said, of the First Amendment's most basic free speech principle — that the government has no business regulating political speech. The dissenters said that allowing corporate money to flood the political marketplace would corrupt democracy.

The ruling represented a sharp doctrinal shift, and it will have major political and practical consequences. Specialists in campaign finance law said they expected the decision to reshape the way elections were conducted. Though the decision does not directly address them, its logic also applies to the labor unions that are often at political odds with big business.

The decision will be felt most immediately in the coming midterm elections, given that it comes just two days after Democrats lost a [filibuster](#)-proof majority in the Senate and as popular discontent over government bailouts and corporate bonuses continues to boil.

[President Obama](#) called it “a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.”

The justices in the majority brushed aside warnings about what might follow from their ruling in favor of a formal but fervent embrace of a broad interpretation of free speech rights.

“If the First Amendment has any force,” Justice [Anthony M. Kennedy](#) wrote for the majority, which included the four members of the court's conservative wing, “it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.”

The ruling, *Citizens United v. [Federal Election Commission](#)*, No. 08-205, overruled two precedents: *[Austin v. Michigan Chamber of Commerce](#)*, a 1990 decision that upheld restrictions on corporate spending to support or oppose political candidates, and *[McConnell v. Federal Election Commission](#)*, a 2003 decision that upheld the part of the [Bipartisan Campaign Reform Act of 2002](#) that restricted campaign spending by corporations and unions.

The 2002 law, usually called McCain-Feingold, banned the broadcast, cable or satellite transmission of “electioneering communications” paid for by corporations or labor unions from their general funds in the 30 days before a presidential primary and in the 60 days before the

general elections.

The law, as narrowed by a [2007 Supreme Court decision](#), applied to communications “susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

The five opinions in Thursday’s decision ran to more than 180 pages, with Justice [John Paul Stevens](#) contributing a passionate 90-page dissent. In sometimes halting fashion, he summarized it for some 20 minutes from the bench on Thursday morning.

Joined by the other three members of the court’s liberal wing, Justice Stevens said the majority had committed a grave error in treating corporate speech the same as that of human beings. Eight of the justices did agree that Congress can require corporations to disclose their spending and to run disclaimers with their advertisements, at least in the absence of proof of threats or reprisals. “Disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way,” Justice Kennedy wrote. Justice [Clarence Thomas](#) dissented on this point.

The majority opinion did not disturb bans on direct contributions to candidates, but the two sides disagreed about whether independent expenditures came close to amounting to the same thing.

“The difference between selling a vote and selling access is a matter of degree, not kind,” Justice Stevens wrote. “And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf.”

Justice Kennedy responded that “by definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.”

The case had unlikely origins. It involved a documentary called “Hillary: The Movie,” a 90-minute stew of caustic political commentary and advocacy journalism. It was produced by Citizens United, a conservative nonprofit corporation, and was released during the Democratic presidential primaries in 2008.

Citizens United lost a suit that year against the Federal Election Commission, and scuttled plans to show the film on a cable video-on-demand service and to broadcast television advertisements for it. But the film was shown in theaters in six cities, and it remains available on DVD and the Internet.

The majority cited a score of decisions recognizing the First Amendment rights of corporations, and Justice Stevens acknowledged that “we have long since held that corporations are covered by the First Amendment.”

But Justice Stevens defended the restrictions struck down on Thursday as modest and sensible. Even before the decision, he said, corporations could act through their political action committees or outside the specified time windows.

The McCain-Feingold law contains an exception for broadcast news reports, commentaries and editorials. But that is, Chief Justice [John G. Roberts Jr.](#) wrote in a concurrence joined by Justice [Samuel A. Alito Jr.](#), “simply a matter of legislative grace.”

Justice Kennedy’s majority opinion said that there was no principled way to distinguish between media corporations and other corporations and that the dissent’s theory would allow Congress to suppress political speech in newspapers, on television news programs, in books and on blogs. Justice Stevens responded that people who invest in media corporations know “that media outlets may seek to influence elections.” He added in a footnote that lawmakers might now want to consider requiring corporations to disclose how they intended to spend shareholders’ money or to put such spending to a shareholder vote.

On its central point, Justice Kennedy’s majority opinion was joined by Chief Justice Roberts and Justices Alito, Thomas and [Antonin Scalia](#). Justice Stevens’s dissent was joined by Justices [Stephen G. Breyer](#), [Ruth Bader Ginsburg](#) and [Sonia Sotomayor](#).

When the case was first argued last March, it seemed a curiosity likely to be decided on narrow grounds. The court could have ruled that Citizens United was not the sort of group to which the McCain-Feingold law was meant to apply, or that the law did not mean to address 90-minute documentaries, or that video-on-demand technologies were not regulated by the law. Thursday’s decision rejected those alternatives.

Instead, it addressed the questions it proposed to the parties in June when it set down the case for an unusual second argument in September, those of whether Austin and McConnell should be overruled. The answer, the court ruled Thursday, was yes.

“When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought,” Justice Kennedy wrote. “This is unlawful. The First Amendment confirms the freedom to think for ourselves.”

1/22/2010 4Q Financials

## **BNSF scores with cost control, misses with revenue and operating ratio**

Count [Burlington Northern Santa Fe Corp.](#) as the third Class I to report fourth-quarter financial results that were mostly discouraging, but partly encouraging. Yesterday, BNSF reported quarterly earnings of \$1.55 per diluted share — including a tax benefit of 25 cents per share associated with the donation of a line segment in Washington state — compared with \$1.78 per diluted share in fourth-quarter 2008. BNSF decided not to conduct an earnings Webcast and teleconference since the Berkshire Hathaway Inc. buyout remains in play.



Fourth-quarter freight revenue decreased 16 percent to \$3.57 billion primarily because of an unfavorable fuel surcharge lag. Analysts expected earnings of \$1.26 per share and revenue of \$3.62 billion, according to *Thomson Reuters*.

Coal revenue declined 17 percent to \$886 million due to soft demand, a low seasonal burn and weather-related challenges; agricultural products revenue dipped 2 percent to \$822 million, although soybean exports were strong and yields improved; industrial products revenues plunged 21 percent to \$722 million because of lower demand for construction and building products; and consumer products revenue tumbled 20 percent to \$1.1 billion due to lower international volumes.

Overall, traffic volume decreased 12 percent to 2.1 million units. But “we have seen some improvement in volumes during the second half of 2009 and expect this gradual improvement to continue,” said BNSF Chairman, President and Chief Executive Officer Matt Rose in a prepared statement.

Quarterly operating expenses fell 14 percent to \$2.8 billion primarily because of cost controls, decreased volumes and lower fuel prices. However, BNSF’s operating ratio rose 1.2 points to 74.9 compared with fourth-quarter 2008’s ratio.

For the full year, the Class I’s operating ratio dropped 1.6 points to 76 and operating expenses plunged 24 percent to \$10.8 billion compared with 2008 figures. Operating revenue declined 22 percent to \$14 billion, diluted earnings per share decreased 17 percent to \$5.01 and operating income dropped 17 percent to \$3.2 billion.

BNSF also announced it’s budgeting \$2.4 billion for this year’s capital spending program, about \$240 million less than 2009’s budget because the railroad plans to acquire fewer locomotives in 2010 (about 170 units costing \$320 million). The Class I expects to spend about \$2.1 billion on track, signal systems, structures, freight cars and technologies, including positive train control.

1/22/2010 Traffic

## **AAR weekly report: Carloads down in U.S., up in Canada and Mexico**

Two weeks into 2010, U.S. railroads’ carload fortunes have yet to turn, while Canadian and Mexican railroads are moving more freight than they did last year. During the week ending Jan. 16, U.S. roads originated 264,030 carloads, down 0.8 percent, and 201,728 containers and trailers, up 1.3 percent compared with totals from the same week in 2009, according to the [Association of American Railroads](#). Total volume dropped 15.6 percent to an estimated 28.7 billion ton-miles.

However, as demand continues to normalize for seasonality and year-over-year comparisons ease, U.S. traffic volume will gradually increase in the first quarter, said Robert W. Baird & Co. Inc. analysts in a weekly “Rail Flash” report. Agricultural product traffic will benefit from a strong harvest, coal traffic will get a slight boost from stockpiles worked down by recent colder-than-normal weather and domestic intermodal traffic will continue to capitalize on “secular conversions from truck,” the report states.

For week No. 2, Canadian railroads reported 73,394 carloads, up 24.1 percent, and 44,268 intermodal loads, up 5.7 percent year over year. Mexican roads reported 13,210 carloads, up 21 percent, and 6,938 containers and trailers, up 41.7 percent.

1/22/2010 Safety

## **NTSB calls on FRA to require cameras, audio recorders in all cabs**

The [National Transportation Safety Board \(NTSB\)](#) recently determined that the September 2008 collision between Metrolink and Union Pacific Railroad trains in Chatsworth, Calif., was caused by the Metrolink engineer, who was text-messaging on a wireless device while operating the train and failed to respond to a red signal.

According to wireless service provider records obtained by the NTSB, both the Metrolink engineer and UP conductor used wireless devices to send and receive text messages on the day of the accident. The engineer also made non-business-related phone calls while on duty, according to the board.

“This accident demonstrates that we must find a way to wrap our arms around the pervasive problem of transportation operators using wireless devices while on the job,” said NTSB Chairman Deborah Hersman in a prepared statement.

As a result of its findings, the NTSB recommends that the [Federal Railroad Administration \(FRA\)](#):

- require the installation of inward- and outward-facing audio and image recorders in all locomotive cabs and cab car operating compartments to verify that train crews abide by wireless device rules and safety procedures; and
- require railroads to regularly review in-cab audio and image recordings for verification purposes.

The NTSB also cited the lack of a positive train control system (PTC) as a contributing factor. A PTC system would have stopped the Metrolink train short of the red signal and prevented the accident, board officials believe.

However, as PTC systems are installed during the next few years, “there will be no advantage whatsoever for either audio or video recording of in-cab activities because the fail-safe nature of PTC technology will prevent collisions of the type that served as the basis for the NTSB recommendation,” said [Brotherhood of Locomotive Engineers and Trainmen \(BLET\)](#) officials in a prepared statement.

In addition, current FRA regulations and railroad operating procedures already call for extensive recording of locomotive and signal data, and radio conversations are routinely recorded, they said.

“Locomotive operation is monitored in such detail by today’s event recorders that inward-facing video cameras will provide no additional information of use in accident investigations,” BLET officials said.