



Rail Law Alert – PRIIA Section 207 Held Unconstitutional

05.02.16

D.C. Circuit Holds "Metrics and Standards" Violate Due Process

On April 29, 2016, the U.S. Court of Appeals for the D.C. Circuit held that Section 207 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432 (Oct. 16, 2008), is unconstitutional.

Section 207 charged Amtrak and the Federal Railroad Administration (FRA) with jointly developing "metrics and standards" that would give shape to the statutory right to preference accorded to intercity and commuter passenger trains operated by or for Amtrak. Unlike nearly any other government entity, however, Amtrak is required to conduct its operations as a "for-profit corporation" and make decisions that will result in maximization of its revenues. Because of the risk that Amtrak would pursue metrics and standards that would accordingly serve its own interest, and the impact that those metrics and standards are likely to have on the operations of freight carriers, the D.C. Circuit held that Amtrak's participation violates due process.

The court rejected the government's argument that FRA's involvement served as an adequate check on any bias resulting from Amtrak's for-profit motivation. Moreover, to the extent that Amtrak and the FRA failed to reach an agreement on any component of the metrics and standards, the D.C. Circuit ruled that the appointment of an arbitrator to resolve the difference would also be unconstitutional. Specifically, because the arbitrator would essentially render a final decision of the Board with regulatory effect, the court ruled that the arbitrator must be appointed by the President of the United States and confirmed by the Senate.

The government may seek en banc review from the D.C. Circuit, and/or petition the U.S. Supreme Court for certiorari.