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Justices Pass On Ohio Train-Crossing Law Dispute

By **Linda Chiem**

Law360 (January 8, 2024, 11:09 AM EST) -- The U.S. Supreme Court on Monday declined to consider Ohio's bid to enforce a state law that penalizes railroads if their trains block grade crossings for more than five minutes, turning away a case that sought further clarity on the scope of federal preemption concerning rail regulations.

The justices denied Ohio's **petition for certiorari** seeking to dismantle an **August 2022 ruling** from the Ohio Supreme Court siding with railroad giant CSX Transportation Inc. The dispute concerned whether states can fill the gaps in federal regulation addressing how long a train may occupy a crossing. As is customary, the justices did not detail their reasoning for denying the petition.

Ohio had maintained in court documents that the case was exceptionally important, "both because blocked grade crossings threaten public safety and because the lower court consensus has the effect of preempting many different laws in many different states."

The Ohio Supreme Court in 2022 had different takes on how federal preemption applied to the state's anti-blocking statute, known as R.C. 5589.21, but they ultimately concluded the state law regulated the movement of railroad equipment and therefore interfered with federal regulations governing railroad switching, operations and routes.

But that decision was "fractured," Ohio said in its November 2022 certiorari petition and demonstrated how courts have "struggled to find a consensus rationale for displacing the states' traditional authority over grade crossings."

R.C. 5589.21 makes it a first-degree misdemeanor to block a railroad crossing with a stopped train for more than five minutes.

Ohio took issue with the state Supreme Court's finding that its anti-blocking statute was preempted by the Interstate Commerce Commission Termination Act of 1995, the sweeping federal law establishing that the economic regulation and deregulation of railroad transportation falls exclusively within the federal government's domain.

The ICCTA created the Surface Transportation Board, an independent adjudicatory board, and gave it exclusive jurisdiction over railroad rates, service disputes, mergers and other nonsafety rail issues.

The Ohio justices had also held that the Federal Railroad Safety Act — which includes a limited exception allowing the U.S. transportation secretary and the states to regulate certain aspects of railroad safety — still did not provide a safe harbor for Ohio to enforce its law.

Ohio countered that the FRSA leaves room for state regulation. R.C. 5589.21 is a public safety measure meant to ensure the unhindered flow of emergency responders across railroad crossings, Ohio argued.

As it considered whether to grant Ohio's petition, the U.S. Supreme Court last year **invited the U.S. solicitor general** to weigh in with the federal government's views on the preemption questions at stake in the case.

U.S. Solicitor General Elizabeth Prelogar **filed a November brief** saying federal law governing railroad operations trumps states' powers to regulate highway- and roadway-rail crossings.

Prelogar explained in the brief that Ohio's statute imposes a statewide five-minute rule without regard to any unique local conditions, and doesn't allow for exceptions, other than for "circumstances wholly beyond the control of the railroad company." That makes it incompatible with federal rail safety regulations governing operating speed limits, railroad workplace and employee safety, airbrake testing, and grade-crossing safety, Prelogar said. Furthermore, Ohio's law unreasonably burdens interstate commerce.

"The cumulative effect of disparate state laws regulating blocked grade crossings could require interstate railroads to substantially modify their operations to comply with a patchwork of varying state and local grade-crossing requirements, thereby impeding the flow of interstate commerce," Prelogar wrote.

However, Ohio found allies in **18 other states** that filed an amicus brief saying that state police powers and public safety are on the line in this case. They said state anti-blocking laws "deter railroad carelessness, ensuring local emergency services, such as firefighters and rescue squads, can quickly respond."

"Critically, no federal statute or regulation addresses blocked crossings, so without state and local intervention, railroads often become roadblocks to life-saving emergency care — a very real, widespread problem," the states said in their December 2022 amicus brief.

The states noted in their amicus brief that from December 2019 to September 2021, the Federal Railroad Administration received reports of 25,374 blocked crossings and 18,801 incidents at 5,773 crossings, yet it conducted only 906 blocked-crossing investigations.

A national coalition of rail unions and labor attorneys also weighed in to urge the justices to hear the case.

This legal challenge came about after Ohio hit CSX with charges of violating the state law five times in Union County in 2018, and CSX promptly fought to have the charges dismissed.

CSX has argued in court documents that "Ohio's suggestion that blocked crossings caused by stopped trains constitute a dire public safety crisis is simply wrong."

"The number of events supposedly attributable to blocked crossings is very low when compared to the large number of grade crossings in the country and the frequency with which they are used," CSX said. "And to the extent that any steps need to be taken to reduce the number and duration of blocked crossings, Congress, the FRA and the railroads would be the appropriate parties to do so, and indeed, are already taking such steps."

"Lack of conflict, error and urgency aside, this case is a poor vehicle for addressing the questions presented," CSX added.

The Ohio high court decision tracked with several other appellate court rulings that similarly found other state anti-blocking statutes were preempted by federal law.

The Tenth Circuit in January 2022 sided with BNSF Railway Co. by ruling **Oklahoma could not enforce** its Blocked Crossing Statute against railroads because it similarly ran afoul of the ICCTA.

Enacted in 2019, Oklahoma's Blocked Crossing Statute fines railroad operators for occupying grade, or street-level, crossings for more than 10 minutes. The law says, "No railcar shall be brought to rest in a position which blocks vehicular traffic at a railroad intersection with a public highway or street for longer than 10 minutes."

Oklahoma petitioned the U.S. Supreme Court to consider the case, but the high court in 2022 **declined to do so**.

Union County Prosecuting Attorney David W. Phillips said in a Monday statement that Ohio and other states had asked the U.S. Supreme Court to accept this case for review because blocked crossings are a serious safety issue.

"There are currently no federal statutes or regulations governing how long a train can block a crossing. With the state unable to regulate and the federal government not acting, Ohioans are left to the whim of the railroads," Phillips said. "Emergency responders' access to individuals and hospitals is hindered by blocked crossings, individuals are tempted to climb through stopped trains, and drivers may take additional risks trying to beat the train to avoid long delays. This is not a speculative safety issue — citizens needing emergency care have died after ambulances came upon blocked crossings and were unable to reach their patient or to transport the patient to the hospital.

"The situation has become untenable. We will now turn to Congress to ameliorate this situation by restoring the state's longstanding police power to regulate the length of time that stopped trains may block roadways," Phillips added.

CSX said in a Monday statement that it believes that the Ohio Supreme Court correctly found that the state's anti-blocking statute is preempted by federal law.

"CSX has and will continue to work with our neighbors in the communities where we operate to minimize the time our trains occupy railroad crossings as we meet ongoing, national supply chain demands and serve our customers throughout Ohio and our network," the company said in the statement.

Ohio is represented by Benjamin M. Flowers and Zachery P. Keller of the Ohio Office of the Solicitor General and Union County Prosecuting Attorney David W. Phillips.

CSX is represented by Andrew E. Tauber and Brandon Duke of Winston & Strawn LLP and Terrance K. Davis and Nicholas T. Stack of Shumaker Loop & Kendrick LLP.

The case is Ohio, Petitioner v. CSX Transportation Inc., case number 22-459, in the Supreme Court of the United States.

--Editing by Alyssa Miller.

Update: This story has been updated with comments from CSX and Union County Prosecuting Attorney David W. Phillips.