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## Justices Want Feds' Take On Ohio Train-Crossing Law

By **Linda Chiem**

Law360 (March 20, 2023, 1:16 PM EDT) -- The U.S. Supreme Court on Monday asked the federal government to weigh in on Ohio's bid to enforce a state law that penalizes railroads if their trains block grade crossings for more than five minutes, in a case addressing the scope of federal preemption concerning rail regulations.

The justices invited U.S. Solicitor General Elizabeth Prelogar to file a brief expressing the federal government's views on whether federal law governing railroad operations trumps states' powers to regulate highway- and roadway-rail crossings.

Ohio **petitioned** the nation's high court in November seeking to dismantle an **August 2022 ruling** from the Ohio Supreme Court siding with railroad giant CSX Transportation Inc. At stake is whether states can fill the gaps in federal regulation addressing how long a train may occupy a crossing.

"Ohio believes the case is 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," Ohio said in a Feb. 23 reply brief. "CSX insists that blocked grade crossings have not yet caused enough death or destruction to warrant this court's review. But it would be better for this court to weigh in before CSX and others inflict more irreparable harm on American families."

Ohio's justices last year 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 maintained in its 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's law addresses an important matter of public safety, and there are life-and-death stakes involved, according to the petition.

"When parked trains block roads for extended periods, they endanger the public. Most significantly, they delay first responders from reaching emergencies in situations where every second counts," Ohio said in its petition. "Because this case presents a significant federal question with important implications for public safety, the court should grant Ohio's petition for a writ of certiorari and reverse."

Ohio takes 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 counters 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 has said.

"Read together, the Termination Act and the Safety Act do not 'radically readjust' the balance of power over grade crossings — and the opaque interaction between the two bodies of law certainly does not amount to a 'clear statement' of Congress' intent to strip the states of their traditional authority over grade crossings," Ohio argued.

**Eighteen other states** have agreed with Ohio that state police powers and public safety are on the line in this case, saying in a December amicus brief that 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 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 have 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 a Feb. 16 opposition brief 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 explained. "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 **declined to do so**.

Representatives for the Ohio attorney general's office and for CSX could not immediately be reached for comment Monday.

But in a previous statement following the Ohio Supreme Court ruling, CSX said it "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."

Ohio is represented by Solicitor General Benjamin M. Flowers and Deputy Solicitor General Zachery P. Keller, Union County prosecuting attorney David W. Phillips, and assistant prosecuting attorney Samantha M. Hobbs.

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 U.S. Supreme Court.

--Editing by Philip Shea.

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