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Ohio Asks High Court To Hear CSX Train Crossing Law Fight

By **Linda Chiem**

Law360 (November 16, 2022, 5:36 PM EST) -- Ohio has asked the U.S. Supreme Court to allow it to enforce a state law that penalizes railroads if their trains block grade crossings for more than five minutes, maintaining that federal law governing railroad operations does not preempt Ohio's statute.

In a **petition for certiorari** made public Tuesday, Ohio asked the nation's high court to dismantle an **August ruling** from the Ohio Supreme Court siding with railroad giant CSX Transportation Inc.

Ohio's justices had different takes on how federal preemption applied to Ohio's anti-blocking statute, known as R.C. 5589.21, but they ultimately concluded that 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 contends in its petition, and demonstrates 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 here, 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. "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's intent to strip the states of their traditional authority over grade crossings," Ohio argued.

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 said in a statement that it appreciated the Ohio Supreme Court's finding that the state's anti-blocking statute was 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.

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

Earlier this year, the Tenth Circuit sided with BNSF Railway Co. by ruling in January that **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**.

Ultimately, the various courts are getting it all wrong, Ohio contends in its petition.

"When it comes to blocked-crossing laws, lower courts are assuming that federal regulations about different subjects, like train speed or brakes, 'implicitly preempt' state and local regulation," Ohio argued. "Rather than showing 'considerable solicitude' for state laws, these courts are holding that federal preemption occurs through unspoken administrative fiat. As a result, there is 'a jurisdictional gap in which states lack the power to patrol the potentially hazardous operation of trains.'"

CSX is represented in the underlying litigation by Andrew E. Tauber of Winston & Strawn LLP, Evan M. Tager of Mayer Brown LLP and Terrance K. Davis and Nicholas T. Stack of Shumaker Loop & Kendrick LLP.

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.

The case is Ohio, Petitioner v. CSX Transportation Inc., case number 22-459, in the U.S. Supreme Court.

--Editing by Peter Rozovsky.