

Appendix B

Preemption of State Blocked Crossing Laws

It is well established that state or local laws regulating how long a train may block a road crossing are preempted by the Federal Railroad Safety Act (FRSA), the ICC Termination Act (ICCTA), or both. In fact, courts—including two federal appellate courts and four state supreme courts—have held that the FRSA or the ICCTA preempt blocked-crossing laws or ordinances in *fifteen* different states: California, *People v. Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th 1513, 1531 (Cal. App. 2012); Illinois, *Vill. of Mundelein v. Wisconsin Cent. R.R.*, 882 N.E.2d 544, 556 (Ill. 2008); Indiana, *Indiana v. Norfolk S. Ry. Co.*, 107 N.E.3d 468 (Ind. 2018); Iowa, *Driesen v. Iowa, Chicago & E. R.R. Corp.*, 777 F. Supp. 2d 1143, 1154 (N.D. Iowa 2011); Kansas, *State v. BNSF Ry. Co.*, 432 P.3d 77, 87 (Kan. App. 2018); Michigan, *CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626, 630 (6th Cir. 1996); Mississippi, *Elam v. Kansas City S. Ry. Co.*, 635 F.3d 796, 808 & n.11 (5th Cir. 2011), Ohio, CSX Transportation, Inc. v. Williams, No. 3:16-cv-2242, 2017 WL 1544958, at *3 (N.D. Ohio Apr. 28, 2017); Oregon, *Burlington N. & Santa Fe Ry. Co. v. Dep't of Transp.*, 206 P.3d 261, 262 (Or. App. 2009); Pennsylvania, *Krentz v. Consol. Rail Corp.*, 910 A.2d 20, 35 (Pa. 2006); Tennessee, *Lewis v. Norfolk Southern Ry. Co.*, 618 F. Supp. 2d 833, 846 (W.D. Tenn. 2008); Texas, *Friberg v. Kansas City Southern Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001); Washington, *City of Seattle v. Burlington N. R. Co.*, 41 P.3d 1169 (Wash. 2002); and Wisconsin, *City of Weyauwega v. Wisconsin Cent. Ltd.*, 919 N.W.2d 609, 618 (Wisc. App. 2018).

In each of these cases, the law at issue imposed a short time limit for blocking a road crossing—usually five minutes, but sometimes ten. And almost all of these laws applied only to stopped trains, but a few applied to moving trains as well. Likewise here, the Ohio blocked crossing law provides that “[n]o railroad company shall obstruct, or permit or cause to be obstructed a public street, road, or highway, by permitting a railroad car, locomotive, or other obstruction to remain upon or across it for longer than five minutes, to the hindrance or inconvenience of travelers or a person passing along or upon such street, road, or highway.” Ohio Revised Code 5589.21. Thus, the Ohio statute is similar or identical to the laws held preempted in all these cases. *E.g.*, *Elam*, 635 F.3d at 804 n.2; *Friberg*, 267 F.3d at 441 n.2; *Williams*, 2017 WL 1544958, at *1; *Lewis*, 618 F. Supp. 2d at 842. It is therefore preempted for the same reasons. In fact, federal courts in Ohio have found exactly that – Ohio Revised Code 5589.21 is preempted. See CSX Transportation, Inc. v. Williams, No. 3:16-cv-2242, 2017 WL 1544958, at *3 (N.D. Ohio Apr. 28, 2017). H.B. 186 would add to the Ohio statute by forbidding the obstruction of grade crossings for *any* length of time “if the obstruction causes the delay of an emergency vehicle that is assisting or attempting to assist a person or property in danger.” This legislation would make the Ohio blocked crossing even more restrictive of rail operations, and for the reasons set forth below, would be preempted by federal law.

FRSA Preemption. The FRSA contains a broad, express preemption clause: “A State may adopt or continue in force a law, regulation, or order related to railroad safety . . . until the Secretary of Transportation” (who has delegated this power to the Federal Railroad Administration) “prescribes a regulation or issues an order covering the subject matter of the State requirement.” 49 U.S.C. § 20106(a)(2). Once a federal rule covers the subject matter, a state law can avoid preemption only if it meets three criteria: It must (A) be “necessary to eliminate or reduce an essentially local safety . . . hazard,” (B) be “not incompatible with a law, regulation, or order of the United States Government,” and (C) “not unreasonably burden interstate commerce.” *Id.*

FRSA preemption thus turns on three questions: Is the state law “related to railroad safety”? If so, do federal regulations “cover the subject matter”? And if federal regulations apply, does the state law satisfy the savings clause’s three requirements? Here, ample case law answers all three questions, establishing that state blocked crossing laws are preempted.

First, blocked-crossing laws are related to railroad safety. “A ‘connection with, or reference to,’ railroad safety is all that is required” to fall within the FRSA’s scope. *Vill. of Mundelein*, 227 2d at 290–91. And numerous cases have found “no question” that “[l]aws related to the movement of trains through crossings, including blocked-crossing laws, are related to railroad safety.” *City of Weyauwega*, 919 N.W.2d at 618–19 (quoting *Driesen*, 777 F. Supp. 2d at 1150); *see also CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626, 629 (6th Cir. 1996); *Lewis*, 618 F. Supp. 2d at 846; *Vill. of Mundelein*, 882 N.E.2d at 550.

Second, federal regulations cover the subject matter. “[I]t is well established in the overwhelming majority of federal and state courts to consider the matter that the subject matter of blocked-crossing laws is the movement of trains through grade crossings.” *Driesen*, 777 F. Supp. 2d at 1151. And the movement of trains through crossings is covered by numerous federal safety regulations. In particular, a state “anti-blocking statute [is] preempted by FRSA because it would ‘require [a railroad] to modify either the speed at which its trains travel or their length,’ both of which are governed by federal rules. *CSX Transp., Inc. v. City of Seabee*, 924 F.3d 276, 286 (6th Cir. 2019); *accord CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812, 817 (6th Cir. 2002); *City of Seattle*, 41 P.3d at 1174. Likewise, “federal regulations governing air brake tests . . . cover[] the subject matter of the movement of trains through crossings,” and thus of blocked-crossing statutes. *Driesen*, 777 F. Supp. 2d at 1151; *accord Krentz*, 910 A.2d at 35.

It does not matter if a state blocked crossing law applies only to stopped trains. “To achieve compliance, the [statute] compels railroad carriers to either adjust the length of their trains, *e.g.*, by having a higher volume of shorter trains, or adjust the speed at which the trains are traveling. Put another way, the regulation here is a regulation of train speed and length, *although it applies only when a train stops at a crossing.*” *Vil. of Mundelein*, 855 N.E.2d at 240 (emphasis added). Thus, courts have held blocked crossing laws preempted by the FRSA regardless of whether they apply

to stopped trains, moving trains, or both. *E.g.*, *Lewis*, 618 F. Supp. 2d at 846; *City of Weyauwega*, 919 N.W.2d at 622; *Vill. of Mundelein*, 882 N.E.2d at 553; *Krentz*, 910 A.2d at 35. Nor does it matter that no federal rule directly regulates how long trains may block crossings. It is “unnecessary for the federal regulation to be identical to the state statute for preemption to apply.” *City of Plymouth*, 283 F.3d at 817; *accord Krentz*, 910 A.2d at 34–35.

Third, state-wide blocked crossing laws are not “essentially local.” To satisfy the FRSA’s savings clause and avoid preemption, a law must be (among other things) “necessary to eliminate or reduce an essentially local safety . . . hazard.” 49 U.S.C. § 20106(a)(2)(A). And courts agree that a law with statewide application—such as H.B. 186’s proposed section 5589.21(C)—does not qualify. The FRSA’s “local safety hazard’ [clause] cannot be applied to uphold the application of a statewide rule.” *Norfolk Western Ry. v. Pub. Utilities Comm’n*, 926 F.2d 567, 571 (6th Cir. 1991). Such a rule “is explicitly inconsistent with the definition of a local safety hazard.” *Id.* at 571–72; *accord Nat’l Ass’n of Regulatory Util. Comm’rs v. Coleman*, 542 F.2d 11, 13 (3d Cir. 1976). And courts have applied this principle specifically to state blocked crossing statutes: “Railroad crossings exist statewide, as does the possibility that trains might block such crossings. Thus . . . blocked-crossing laws address situations which are statewide in character” rather than uniquely local. *Driesen*, 777 F. Supp. 2d at 1153.

ICCTA Preemption. The ICCTA gives the federal Surface Transportation Board exclusive jurisdiction over—and expressly “preempt[s] the remedies provided under Federal or State law” regarding—“transportation by rail carriers” and the “practices, routes, services, and facilities of such carriers,” which includes any “equipment” or “services related to” “the movement of passengers or property, or both, by rail.” 49 U.S.C. §§ 10501(b), 10102(9). “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *City of Auburn v. United States*, 154 F.3d 1025, 1030 (9th Cir. 1998).

Numerous cases have found that this broad language preempts state blocked-crossing laws because such laws “dictate[] key operational choices” like train speed, length, scheduling, and switching, *Norfolk S. Ry. Co.*, 107 N.E.3d at 476, and thus “necessarily and directly attempt[] to manage railroad operations,” *Burlington N. Santa Fe R.R.*, 148 Cal. Rptr. 3d at 256; *see also Elam*, 635 F.3d at 804 n.2, 807; *Williams*, 2017 WL 1544958, at *3; *Burlington N. & Santa Fe Ry.*, 206 P.3d at 264.

The same reasoning was applied to the court in its decision in *CSX Transportation, Inc. vs. Williams*, which held that Ohio Revised Code 5589 is preempted by the ICCTA. *CSX Transportation, Inc. v. Williams*, No. 3:16-cv-2242, 2017 WL 1544958 (N.D. Ohio Apr. 28, 2017).