



federally-required “testing”. (Bruce Carpenter Affidavit, at ¶¶1-4.) By and through its Chief Train Dispatcher, NSRC contends that while engaged in these activities, it is not possible for NSRC to comply with the Ohio blocked crossing statute without relocating and/or reconstructing its current rail facilities, and significantly revamping its rail operations, including with respect to train speed, length, and/or scheduling, the regulation of which are governed exclusively by federal law. (Carpenter Affidavit, at ¶5.)

NSRC contends that the citations at issue should be dismissed for want of subject matter jurisdiction since, facially and as applied against NSRC, the underlying charging statute is preempted by federal law – specifically, the Federal Railroad Safety Act (“FRSA”) and/or the Interstate Commerce Commission Termination Act (“ICCTA”).

This Court is persuaded by the fact that, since early October of 2001, the enforceability of state and municipal blocked crossing legislation has been considered by numerous courts (federal and state) throughout the country. In each instance, this legislation has been determined to be preempted by federal law – in other words, it does not and cannot withstand constitutional scrutiny.

These decisions include, perhaps most notably, *CSX Transp. v. City of Plymouth*, 283 F.3d 812 (6<sup>th</sup> Cir. 2002) wherein the Sixth Circuit Court of Appeals – the circuit which controls Ohio – affirmed a federal district court’s decision which struck the State of Michigan’s blocked crossing statute. In most pertinent part, the federal district court had held as follows: **“Under the law, any limitation on the amount of time a train can block a crossing must come from the federal government”** – in other words, such limitation cannot come from state

governments (such as Ohio, via R.C. 5589.21) or municipal governments. *CSX Transp. Inc. v. City of Plymouth*, 93 F. Supp. 2d 643, 663 (E.D. Mich 2000).

Courts throughout the federal and state systems are in accord. *See e.g., People v. Burlington N. Santa Fe R.R.*, 148 Cal. Rptr.3d 243, 255 (Cal. App. 2012) (confirming that **the State of California's blocked crossing statute was preempted by the ICCTA**, stating in pertinent part that “[t]he People have not cited, and we have not discovered through our independent research, a single case in which a court considered ICCTA preemption and concluded that an antiblocking regulation was not preempted”; the concurring opinion agreed that the statute was preempted, but on FRSA grounds); *Elam v. The Kansas City S. Ry. Co.*, 635 F.3d 796, 807 (5<sup>th</sup> Cir. 2011) (confirming that **the State of Mississippi's blocked crossing statute was completely preempted by the ICCTA**, since it “directly attempts to manage [the railway's] switching operations, including [its] decisions as to train speed, length, and scheduling,” and therefore constituted a “direct attempt to manage [the railway's] decisions in the economic realm”); *Driesen v. Iowa, Chicago & E. R.R. Corp.*, 777 F. Supp.2d 1143 (N.D. Iowa 2011) (concluding that **the State of Iowa's blocked crossing statute and a municipality's blocked crossing ordinance were preempted by the FRSA**, thus noting that the court need not address ICCTA preemption); *Burlington N. & Santa Fe Ry. Co. v. DOT* 227 Ore. App 468, 206 P.3d 261, 264 (2009) (confirming that **the State of Oregon's blocked crossing statute was preempted by the ICCTA**, and stating in pertinent part as follows: “dictating where and for how long a train may stop [is] a regulation of railroad operations [and thus] preempted by the ICCTA”); *Lewis v. Norfolk S. Ry. Co.*, 618 F.Supp.2d 833, 846 (W.D. Tenn. 2008) (concluding that **a municipality's blocked crossing ordinance was**

“expressly preempted by the FRSA”); *Eagle Marine Indust., Inc. v. Union Pacific R.R. Co.*, 227 Ill. 2d 377, 822 N.E. 2d 522 (2008) (confirming that the State of Illinois’ blocked crossing statute was preempted by the FRSA, thus noting that the court need not address ICCTA preemption); *Vill. of Mundelein v. Wis. Cent. R.R.*, 227 Ill. 2d 281, 296, 882 N.E. 2d 544 (2008) (confirming that a municipality’s blocked crossing ordinance was preempted by the FRSA, and noting that the court’s decision was “consistent with other federal and state cases considering preemption of similar blocked-crossing laws”); *Krentz v. Consolidated Rail Corp.*, 589 Pa. 576, 910 A.2d 20 (2006) (confirming that the State of Pennsylvania’s blocked crossing statute was preempted by the FRSA, thus noting that the court need not address ICCTA preemption); *Canadian Nat Ry. Co. v. City of Des Plaines*, Ill. No. 1-04-2479, 2006 WL 345095 (Feb. 10, 2006) (confirming that a municipality’s blocked crossing ordinance was preempted by both the ICCTA and the FRSA, stating that “[the ICCTA] expresses a clear intention to preempt state and local regulation of railroad operations” including any “statute or ordinance [] which limits the amount of time a train may block an intersection,” and that “[m]unicipal regulation of the number of minutes a train may block an intersection runs contrary to one of the main purposes of the FRSA: national uniform regulation of railroad safety”); *City of Seattle v. Burlington N. R.R. Co.*, 145 Wn. 2d 661, 674, 41 P.3d 1169 (2002) (confirming that the City of Seattle’s blocked crossing ordinances were preempted by federal law, stating in pertinent part as follows: “[t]he City’s ordinance that reserves to it the authority to control railroad activities that interfere with city traffic is subject to preemption under the ICCTA and the FRSA”); and *Friberg v. Kan. City S. Ry.*, 267 F.3d 439, 443 (5<sup>th</sup> Cir. 2001) (confirming that the State of Texas’ blocked crossing statute was

preempted by federal law, stating in pertinent part as follows: “[r]egulating the time a train can occupy a rail crossing impacts, in such areas as train speed, length and scheduling, the way a railroad operates its trains. \* \* \* Nothing in the ICCTA [] provides authority for a state to impose operating limitations on a railroad like those imposed by the Texas [blocked crossing statute].”).

This Court is also cognizant that within Ohio, at least three (3) municipal courts (Toledo, Ottawa County, and Perrysburg) have considered this issue since October of 2001; in each instance, these courts have reached the same conclusion – specifically, that the Ohio statute is preempted by both the FRSA and ICCTA.

Also, the attorneys general of at least two states have issued advisory opinions that state and municipal blocked crossing legislation is preempted by federal law. *See, e.g.*, 2008 Wis. Att. Gen. Ops. No. I-07-08 (concluding that “a court would likely hold that enforcement of the [Wisconsin blocked crossing statute] is wholly preempted under federal law”); and 2005 Tex. Atty. Gen. Ops. No. GA-0331 (stating in most pertinent part as follows: “[the Texas state blocked crossing statute], which imposes a criminal penalty against a railway company if its train blocks a railroad crossing for more than ten minutes, is preempted by the [ICCTA] and the [FRSA].”

In sum, during the past fifteen-plus years, the enforceability of state and municipal blocked crossing legislation has been passed upon by multiple courts of authority (in both the federal and state systems), and by various attorney generals; in each of these instances, this legislation has been determined to be preempted by federal law.

Upon review of the above-referenced authority, together with the briefs filed by the respective parties, this Court concludes that the State of Ohio's blocked crossing statute (R.C. 5589.21) is preempted by federal law, both facially and as applied. Accordingly, NSRC's motion is well-taken, and the instant citations are ordered dismissed.

**IT IS SO ORDERED.**

January 30, 2017  
Date

  
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Hon. Paul G. Lux