

No. 22-459

IN THE
Supreme Court of the United States

STATE OF OHIO,
v.
CSX TRANSPORTATION, INC.,
Petitioner,
Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of Ohio**

**BRIEF *AMICI CURIAE* BY THE SHEET METAL,
AIR, RAIL TRANSPORTATION WORKERS-
TRANSPORTATION DIVISION, THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
AND TRAINMEN, AND THE ACADEMY OF RAIL
LABOR ATTORNEYS IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI**

JOSHUA D. MCINERNEY, BLET
BARKAN MEIZLISH, LLP
250 E. Broad Street, 10th Floor
Columbus, Ohio 43215
(614) 221-4221
jmcinerney@barkanmeizlish.com

LAWRENCE M. MANN
Counsel of Record
ALPER & MANN, P.C.
9205 Redwood Avenue
Bethesda, MD 20817
(202) 298-9191
mann.larrym@gmail.com

KEVIN BRODAR, General Counsel
SMART-TD
6060 Rockside Woods Blvd. N.
Suite 325
Independence, OH 44131-2378
kbrodar@smart-union.org

Counsel for *amici curiae*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTERESTS OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	2
A. Railroad Safety Background.....	2
B. The Interstate Commerce Commission Termination Act and the Federal Railroad Safety Act Should Be Read <i>in pari materia</i>	5
C. If the Rationale of the Lead Opinion’s Approach is Applied, Neither a State Nor Even the Federal Railroad Administration Could Regulate Railroad Safety.....	7
D. The Surface Transportation Board Has Issued Conflicting Decisions Regarding the Application of the FRSA and the ICCTA.....	8
E. Safety is Adversely Impacted by the Decision Below	13

、

TABLE OF AUTHORITIES

	Page
Cases	
<i>Blalock v. Union Pacific R.R. Co.</i> , 2022 U.S. App. LEXIS 29255 (5th Cir. 2022)	13
<i>BNSF Railway Co. v. Todd Hiett</i> , 22 F. 4th 1190 (10th Cir. 2022)	12
<i>CSX Transportation, Inc. v. Easterwood</i> , 507 U.S. 658 (1993)	3
<i>Emerson v. Kansas Southern Railway Co.</i> , 503 F. 3d 1126 (10th Cir. 2007)	6
<i>Friberg v. Kansas City Southern Ry. Co.</i> , 267 F. 3d 439 (5th Cir. 2001)	12
<i>Griffin v. Oceanic Contractors, Inc.</i> , 458 U.S. 564 (1982)	6
<i>Maumee & W. R.R. Corp. & Rmw. Ventures, LLC</i> , No. 34354, 2004 WL 395835 (2004)	11
<i>Merrill Lynch v. Ware</i> , 414 U.S. 117 (1973)	6
<i>Tyrrell v. Norfolk Southern Ry.</i> , 248 F.3d 517 (6th Cir. 2001)	9, 10
Statutes	
Federal Railroad Safety Act	<i>passim</i>
Infrastructure Investment and Jobs Act of 2021	4
Interstate Commerce Commission Termination Act	<i>passim</i>
45 U.S.C. §§ 51-60	2
45 U.S.C. § 431	3 n.2

TABLE OF AUTHORITIES—Continued

	Page
49 U.S.C. § 10501(b)	8
49 U.S.C. §§ 11701-11707	9
49 U.S.C. §§ 11901-11908	9
49 U.S.C. § 20101	3, 10
49 U.S.C. § 20106	3 n.2
49 U.S.C. § 20109	2
Pub. L. 91-458, 84 Stat. 971 (1970)	7
Pub. L. 103-272, 108 Stat. 1379 (1994)	3 n.2
Pub. L. 117-58	4
S. Rep. No. 104-176, 104th Cong., 1st Sess. 5-6 (1995)	9
<i>Federal Railroad Safety Act of 1969: Hearings on S.1933, S. 2915, and S.3061 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess. (1969)</i>	8
<i>Hearing on Examining Rail Freight Safety: Before the Subcommittee on Railroads, Pipelines and Hazardous Materials of the House Committee on Transportation and Infrastructure, 117 Cong., 2d Sess. (2022)</i>	5
 Regulatory Authorities	
<i>Borough of Riverdale, STB Finance Docket No. 33466 (Sept. 9, 1999)</i>	11
<i>CSX Transp., Inc., Fed. Carr. Cas. (CCH) par. 37186, 2005 WL 58402, (STB Mar. 14, 2005)</i>	12

TABLE OF AUTHORITIES—Continued

	Page
<i>CSX Transportation, Inc.</i> , No. FIN 34662, 2004 WL 1024490 (2005).....	11
Notice of Information Collection: Request for Comment. Docket No. FRA-2022-0002-N-4; 87 Fed. Reg.19176	4
<i>The City of Ozark, Ark., Petition for Declaratory Order</i> , STB Finance Docket 36104 (2017)	12
49 C.F.R. § 1.89	3 n.3
63 Fed. Reg. 72,225 (Dec. 31, 1998)	11
 Other Authorities	
Report to Congressional Requesters by the U.S. Government Accountability Office, <i>Rail Safety: Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact.</i> GAO-19-443 (May 2019)	4-5

**BRIEF OF *AMICI CURIAE* IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

INTERESTS OF *AMICI CURIAE* ¹

The Sheet Metal, Air, Rail Transportation Workers (SMART-TD) is the duly recognized collective bargaining representative under the Railway Labor Act (RLA) for the crafts or classes of locomotive engineers, conductors, brakemen, firemen, switchmen, hostlers and other train service employees employed by freight, passenger and commuter rail carriers operating in the United States. SMART-TD represents approximately 125,000 employees in the railroad industry.

The Brotherhood of Locomotive Engineers and Trainmen (BLET) is the duly recognized collective bargaining representative under the RLA for the crafts or classes of locomotive engineers, conductors, brakemen, firemen, switchmen, hostlers and other train service employees employed by freight, passenger and commuter rail carriers operating in the United States. BLET represents more than 57,000 employees in the railroad industry.

The crafts or classes of employees represented by SMART-TD and BLET comprise the crews who operate trains in the United States and are among those persons who are affected by this matter.

¹ Pursuant to this Court's Rule 37.6, amicus curiae states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amicus curiae and its counsel made a monetary contribution to the preparation or submission of this brief. Each of the parties received notice of our intention to file an amicus brief at least 10 days prior to the deadline to file this brief. The Petitioner and Respondent, through counsel, gave their consent to the filing of this Brief.

The Academy of Rail Labor Attorneys (“ARLA”) is a professional association with members nationwide who represent railroad employees and their families in personal injury and wrongful death cases under the Federal Employers’ Liability Act. 45 U.S.C. §§ 51-60. The members of ARLA represent an overwhelming majority of employees seeking recovery under the FELA, and the Federal railroad whistleblower law. (49 U.S.C. §20109). A primary purpose of ARLA is the promotion of rail safety for railroad employees and the general public.

The vast majority of railroad employees impacted by this case are represented by the *amici*. The interests common to the *amici* in this matter are the preservation of a railroad safety law in which Congress has authorized states to regulated railroad safety.

SUMMARY OF ARGUMENT

The reason for granting the Petition is simple. If the lower court decision is not overturned, neither a state, nor the Federal Railroad Administration (FRA), would be able to regulate railroad safety. The Interstate Commerce Commission Termination Act (ICCTA) and the Federal Railroad Safety Act of 1970 (FRSA) should be read *in pari materia*. The Surface Transportation Board (STB) has issued conflicting decisions regarding the application of the FRSA and the ICCTA. During the previous 12 months, there were 31, 141 reported to the FRA and in 17.04 % of the instances, first responders were unable to cross highway-rail grade crossings. In some cases, this resulted in deaths.

ARGUMENT

A. Railroad Safety Background

There are more than 200,000 highway-rail grade crossings in the U.S. Thirty-eight states have at-

tempted to regulate blocked rail/highway grade crossings. See, <https://www.fra.dot.gov/StateLaws>. On December 20, 2019, FRA established a dedicated webpage for the public and law enforcement to report blocked highway-rail grade crossings. <https://www.fra.dot.gov/blockedcrossings>. This was a clear intent by FRA that it had safety jurisdiction over blocked crossings. In turn, the states have similar authority until such time as the FRA substantially subsumes the subject matter. See, *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). The FRSA (49 U.S.C. §20101, *et. seq.*)² authorizes the States to “adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary³ has adopted a . . . regulation . . . covering the subject matter of such State requirement,” This Court, in *Easterwood*, recognized that the scope of the FRSA’s “broad phrases” describe matters relating to railroad safety. *Id.* at 658.

Blocked crossings pose potential safety risks. Frustrated individuals may be tempted to crawl between stopped railcars, and blocked crossings hinder emergency services’ access to individuals and hospitals. This has caused some deaths. An example of the extent of blocked crossings categorized on the FRA website shows that, during the last 12 months through 11/23/22, there were 31,141 reports to FRA. <https://www.fra.dot>.

² The FRSA was originally enacted in 1970 into 45 U.S.C. §431 *et. seq.* In 1994, Congress codified the federal railroad safety laws, but may not be construed to change the substance of the laws. See, Pub. L 103-272, 108 Stat. 1379, §§1(a) and 6(a) (1994). The state savings clause in the FRSA is codified at 49 U.S.C. §20106.

³ The Department of Transportation has delegated to the FRA authority to administer the federal railroad safety laws and regulations. 49 C.F.R. §1.89.

gov/blockedcrossingsincidents. First responders were unable to cross the tracks 17.04% of the time. That is 5,293 instances when first responders were blocked in the past 12 months. CSX had 4,625 reported blocked crossings during that time. These statistics clearly demonstrate that there is a national railroad safety issue which needs to be addressed by the Court.

In the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58), Congress mandated that FRA establish an online portal and corresponding database to receive information regarding blocked highway-rail grade crossings. (Sec. 22404). On April 1, 2022, the FRA issued a Notice of Information Collection: Request for Comment. Docket No. FRA-2022-0002-N-4; 87 Fed. Reg. 19176. FRA stated that it would submit to OMB clearance to obtain approval of for information collection. The FRA pointed out the safety problems which exist at blocked crossings.

There are potential safety concerns with crossings that are blocked by trains. For instance, pedestrians may crawl under or through stationary trains. Also, emergency response vehicles and first responders may be delayed when responding to an incident or transporting persons to a hospital. In addition, drivers may take more risks, such as driving around lowered gates at a crossing or attempting to beat a train through a crossing without gates, in order to avoid a lengthy delay if they are aware that trains routinely block a crossing for extended periods of time.

87 Fed. Reg. 19176-19177

A major problem which blocked crossings has created is the length of freight trains. In a Report to Congressional Requesters by the U.S. Government Accountability Office, *Rail Safety: Freight Trains Are Getting*

Longer, and Additional Information Is Needed to Assess Their Impact, GAO-19-443 (May 2019), the GAO noted that data from two Class I railroads indicated that their average train length had increased by about 25% since 2008, with average lengths of 1.2 and 1.4 miles in 2017. All Class I railroads said they operate longer than average trains on specific routes. One railroad stated that it ran a 3-mile long train twice weekly.

In recent years, the large railroads have implemented what they identify as precision scheduled railroading (PSR). It is a service model adopted in an effort to streamline operations. In fact, it is a brainchild of Wall Street urging railroads to increase their stock price. One of the effects of PSR is that the railroads are operating much longer trains, which, in turn, result in more frequently block crossings.

As stated at a congressional hearing on June 14, 2022, during the first quarter of 2022, a CSX train departing South Schenectady, NY, totaled 24,138 feet. A number of the railroad's trains exceeded 20,000 feet. Statement of Jeremy Ferguson, President of Sheet Metal, Air, Rail Transportation Workers-Transportation Division, p.13, *Hearing on Examining Rail Freight Safety Before the Subcommittee on Railroads, Pipelines and Hazardous Materials of the House Committee on Transportation and Infrastructure*, 117 Cong., 2d Sess. <https://transportation.house.gov/committee-activity/hearings/examining-freight-rail-safety>.

B. The Interstate Commerce Commission Termination Act and the Federal Railroad Safety Act Should Be Read *in pari materia*.

Here, we address the interrelationship between the Interstate Commerce Commission Termination Act (ICCTA) and the federal railroad safety laws (FRSA). At

the outset, it should be recognized that the STB’s analysis of the ICCTA has been conflicting. The FRA’s analysis of both laws supports Petitioner. We believe that the FRSA safety provisions, not the ICCTA, govern this issue. In analyzing the ICCTA, as to preemption or preclusion, the inquiry should be “tempered by the conviction that the proper approach is to reconcile ‘the operation of both statutory schemes with one another rather than holding one completely ousted.’” *Merrill Lynch v. Ware*, 414 U.S. 117, 127 (1973). When interpreting a law, interpretations that would produce absurd results are disfavored when alternative readings of the text that would comport with Congress’ purpose are available. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Expansive claims of ICCTA preemption have been criticized and rejected by courts. See, *Emerson v. Kansas Southern Railway Co.*, 503 F. 3d 1126, 1132 (10th Cir. 2007), where the court noted that the ICCTA preemption argument “has no obvious limit, and if adopted would lead to absurd results.” That certainly would occur, if the lower court decision is upheld.

We concur with the statement in the lead opinion (Pet. App. 9a):

As the United States Supreme Court has explained, “[w]hen confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at ‘liberty to pick and choose among congressional enactments’ and must instead strive ‘to give effect to both.’” *Epic Sys. Corp. v. Lewis*, ___ U.S. ___, 138 S. Ct. 1612, 1624, 200 L.Ed.2d 889 (2018), quoting *Morton v. Mancari*, 417 U.S. 535, 551, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974), quoting *United States v. Borden Co.*, 308 U.S. 188, 198, 60 S. Ct. 182, 84 L. Ed. 181 (1939). We may conclude that “two statutes cannot be harmonized,

and that one displaces the other,” only if there is ““a clearly expressed congressional intention” that such a result should follow.” *Id.*, quoting *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 533, 115 S. Ct. 2322, 132 L. Ed. 2d 462 (1995), quoting Morton at 551. We therefore presume that ““Congress will specifically address’ preexisting law when it wishes to suspend its normal operations in a later statute.” *Id.*, quoting *United States v. Fausto*, 484 U.S. 439,453, 108 S. Ct. 668, 98 L. Ed. 2d 830 (1988).

The above principles apply to the present case.

C. If the Rationale of Lead Opinion’s Approach is Applied, Neither a State Nor Even the Federal Railroad Administration Could Regulate Railroad Safety.

Congress authorized states to regulate safety in the FRSA, and took into consideration that a safety law will have some economic impact on railroads. To adopt the lower court’s decision to its ultimate conclusion, would mean that neither the FRA, nor a state, could ever regulate railroad safety. That, clearly, is contrary to congressional intent. Every railroad safety law or regulation has some economic impact on a railroad. The lower court’s decision is based upon the point that the matter before the court is one of public safety, not railroad safety. (Pet. App. 13a, 15a). That is an invalid conclusion. Any incident where a railroad’s actions or inactions result in injury or death, is a railroad safety matter. The lead opinion ignores the declaration of purpose stated in the original enactment of the FRSA. “Congress declares that the purpose of this Act is to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and injuries to persons . . .” Pub. L. 91-458, 84

Stat. 971, Sec.101 (1970). It also ignores the congressional hearings where there were numerous references to protecting the public. *See, Federal Railroad Safety Act of 1969: Hearings on S.1933, S. 2915, and S.3061 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess. 35, 37, 55, 57, 91, 110, 161, 191, 207, 220, 221, 231, 234, 245, 287, 298, 306, 310, 324 (1969).*

Additionally, each case favorably cited in the lead opinion preempting state laws blocking of crossings relied upon the economic impact of the state law. (*See, Pet. App.9a.*). Every substantive regulation by a state and FRA has an economic impact upon railroads. Therefore, if economic impact is the criteria for ICCTA preemption/preclusion, neither the FRA nor a state could ever regulate railroad safety.

D. The Surface Transportation Board Has Issued Conflicting Decisions Regarding the Application of the FRSA and the ICCTA.

Congress enacted the ICCTA to limit the economic regulation of various modes of transportation and created the STB to administer that Act. The STB has exclusive jurisdiction over the (1) transportation by rail carriers and the remedies provided with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and (2) construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities. 49 U.S.C. § 10501(b). The language of the ICCTA expressly preempts state and local regulation that either contradicts the language set out in the ICCTA or attempts to regulate a subject over which the STB has exclusive jurisdiction. *Id.* The ICCTA confers upon the STB “all regulatory power

over the economic affairs and non-safety operating practices of railroads.” S. Rep. No. 104-176, 104th Cong., 1st Sess. 5-6 (1995). There exists nothing in the ICCTA, nor its legislative history, to suggest that the STB could supplant the FRSA provisions.

For any railroad safety preemption/preclusion analysis, the relevant statute is the FRSA, not the ICCTA. While the STB may consider safety, along with other issues under its jurisdiction, it cannot adopt safety rules or standards. That is the duty of the Secretary of Transportation, or the states, if the FRA has not prescribed a regulation covering the subject matter involved.

The remedies set out in the ICCTA at §§ 11701-11707 and 11901-11908 do not pertain to safety and are not intended to supplant remedies specifically designed to address safety under federal law such as the FRSA. The CSX cannot point to any language in the ICCTA’s statute or legislative history which suggests that it was intended to supplant any other safety law such as the extensive rail safety regulatory scheme administered by the FRA or States.

The history of rail safety rulemaking since the passage of the ICCTA is equally indicative of how the STB and the FRA each have construed the ICCTA as not vesting preemptive jurisdiction for railroad safety in the STB. In the ensuing years of its existence, the STB has not issued any railroad safety regulations. By contrast, the FRA and states continue to issue numerous railroad safety regulations, covering a broad range of safety issues having some economic impact on the railroads. Both the STB and the FRA have rejected the railroads’ argument that the ICCTA preempts state laws regarding railroad safety. Each agency filed *amicus* briefs in *Tyrrell v. Norfolk Southern Ry.*, 248 F.3d 517 (6th Cir. 2001) arguing that the FRSA, not the

ICCTA, is the appropriate statute to determine state safety preemption. The brief of the STB in *Tyrrell* states that the lower court’s ruling in favor of the railroad would “. . . undermine the primary authority of the Federal Railroad Administration (FRA) (or states where the FRA has no Federal standards) to regulate railroad safety under FRSA”. STB Brief at 3. In *Tyrrell*, the court reversed the district court, stating that its decision erroneously preempted “state safety law that is saved under FRSA if it tangentially touches upon an economic area regulated under the ICCTA.” *Id.* at 522-523. Further, the court said:

While the STB must adhere to federal policies encouraging “safe and suitable working conditions in the railroad industry,” the ICCTA and its legislative history contains no evidence that Congress intended for the STB to supplant the FRA’s authority over rail safety. 49 U.S.C. § 10101(11). Rather, the agencies’ complementary exercise of their statutory authority accurately reflects Congress’s intent for the ICCTA and FRSA to be construed *in pari materia*. For example, while recognizing their joint responsibility for promoting rail safety in their 1998 Safety Integration Plan rule-making, the FRA exercised primary authority over rail safety matters under 49 U.S.C. § 20101 et seq., while the STB handled economic regulation and environmental impact assessment.

Id. at 523.

The administrative rulings of the FRA and the STB are equally instructive that the ICCTA has not vested preemptive jurisdiction for safety matters in the STB.⁴

⁴ We acknowledge that STB has issued conflicting decisions on this issue.

As both the FRA and the STB recognized in a joint rulemaking:

. . . both FRA and STB are vested with authority to ensure safety in the railroad industry. Each agency, however, recognizes the other agency's expertise in regulating the industry. FRA has expertise in the safety of all facets of railroad operations. Concurrently, the Board has expertise in economic regulation And assessment of environmental impacts in the railroad industry. Together, the agencies appreciate that their unique experience and oversight of the railroads complement each other's interest in promoting a safe and viable industry.

63 Fed. Reg. 72,225 (Dec.31, 1998).

Similarly, the STB's orders have delineated the extent of its jurisdiction to emphasize that the ICCTA did not preempt federal safety laws. In *Borough of Riverdale*, STB Finance Docket No. 33466 (Sept.9, 1999), the STB stated: "Our view [is] that not all state and local regulations that affect railroads are preempted . . . state or local regulation is permissible where it does not interfere with interstate rail operations, and that localities retain certain police powers to protect public health and safety." Decision at 6.

In *Maumee & W. R.R. Corp. & Rmw. Ventures, LLC*, No. 34354, 2004 WL 395835, at *2 (2004), the STB ruled that a state eminent domain power or railroad crossings is permissible. In *CSX Transportation, Inc.*, No. FIN 34662, 2005 WL 1024490, at *6 (May 3, 2005), the STB stated "traditional authority over the safety of roads and bridges at grade separated rail/highway crossings" is not preempted by the ICCTA if those regulations do not impose an unreasonable bur-

den on a railroad. Having a railroad to separate a train to allow emergency vehicles to pass is not an unreasonable burden.

Both the STB and the FRA have taken the position that the FRA and the states, as appropriate under the FRSA, retain primary jurisdiction over railroad safety regulation, while assisting the STB with its expertise in matters of principal concern to the STB. The bottom line is that the argument regarding ICCTA preemption of state railroad safety laws is meritless.

We are aware of cases which hold states that have enacted an arguably safety regulation is preempted. *See, e.g., Friberg v. Kansas City Southern Ry. Co.*, 267 F. 3d 439 (5th Cir. 2001). However, such cases did not address the views of either the FRA or the STB. The states and the FRA take their authority from the FRSA, and the ICCTA is in *pari materia* with it. If the ICCTA cannot encroach upon the FRA's authority over railroad safety, neither can it impact the states authority.

We are mindful of the STB's position cited in *BNSF Railway Co. v. Todd Hiatt*, 22 F. 4th 1190 (10th Cir. 2022). There, the court quoted from a STB proceeding where the Board said that ICCTA preemption "is broader than just direct economic regulation of railroads" and that states "cannot take an action that would have the effect of foreclosing or unduly restricting a railroad's ability to conduct its operations or otherwise unreasonably burden interstate commerce." *CSX Transp., Inc.*, Fed. Carr. Cas. (CCH) par. 37186, 2005 WL 584026, at *7-8 (STB Mar. 14, 2005). *See also, The City of Ozark, Ark., Petition for Declaratory Order*, STB Finance Docket 36104 (2017). There, the STB rejected a city's attempt to require the UP railroad to reinstall a grade crossing it had removed, stating the ICCTA preempted the city. One STB Commis-

sioner cautioned the railroad that a railroad's past conduct would have bearing on preemption, particularly where the railroad's claim is the result of its own improper conduct. Slip Op. at 6.

E. Safety is Adversely Impacted by the Decision Below.

As stated herein, the nation's largest railroads are operating some trains that exceed several miles. Statement of Jeremy Ferguson, *supra*,___ This results in trains frequently blocking railroad-highway grade crossings for long periods of time. In turn, this has affected the safety of many communities in various ways, by blocking emergency vehicles and other vehicles involved in emergency situations. We could cite many examples, but a few will suffice to demonstrate the problem.

On September 30, 2022 at Leggett, Texas, an infant child was found by his mother not breathing. 911 was called, but the paramedics could not reach the infant's home because a Union Pacific train blocking the tracks. More than 30 minutes passed between the 911 call and when the infant was finally loaded into an ambulance. The paramedics were forced to crawl between the train cars to reach the child, to return to the ambulance by again crawling between the train. The child died soon thereafter. <https://abc13.com/ktwon-franklin-leggett-texas-glover-road-union-pacific-controversy-what-did-do-to-let-baby-die/11257624/>

On June 27, 2019, at Bunkie, LA, a wife noticed that her husband was white as a sheet and unresponsive. She called 911. Because of the nature of the problem, the paramedics needed to transport the man to a heliport nearby. However, enroute to the helipad, the paramedics noticed that the railroad crossings were

blocked. Union Pacific was called, and the firefighter was informed that the crew was resting and would not break the train to open the crossing. The patient later died. *Blalock v. Union Pacific R.R. Co.*, 2022 U.S. App. LEXIS 29255 (5th Cir. 2022)

On September 6, 2020, at Noble, Okla., a person had suffered a heart attack and an emergency call was made at 1:15 a.m. The only route to the patient's home required the first responders to travel over a railroad crossing which was blocked by a BNSF railroad train. At 1:20 a.m., the local police department called the BNSF to allow the emergency medical service personnel to cross in order to respond to the medical emergency. The company did not respond. At 1:23 a.m., a police officer asked the train crew if it would move the train. The response was "no". At 1:30 a.m., the train moved forward and cleared the crossing. However, at 1:32 a.m., it was too late for the defibrillator efforts to restart the patient's heart, and he died. <https://railfan.com/lawsuit-blocked-crossing-caused-death/>

CONCLUSION

For the reasons stated herein, the *Amici Curiae* respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully Submitted,

JOSHUA D. MCINERNEY, BLET
BARKAN MEIZLISH, LLP
250 E. Broad Street, 10th Floor
Columbus, Ohio 43215
(614) 221-4221
jmcinerney@barkanmeizlish.com

LAWRENCE M. MANN
Counsel of Record
ALPER & MANN, P.C.
9205 Redwood Avenue
Bethesda, MD 20817
(202) 298-9191
mann.larrym@gmail.com

KEVIN BRODAR, General Counsel
SMART-TD
6060 Rockside Woods Blvd. N.
Suite 325
Independence, OH 44131-2378
kbrodar@smart-union.org

