

No. 22-459

In The
Supreme Court of the United States

—◆—
STATE OF OHIO,

Petitioner,

v.

CSX TRANSPORTATION, INC.,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The Supreme Court Of Ohio**

—◆—
**BRIEF OF AMICUS CURIAE
OHIO PROSECUTING ATTORNEYS ASSOCIATION
IN SUPPORT OF PETITIONER**

—◆—
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STATEMENT OF AMICUS INTEREST¹

Founded in 1937, the Ohio Prosecuting Attorneys Association (OPAA) is a private, non-profit trade organization that supports Ohio's eighty-eight elected county prosecutors. OPAA's mission is to assist prosecuting attorneys to pursue truth and justice as well as promote public safety. OPAA advocates for public policies that strengthen prosecuting attorneys' ability to secure justice for crime victims and sponsors continuing legal education programs that facilitate access to best practices in law enforcement and community safety.

In the course of promoting public safety, OPAA's members have a compelling interest protecting their traditional authority to investigate and combat violations of state laws designed for the protection of Ohio's citizens. Statutes that regulate stoppage time at grade crossings promote public safety, since they protect the public from the various dangers that arise when trains block roadway crossings. As such, finding that State laws that regulate the length of time that stopped trains may block roadways at grade crossings are preempted, as the Supreme Court of Ohio found here,

¹ No counsel for any party authored any part of this brief, and no monetary contribution was made by any counsel or party intended to fund the preparation or submission of this brief. The OPAA notified all parties, through the parties' attorneys, of its intent to file this amicus brief more than ten days before its due date, and both parties have provided written consent for the filing of this amicus brief.

impedes OPAA's members' ability to ensure that Ohio's citizens are kept safe.

That is especially problematic when no federal laws or regulations address the length of time that a train may block a roadway crossing. States, such as Ohio, have historically filled that void by regulating stoppage times within their jurisdictions, and indeed, the States are best-situated to regulate stoppage times. Within their communities, OPAA's members are responsible for enforcing Ohio's law where no federal agency has acted to promote safety at railroad crossings.

As such, Amicus Curiae OPAA respectfully urges this Court to grant the petition for a writ of certiorari.



SUMMARY OF THE ARGUMENT

Ohio has long regulated the length of time trains may stop in railroad crossings. The Ohio Supreme Court found in this case that Ohio's Blocked Crossing Statute is preempted either by the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501(b) ("The Termination Act"), or the Federal Railroad Safety Act, 49 U.S.C. § 20106(a)(2) ("The Safety Act"). *State v. CSX Transportation, Inc.*, 2022-Ohio-2832, 2022 Ohio LEXIS 1672. OPAA agrees with and incorporates the Petitioner, State of Ohio's argument as to why the Ohio Supreme Court's decision is wrong.

However, from OPAA’s perspective, there are two particularly compelling reasons why this Court should grant the petition for a writ of certiorari. First, Ohio’s Blocked Crossing Statute addresses an important issue of public safety. Blocked railroad crossings create a hazard for motorists and pedestrians as well as emergency responders. Simply put, citizens within the communities served by OPAA’s members are better-served by regulations that limit the extent to which trains may block roadways. OPAA’s interest is in ensuring that its members have a mechanism available to them by which these issues of public safety may be addressed.

Second, Ohio’s statute regulates a safety issue that the federal government has not yet addressed. As such, were it not for Ohio’s statute—and those enacted by other States—there would be no means for any jurisdiction to enforce limits on railroads’ ability to block roadways. Those State statutes, then, do not seek to regulate where the federal government has already acted but instead, seek to fill a void. If those statutes are deemed preempted, OPAA and its members will lack any means to enforce safety around the thousands of railroad crossings in Ohio. For those reasons, this Court should grant the petition for a writ of certiorari.



ARGUMENT

I. State Statutes That Regulate Stoppage Times At Roadway Crossings Promote Public Safety.

Ohio has long prohibited stopped trains from blocking roads for extended periods. *Capelle v. Baltimore & Oh. R. Co.*, 136 Ohio St. 203, 207–08 (Ohio 1940). It does so now through the “Blocked Crossing Statute.” Ohio Rev. Code § 5589.21 (2022). The statute prohibits trains from blocking roads for “longer than five minutes.” *Id.* Ohio’s General Assembly made clear that the purpose of the statute was to promote public safety. The General Assembly stated its intent as follows:

The general assembly finds that the improper obstruction of railroad grade crossings by trains is a direct threat to the health, safety, and welfare of the citizens of this state inasmuch as improper obstructions create uniquely different local safety problems by preventing the timely movement of ambulances, the vehicles of law enforcement officers and firefighters, and official and unofficial vehicles transporting health care officials and professionals. It is the intent of the general assembly in amending sections 5589.21, 5589.24, and 5589.99 of the Revised Code that the health, safety, and welfare of the citizens of this state be enhanced through those amendments.

Ohio Rev. Code § 5589.20 (2022).

Most states have acted similarly and passed statutes regulating the length of time that a train may block a railroad crossing. See Federal Railroad Administration, *Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings*, at 250–74 (7th ed. 2021), available at: <https://perma.cc/TJ2D-XFN8>.

Some of those address various safety issues more directly. For example, Florida requires a crew of a railroad train blocking a roadway to place a warning device to warn of the blockage, but it goes on to require that a train blocking a roadway must be cleared to make way for emergency vehicles when possible. Fla. Stat. Ann. §§ 351.03, 351.034 (West 2021). Illinois requires that railroads minimize the obstruction of emergency vehicles and when an obstruction occurs, to “immediately take any action, consistent with safe operating procedure, necessary to remove the obstruction.” 625 Ill. Comp. Stat. Ann. 5/18c-7402 (West 2021). Louisiana similarly requires that a train crew take immediate action to remove a train that is obstructing an emergency vehicle during a pending emergency. La. Stat. Ann. § 48:391 (2021). And North Dakota requires that if a train is blocking a roadway, it must “provide and keep in good order a suitable temporary way and crossing with adequate protection to enable travelers to avoid or pass such obstruction.” N.D. Cent. Code Ann. § 49-11-01 (West 2021).

The reason for this is simple: blocked crossings are a considerable public safety concern. The Federal Railroad Administration has concluded that “stopped

trains impede the flow of motor vehicle or pedestrian traffic at railroad tracks for extended periods of time.” Federal Railroad Administration, *Blocked Crossings Fast Facts* (Nov. 2021), available at <https://perma.cc/AJ9B-FBR3>. It also found that “frustrated individuals may be tempted to crawl between stopped railcars” to escape a blocked crossing. *Id.* Drivers “may take more risks,” and if they are “aware that trains routinely block a crossing for extended periods of time,” they may “driv[e] around lowered gates at a crossing or attempt[] to beat a train through a crossing without gates, in order to avoid a lengthy delay.” 84 Fed. Reg. 27832, 27832 (June 14, 2019). Moreover, “emergency response vehicles and first responders may be significantly delayed from responding to an incident or transporting patients to a hospital.” *Id.*

News reports are replete with examples of blocked crossings creating safety hazards. For example, in May 2018 in Chesapeake, Virginia, school students were videoed crossing a stopped train that was stopped for twenty-five to thirty minutes. Megan Shinn, *Video Shows Chesapeake Students Leave School Bus, Climb Over Stopped Train*, WVEC, May 2, 2018, available at: <https://www.13newsnow.com/article/news/local/mycity/chesapeake/video-shows-chesapeake-students-leave-school-bus-climb-over-stopped-train/291-548193750>. In Oklahoma, an emergency response to a person threatening suicide that should have taken one minute took twenty, since three crossings were blocked at the time. Shaun Courtney, *Rail Prevails as Long Trains Block First Responders at Crossings*, Bloomberg

Government, September 10, 2019, available at: <https://about.bgov.com/news/rail-prevails-as-long-trains-block-first-responders-at-crossings/>.

The situation is particularly troubling in Ohio. According to the Federal Railroad Administration, when it established a means for the public and law enforcement to report blocked grade crossings, it received a total of 25,374 reports between December 2019 and November 2021. Federal Railroad Administration, *Blocked Crossings Fast Facts* (Nov. 2021), available at <https://perma.cc/AJ9B-FBR3>. Of those, 5,174 (more than twenty percent) involved reported incidents in Ohio. *Id.* A report regarding Lake Township, Ohio described that railroads routinely use grade crossings “as a parking lot” for trains, with blockages lasting hours or even sometimes days. Debbie Rogers, *Worst in the country: Lake Twp. tops for blocked crossings*, Sentinel-Tribune (Mar. 10, 2022), available at: <https://perma.cc/6E9WNSU6>. The same report found that “[e]mergency vehicles often have to take a detour around” these blockages. *Id.*

In short, State regulations such as Ohio’s address an important safety issue, which—as Petitioner argues—is explicitly permitted by The Safety Act. (Pet. Br. at 5–6). The Safety Act does provide that “[l]aws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable” but it also permits state and local laws regulating safety. 49 U.S.C. § 20106(a)(1) (2022). The Safety Act’s savings clause states:

A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

- (A) is necessary to eliminate or reduce an essentially local safety or security hazard;
- (B) is not incompatible with a law, regulation, or order of the United States Government; and
- (C) does not unreasonably burden interstate commerce.

49 U.S.C. § 20106(a)(2) (2022).

As such, Ohio's statute addresses an important public safety concern, and should be permitted under The Safety Act. The OPAA respectfully requests that the Court grant the petition for a writ of certiorari to clarify Ohio's ability to ensure the safety of its citizens.

II. State Statutes Regulating Stoppage Times Should Be Permitted Where The Federal Government Has Not Acted To Protect Public Safety.

That the federal government has not regulated blockages at roadway crossings makes only more appropriate that States such as Ohio have acted. As Petitioner has argued, States hold the police power to “enact legislation for the public good.” *Bond v. United States*, 572 U.S. 844, 854 (2014). This Court has acknowledged that the regulation of grade crossings “call[s] for a necessary adjustment of two conflicting interests—that of the public using the streets and that of the railroads” using the train tracks. *Erie R. Co. v. Bd. of Pub. Util. Comm’rs.*, 254 U.S. 394, 410 (1921). Usually, “the streets represent the more important interest of the two.” *Id.* Thus, this Court has held that the regulation of grade crossings is “within the police power of the States.” *Lehigh Valley R. Co. v. Bd. of Pub. Util. Comm’rs.*, 278 U.S. 24, 35 (1928); see also *Cincinnati, Indianapolis & W. Ry. Co. v. Connersville*, 218 U.S. 336, 343–44 (1910). As such, according to the Safety Act, Ohio may regulate stoppage time so long as the federal government has not “prescribe[d] a regulation or issue[d] an order covering the subject matter of the State requirement.” 49 U.S.C. § 20106(a)(2) (2022).

The federal government clearly has not done so here. Certainly, neither The Safety Act nor The Termination Act regulate stoppage time as the State regulations do. Congress certainly agreed, given that in the Fixing America’s Surface Transportation Act of 2015,

it tasked the Federal Railroad Administration with developing a plan to address “public safety risks posed by blocked highway-rail grade crossings due to idling trains.” Pub. L. No. 114-94, 129 Stat. 1312, § 11401(a) (Dec. 4, 2015).

For its part, the Federal Railroad Administration also has acknowledged that State regulations are an appropriate mechanism to address the void left by the lack of federal regulation. In his statement announcing the creation of a web portal to collect reports of blocked crossings, Administrator Ronald L. Batory stated, “Railroads, states and local jurisdictions are best positioned to address blocked highway-rail grade crossings and I’ve asked them to work together to minimize unwanted impacts.” Federal Railroad Administration, *Federal Railroad Administration Launches Web Portal for Public to Report Blocked Railroad Crossings* (Dec. 20, 2019), available at: <https://railroads.dot.gov/newsroom/press-releases/federal-railroad-administration-launches-web-portal-public-report-blocked-0>. The Administration has also noted that “Communities have long dealt with the issue of blocked crossings, and any regulations regarding blocked crossings are at the state or local level.” Federal Railroad Administration, *Blocked Crossings Fast Facts* (Nov. 2021), available at <https://perma.cc/AJ9B-FBR3>.

At present, then, the only mechanism available to address the thousands of blocked crossings occurring in Ohio is OPAA’s members’ enforcement of the Blocked Crossing Statute. In other words, when the Ohio Supreme Court and other courts have found that

such statutes are preempted, they leave those communities most affected by the dangers associated with railroad crossings with no means to minimize the risks that they pose. As a part of their mission, and given the lack of any alternative, OPAA's members seek only the ability to ensure the safety of the members of their communities through enforcement of the Blocked Crossing Statute.

◆

CONCLUSION

For the foregoing reasons, Amicus Curiae Ohio Prosecuting Attorneys Association respectfully requests that this Court grant the petition for a writ of certiorari.

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