National Uniformity in Rail Regulation is Critical + Constitutional

A nationwide rail network is crucial for the economy. Uniform safety and operating standards are needed across the country and mandated by the U.S. Congress[1] to avoid a patchwork of state regulations on train length that would disrupt interstate commerce.

Impact of S.F. 4161:

- Forces more trains to haul the same amount of goods, congesting the rail network.
- Would require railroads to stop and change train composition when entering and exiting the state.
- Disrupts interstate commerce.
- Likely to be struck down in court.

Federal Agencies Regulate Railroads:

- Surface Transportation Board (STB) - regulates rail transportation, including rates, scheduling, routing, and rules.
- Federal Railroad Administration (FRA) - regulates railroad safety.

Federal Law Applies Here:

- Interstate Commerce Commission Termination Act (ICCTA) - grants STB exclusive authority over rail transportation, with courts repeatedly recognizing the breadth of the preemption clause.[2]
- The STB broad jurisdiction over all *transportation* by rail carriers, including a locomotive, car…or equipment, of any kind related to the movement of passengers or property.…"[3]
- While the core of ICCTA preemption is economic regulation, courts have uniformly rejected the argument that ICCTA preempts only economic regulation.[4]

Federal Railroad Safety Act (FRSA) Does NOT Apply Here:

Federal Railroad Safety Act (FRSA) - grants U.S. Department of Transportation (DOT) authority over railroad safety with a small exception for states to act *IF:*

- *The FRA must show "No Interest."* This requirement is NOT met: the FRA has clearly demonstrated an interest in train length through a safety advisory, regulations (like 49 CFR 240.11) requiring training based on factors including train length and encouraging railroads to update engineer training programs to reflect factors like train length (Appendix B to 49 CFR part 240).
- *There must be a "Local Safety Hazard."* This test is NOT met. To meet this test, the issue must be "essentially local." Courts have ruled again and again that statewide laws do not meet the essentially local requirement. It also doesn't meet the other two prongs of the three-prong test because, 2) it conflicts with federal law under ICCTA, and 3) it interferes with interstate commerce.

U.S. Supreme Court Precedent:

- The U.S. Supreme Court struck down a state law, much like the one proposed here, limiting train length in Southern Pacific Co. v. Arizona, 1945. This is still good law today.[5]
- The U.S. Supreme Court recently declined to allow states to regulate blocked crossings (2023), with the US Solicitor General's Brief to the Court warning, **"the cumulative effect of disparate state laws regulating blocked grade crossings could require interstate railroads to substantially modify their operations to comply with a patchwork of varying state and local requirements, thereby impeding the flow of interstate commerce."**

---

[1] Congress mandated that the regulation of railroad safety "shall be nationally uniform to the extent practicable" and explicitly preempted state laws attempting to address any issue that is covered by regulations from the U.S. DOT (including the FRA and PHMSA). 49 USC § 20106(a).

[2] "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) (quotations and citation omitted); Ass'n Am. Railroads v. S. Coast Air Quality, 622 F.3d 1094, 1096 (9th Cir. 2010) (Congress intended to preempt "a wide range of state and local regulation of rail activity"); Oregon Coast Scenic Railroad, LLC v. Oregon Dep't of State Lands, 841 F.3d 1069, 1076 (9th Cir. 2016) ("the broad preemption provision of 49 U.S.C. § 10501(b)").

[3] 49 USC 10102(9), 49 USC 10501(b).

[4] E.g., Ass'n Am. Railroads v. S. Coast Air Quality, 622 F.3d 1094, 1098 (9th Cir. 2010) ("Both we and our sister circuits have rejected the argument—advanced by the District here —that ICCTA preempts only economic regulation."); New York Susquehanna and Western Ry. Corp., 500 F.3d 238, 252 (3d Cir. 2007) ("Contrary to New Jersey and the amici's argument, the Termination Act does not preempt only explicit economic regulation."); Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 644 (2d Cir. 2005); City of Lincoln v. STB, 414 F.3d 858, 861 (8th Cir. 2005); City of Auburn v. United States, 154 F.3d 1025, 1030 (9th Cir. 1998) ("there is nothing in the case law that supports Auburn's argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads."); Fayus Enterprises v. BNSF Ry. Co., 602 F.3d 444, 451 (D.C. Cir. 2010); see also CSX Transp. Inc. – Petition for Declaratory Order, STB Docket No. 34662, 2005 WL 584026, at *7 (STB March 14, 2005) (rejecting District's argument that ICCTA only preemptions direct "economic" regulation of railroads).

[5] The applicability of the Commerce Clause and the U.S. Supreme Court's decision remains good law today. (See, e.g., recent citations to the case as made in Mallory v. Norfolk Southern Ry., 600 U.S. 122 (2023) (footnote 3 to concurring opinion); Vill. of Mundelein v. Wis. Cent. R.R., 227 Ill. 2d 281, 300, 882 N.E.2d 544 (Ill. Sup. Ct. 2008; cert. denied) ("Furthermore, the Supreme Court has held that any state regulation of train length violates the commerce clause."); Krentz v. CONRAIL, 589 Pa. 576, 602-603, 910 A.2d 20 (Penn. Sup. Ct. 2006) ("The Commerce Clause, however, does not tolerate state regulation of train length." [citation omitted] (noting the "serious impediment to the free flow of commerce" caused by the state regulation of train length)). "It is difficult to imagine a state regulation of the train itself…which could escape being a burden upon commerce under Article I, Section 8, Clause 3 of the United States Constitution." Missouri P. Railroad v. Railroad Com. of Texas, 850 F.2d 264, 268 (5th Cir. 1988).