

Recent Developments Fortify Case for a Surface Transportation Board Preemption Policy

by Glenn G. Lammi

Last week, the U.S. Senate confirmed Richard Kloster as a Commissioner on the Surface Transportation Board (STB). He should begin his term by supporting the prompt release of an STB preemption policy statement—one the STB has already indicated is forthcoming. The STB [expressed](#) a “consensus of views” on such a policy statement last September, and in February, Chairman Patrick Fuchs [said](#) he would present a draft for the Board’s consideration “in May.”

Given Commissioner Kloster’s 35-year career in rail freight, he understands why a uniform, predictable set of rules is essential for railroad transportation. We’ve explained in two past *WLF Legal Pulse* posts ([here](#) and [here](#)) WLF’s support for muscular federal preemption under the ICC Termination Act (ICCTA) and a forceful STB preemption policy statement. We’ve written:

ICCTA reflects Congress’s understanding that the railroad industry could not efficiently function without uniform rules. Railroads span the entire continent, connecting the East Coast, West Coast, Gulf, and Great Lakes, with over 140,000 miles of rail moving all kinds of commodities. Congress made clear that the STB’s jurisdiction over rail transportation and the remedies provided under the law is exclusive, expressly preempting other remedies under federal or state law. 49 U.S.C. § 10501(b).

Without broad ICCTA preemption, States could step in and regulate transportation by rail—a purposefully broad phrase—in 50 different and inconsistent ways.

The STB’s views on the breadth of ICCTA preemption carry considerable weight with federal and state courts, and a strong STB preemption policy would function as a deterrent against State and local regulatory intrusions. Those intrusions are becoming more frequent in the States, with freight rail experiencing the same populist-driven desire to regulate business activity that other industries face.

For example, on the last day of his final term as governor, New Jersey’s Phil Murphy signed into law a bill that, among other things, mandates two-person crews on all locomotives operating in the State, requires railroads to submit bridge-inspection reports to state regulators, and creates a State-administered “wayside detector system program.” The State dictates the system’s design and installation plan, and railroads must participate in compliance training and provide regular reports.

On March 30, 2026, an industry association sued New Jersey alleging that ICCTA and two other federal laws preempt the state law. *Assoc. of American Railroads v. Jain*, No. 26-cv-3375 (D. NJ). The plaintiff argues that because each mandate “manages, governs, interferes with, and

discriminates against rail transportation,” ICCTA expressly preempts the New Jersey law.

Politicians next door in Pennsylvania took notice of New Jersey’s new law and introduced a nearly identical proposal in the legislature this year, [House Bill 1191](#). The state House of Representatives passed 1191 on March 25, 120-79, and the bill is now pending in the state Senate.

The same day the railroad association filed suit to enjoin the New Jersey law, it initiated action in the District Court for the District of Columbia to enjoin a D.C. Department of Energy & Environment rule. *Assoc. of American Railroads v. D.C. Dept. of Energy and Env’t.*, No. 26-cv-1079 (D. D.C.). The rule imposes a “Border Fee” of sixty cents per car on any train transporting certain hazardous materials that enters, exits, or passes through D.C. The fee applies only to trains, not to other forms of transportation that carry hazardous materials.

The association argues in its complaint that ICCTA expressly preempts the rule because it singles out railroad transportation and it “alters the economics of routing decisions and interstate movements” of trains. On the latter point, the complaint explains that Congress, when adopting ICCTA, noted that federal law occupies the field of railroad economics and any State attempt to do so improperly “manages or governs” rail transportation.

The above-mentioned Pennsylvania bill includes a provision that resurrects a recurring state vs. federal regulation conflict: rules for trains’ blockage of at-grade rail crossings. Pennsylvania’s neighbor, Ohio, adopted a five-minute limit on trains’ stoppages at crossings in the early 2020s. CSX challenged the limit as preempted under ICCTA, and the Ohio Supreme Court [struck down](#) the limit on that ground. The State sought U.S. Supreme Court review, with the Biden Administration opposing review. The justices denied certiorari in 2024. Motivated by this outcome, an Ohio Member of Congress introduced a [bill](#) in 2025 to allow States to regulate crossing blockages. The House has thus far taken no action on the bill.

Three other regulatory areas that are prone to federalism conflicts are environmental permitting, emissions regulation, and eminent domain. In 2024, environmental justice activists convinced a local California regulator, the South Coast Air Quality Management District, to directly regulate the 25 rail yards in the District. After substantial push-back from railroads and the federal government, the local regulator [dropped](#) its proposal. Local and state governments frequently pursue condemnation of railroad property for trails, transit projects, and, increasingly, utilities infrastructure such as broadband lines. As we discussed in our [January 2026](#) post, federal courts’ ICCTA analysis has favored government land-use actions, a misinterpretation of ICCTA that we urged the STB to specifically address in a preemption policy statement.

Railway transportation is more inherently interstate than most other business conducted in America. Congress undertook a concerted effort over several decades to deregulate the railroads, with ICCTA and its clear statement of federal supremacy being central to that effort.

STB has a critical role to play in defending ICCTA and deterring state and local efforts that can Balkanize railroad regulation. The Board can and should do that on a case-by-case basis, but a clear, forceful policy statement will be a valuable tool that serves the interest of railroads, shippers, and consumers.