UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
Electronically Filed

ASSOCIATION OF AMERICAN RAILROADS,

Plaintiff,

v.

Civ. Action No. _____

ANDY BESHEAR, in his OFFICIAL CAPACITY as the ATTORNEY GENERAL of the COMMONWEALTH OF KENTUCKY,
Serve: Andy Beshear, Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

MARTIN L. HATFIELD, in his OFFICIAL CAPACITY as the COUNTY ATTORNEY of PULASKI COUNTY, KENTUCKY
Serve: Martin L. Hatfield
Pulaski County Attorney
103 S. Maple St.
Somerset, KY 42501

GREG SPECK, in his OFFICIAL CAPACITY as the SHERIFF of PULASKI COUNTY, KENTUCKY
Serve: Greg Speck, Sheriff
Pulaski County Sheriff's Office
100 N. Main St., Suite 101
Somerset, KY 42501

RANDY WATERS, in his OFFICIAL CAPACITY as the SHERIFF of McCREARY COUNTY, KENTUCKY
Serve: Randy Waters, Sheriff
McCreary County Sheriff's Office
36 Court Street
Whitley City, KY 42653

AND

CONLEY CHANEY, in his OFFICIAL CAPACITY as the COUNTY ATTORNEY of McCREARY COUNTY, KENTUCKY

Serve: Conley Chaney
McCreary County Attorney
1 North Main St.
Whitley City, KY 42653.

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The plaintiff, the Association of American Railroads ("AAR"), by and through its undersigned counsel and for its Complaint against the defendants, Andy Beshear, in his Official Capacity as the Attorney General of the Commonwealth of Kentucky, Martin L. Hatfield, in his Official Capacity as County Attorney for the County of Pulaski, Kentucky, Greg Speck, in his Official Capacity as the Sheriff of Pulaski County, Kentucky, Randy Waters, in his Official Capacity as the Sheriff of McCreary County, Kentucky, and Conley Chaney, in his Official Capacity as County Attorney for the County of McCreary (collectively, the "Defendants"), states as follows:

INTRODUCTION

1. Plaintiff brings this action pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act, *Ex Parte Young*, 209 U.S. 123 (1908), and 42 U.S.C. § 1983, seeking vindication of its members' federal Constitutional and statutory rights.

2. Plaintiff seeks a declaration that KRS §§ 277.200 and 525.140, also known as an "anti-blocking statutes," are preempted by federal statutes and unconstitutionally burden interstate commerce, and are therefore void and unenforceable. State or local anti-blocking statutes, like the ones at issue in this case, purport to dictate the length of time trains can block at-grade crossings with roads or highways. These laws directly and indirectly attempt to regulate railroad operating procedures, including train length, train speed, and routine air brake testing. Congress has expressly preempted such state laws in the Federal Rail Safety Act ("FRSA") and

the ICC Termination Act ("ICCTA"). KRS §§ 277.200 and 525.140 also interfere with the interstate operations of railroads, in violation of the Commerce Clause of the United States Constitution.

3. In addition to declaratory relief, Plaintiff seeks permanent injunctive relief pursuant to Fed. R. Civ. P. 65, *Ex Parte Young*, 209 U.S. 123 (1908), and 42 U.S.C. § 1983, prohibiting the Attorney General of Kentucky, the Pulaski County Attorney, the Sheriff of Pulaski County, the McCreary County Attorney, and the Sheriff of McCreary County, Kentucky, in their official capacities, from enforcing KRS §§ 277.200 and 525.140 (as applied to railroads).

4. There is an actual controversy between the parties, as hereinafter alleged, directly concerning federal questions.

PARTIES, JURISDICTION, AND VENUE

5. The Plaintiff, Association of American Railroads, is a nonprofit trade association that represents all the nation's major freight railroads, including railroads operating within Kentucky. Its members carry more than 97 percent of the nation's rail freight by revenue and employ more than 95 percent of rail employees. AAR appears regularly on behalf of the railroad industry before Congress, regulatory agencies, and the courts, including in cases involving federal preemption of state and local requirements.

6. AAR brings this case in its representational capacity, to assert the rights of its member railroads who operate in Kentucky. AAR's associational claim is proper because "its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Am. Canoe Ass'n, Inc. v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 540 (6th Cir. 2004) (quoting *Friends of the*

Earth, Inc. v. Laidlaw Envtl. Servs. Inc., 528 U.S. 167, 174 (2000)). Specifically, and as noted below, law enforcement officials within the Commonwealth of Kentucky have recently attempted to enforce KRS §§ 277.200 and 525.140 against AAR member Norfolk Southern Railway Co., and upon information and belief will continue to enforce the invalid statutes against one or more AAR members absent relief from this Court.

7. The Defendant, Andy Beshear (the "Attorney General"), is the Attorney General of the Commonwealth of Kentucky. The Attorney General is charged by KRS § 15.700 with the general supervision of criminal justice in the Commonwealth of Kentucky and, pursuant to KRS § 418.075, must be notified of any constitutional challenges such as the ones presented here. The Attorney General is named in his official capacity and will be served at 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601.

8. The Defendant, Martin L. Hatfield (the "Pulaski County Attorney") is the County Attorney of Pulaski County, Kentucky. The Pulaski County Attorney is named in his official capacity and may be served at the Pulaski County Attorney's Office, 103 South Maple St., Somerset, KY 42501. The Pulaski County Attorney has prosecuted, and, on information and belief, will continue to prosecute, citations for violating KRS § 277.200 against at least one AAR member operating in the County.

9. The Defendant, Greg Speck (the "Pulaski Sheriff"), is the Sheriff of Pulaski County, Kentucky. The Pulaski Sheriff is named in his official capacity and may be served at the Pulaski County Sheriff's Department, 100 North Main Street, Suite 101, Somerset, Kentucky 42501. The Pulaski Sheriff has enforced, and, on information and belief, will continue to enforce, KRS § 277.200 against at least one AAR member operating in the County.

10. The Defendant, Randy Waters (the "McCreary Sheriff"), is the Sheriff of McCreary County, Kentucky. The McCreary Sheriff is named in his official capacity and may be served at the McCreary County Sheriff's Office, 36 Court Street, Whitley City, Kentucky 42653. The McCreary Sheriff has enforced, and, on information and belief, will continue to enforce, KRS §§ 277.200 and 525.140 against at least one AAR member operating in the County.

11. The Defendant, Conley Chaney (the "McCreary County Attorney"), is the County Attorney of McCreary County, Kentucky. The McCreary County Attorney is named in his official capacity and may be served at the McCreary County Attorney's Office, 1 North Main St., Whitley City, KY 42653. The McCreary County Attorney has enforced, and, on information and belief, will continue to enforce, KRS §§ 277.200 and 525.140 against at least one AAR member operating in the County.

12. This Court has original subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331 and 2201, because the issues presented arise under federal law, including the Constitution of the United States of America.

13. This Court has personal jurisdiction over the Defendants because they are residents and representatives of the Commonwealth of Kentucky.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because the events giving rise to AAR members' injuries, and therefore AAR's associational standing, occurred within the Eastern District of Kentucky.

BACKGROUND AND FACTUAL ALLEGATIONS

State Regulation of Railroads and The Commerce Clause

15. Railroad transportation is an inherently interstate activity. Therefore, as the Fifth Circuit observed in *Friberg v. Kansas City Southern Ry. Co.*, 267 F.3d 439 (5th Cir. 2001), "the

regulation of railroad operations has long been a traditionally federal endeavor, to better establish uniformity in such operations and expediency in commerce." *Id.* at 443. Indeed, railroads are subject to one of "the most pervasive and comprehensive of federal regulatory schemes." *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981).

16. Nonetheless, states have, at times, attempted to step in and regulate certain aspects of railroad transportation, often running afoul of the boundary between state and federal authority. The United States Supreme Court has "frequently invalidated" such state efforts to intrude into this arena. *Id.*

17. An early notable example was the Arizona Train Limit Law of May 16, 1912, which made it unlawful for any person or corporation to operate within Arizona a railroad train of more than fourteen passenger cars or seventy freight cars. In 1945 the United States Supreme Court struck down the law, holding that it violated the Commerce Clause, which, even in the absence of federal legislation, "affords some protection from state legislation inimical to the national commerce." *Southern Pac. Co. v. State of Ariz. ex rel. Sullivan*, 325 U.S. 761 (1945). In striking down the Arizona law, the Supreme Court observed that national uniformity in the regulation of the length of trains "is practically indispensable to the operation of an efficient and economic railway system." *Id.* at 772.

The Federal Rail Safety Act

18. Congress has subsequently clarified that states are almost universally prohibited from enacting regulations that disrupt the operation of an efficient and economic railway system. In 1970, Congress enacted the Federal Rail Safety Act ("FRSA"), 49 U.S.C. § 20101, *et. seq.* to "promote safety in every area of railroad operations and reduce railroad-related accidents." 49

U.S.C. § 20101. Under the FRSA, the Secretary of Transportation was given the power to "prescribe regulations and issue orders for every area of railroad safety." 49 U.S.C. § 20103(a).

19. The FRSA provides that "[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable." 49 U.S.C. § 20106(a)(1). To promote that goal, Congress included an express preemption provision in the FRSA. 49 U.S.C. § 20106(a)(2).

20. Accordingly, the FRSA "permits state regulation related to railroad safety only if: (1) the Secretary of Transportation has not yet regulated the subject matter of the state regulation (the first savings clause), or (2) the regulation (a) is necessary to eliminate an essentially local hazard, (b) does not conflict with federal law, and (c) does not unreasonably burden interstate commerce (the second savings clause)." *CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812, 815 (6th Cir. 2002).

21. The United States Department of Transportation, through the Federal Railroad Administration ("FRA"), has enacted comprehensive railroad safety regulations, found at Title 49, Subtitle B, Chapter II of the Code of Federal Regulations. In addition, the railroads are subject to regulation by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), when they transport hazardous materials.

22. In *City of Plymouth*, 283 F.3d 812, the Sixth Circuit held that state statutes regulating "the time that trains may block traffic," *i.e.*, anti-blocking statutes, are preempted by the FRSA. Among other reasons, the Sixth Circuit noted that such statutes would force rail operators to modify the federally regulated speed of their trains, and interfere with their performance of federally-mandated air brake tests. The Court found that such state regulation

also violates the Commerce Clause. *See also CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996) (same, as to municipal ordinance).

The ICC Termination Act

23. In 1995, Congress enacted the ICC Termination Act ("ICCTA"), Pub. L. No. 104-88 (Dec. 29, 1995). The ICCTA abolished the Interstate Commerce Commission and created a new Surface Transportation Board ("STB") "to regulate, *inter alia*, rail transportation in the United States." *Elam v. Kansas City Southern Ry. Co.*, 635 F.3d 796, 804 (5th Cir. 2011); 49 U.S.C. § 10501.

24. The ICCTA's purpose was "to build[] on the deregulatory policies that have promoted growth and stability in the surface transportation sector." *Elam*, 635 F.3d at 804 (quoting H.R. Rep. No. 104-311, at 93 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 805). "With respect to rail transportation," the ICCTA sought "'to implement a [f]ederal scheme of minimal regulation for this intrinsically interstate form of transportation,'" and to retain only those regulations that were necessary. *Id.*

25. These federal transportation policies are articulated in 49 U.S.C. § 10101, which states, "In regulating the railroad industry, it is the policy of the United States Government … (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes; … (7) to reduce regulatory barriers to entry into and exit from the industry; (8) to operate transportation facilities and equipment without detriment to the public health and safety; (9) to encourage honest and efficient management of railroads; [and] … (11) to encourage … suitable working conditions in the railroad industry …."

26. Consistent with its overarching purpose of minimal regulation of this intrinsically interstate railroad industry, Congress granted STB exclusive jurisdiction over "transportation by

rail carriers." 49 U.S.C. § 10501(b)(1). Aside from exceptions set forth in the ICCTA, the remedies set forth in the ICCTA are also "exclusive and preempt the remedies provided under Federal or State law." *Id.*

27. The nearly-uniform weight of authority holds that anti-blocking statutes like the one at issue here are preempted by either the FRSA or the ICCTA, or both. *See City of Plymouth*, 283 F.3d at 815 (FRSA); *Elam*, 635 F.3d at 804 (ICCTA); *Friberg*, 267 F.3d 439 (ICCTA); *People v. Burlington Northern Santa Fe R.R.*, 148 Cal. Rptr. 243, 244 (Cal. App. 2012) (ICCTA); *City of Seattle v. Burlington Northern R. Co.*, 41 P.3d 1169 (Wash. 2002) (ICCTA and FRSA); *Canadian Nat. Ry. Co. v. City of Des Plaines*, 2006 WL 345095 (Ill. App. 2006) (ICCTA and FRSA); *Eagle Marine Industries, Inc. v. Union Pacific R. Co.*, 882 N.E.2d 522 (Ill. 2008) (FRSA); *Village of Mundelein v. Wisconsin Cent. R.R.*, 882 N.E.2d 544 (Ill. 2008) (FRSA); *Burlington Northern & Santa Fe Ry. Co. v. Department of Transp.*, 206 P.3d 261 (Ore. App. 2009) (ICCTA); *Krentz v. Consolidated Rail Corp.*, 910 A.2d 20 (Pa. 2006) (FRSA).

Commerce Clause Limitations on State Regulation

28. The Commerce Clause of the U.S. Constitution provides that "the Congress shall have the power . . . to regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. The promotion and protection of interstate commerce is a central function of the Federal Government, and the Commerce Clause recognizes that the free flow of goods and materials throughout the nation is essential to the national economy. "Although the Commerce Clause is by its text an affirmative grant of power to Congress to regulate interstate and foreign commerce," the Supreme Court has explained it also "has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce." *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984). This

principle is sometimes referred to as the "dormant" Commerce Clause. State and local laws or regulations that discriminate against or impermissibly interfere with interstate commerce violate the Commerce Clause and are invalid. *Pike v. Bruce Church, Inc*. 397 U.S. 137 (1970).

KRS §§ 277.200 and 525.140

29. KRS § 277.200(1) states, "No railroad company shall obstruct any public highway or street, or the navigation of any stream, by stopping and permitting trains, engines or cars to stand upon a public grade crossing or upon a drawbridge for more than five (5) minutes at any one time, unless such stopping and standing is caused by circumstances beyond [the] control of the railroad company."

30. KRS § 525.140(1) states, "A person is guilty of obstructing a highway or other public passage when having no legal privilege to do so he, alone or with other persons, intentionally or wantonly renders any highway or public passage impassable without unreasonable inconvenience or hazard."

31. KRS §§ 277.200(1) and 525.140(1), and other similar statutes and regulations, are commonly known as "anti-blocking statutes."

32. Trains may block grade crossings for a variety of reasons, including (a) when performing federally mandated crew changes, (b) when performing switching operations necessary to serve local industries, (c) while seeking entry into the local yard, (d) due to mechanical defects that result in federally mandated stoppages, and (e) when performing federally mandated air brake tests. AAR's members make substantial efforts, consistent with federal regulations and industry safety standards, to minimize the occurrence and duration of blocked crossings.

33. To limit blocked crossings to five minutes or fewer in duration, or otherwise eliminate obstructions of highways, as KRS §§ 277.200 and 525.140 require, AAR's members would be required to make at least one or more of the following changes in their operations:

a. Running trains at higher speeds;

b. Operating shorter, and therefore more numerous, trains; or

c. "Cutting" (*i.e.*, breaking apart) a train to clear a grade crossing, which would significantly extend the duration of train stoppages and impact the movement of freight across the network.

34. These additional burdens on interstate rail carriers and on the free and efficient flow of interstate commerce would be "clearly excessive in relation to the putative local benefits" of KRS §§ 277.200 and 525.140. *City of Plymouth*, 283 F.3d at 818 (citation omitted).

Pulaski County Citations and Contempt Order

35. Beginning on March 16, 2017 and continuing to the present, the Pulaski Sheriff's office issued numerous citations to Norfolk Southern Railway Company, an AAR member, for obstructing a highway in violation of KRS § 277.200(1).

36. The Pulaski County Attorney's Office has enforced some of the aforementioned citations by pursuing fines against Norfolk Southern under KRS § 277.990(6), including in Pulaski County District Court matter *Commonwealth of Kentucky v. Norfolk Southern Railway Co.*, Case Nos. 17-M-00343 and 17-M-00372.

37. The Pulaski District Court denied Norfolk Southern's motion to dismiss the citations issued by the Pulaski Sheriff and prosecuted by the Pulaski County Attorney, on the grounds that the law was preempted and violated the Commerce Clause. The District Court suggested that Norfolk Southern could comply with KRS § 277.200 by changing its operations, including the manner in which it conducted federally mandated crew changes.

38. Subsequently, the Pulaski District Court held Norfolk Southern in contempt in those cases based on other, later alleged violations of Kentucky's anti-blocking statute. The court imposed a $17,000 contempt fine upon Norfolk Southern—$1,000 for each of 17 alleged blocked crossings. *See Commonwealth v. Norfolk Southern*, Contempt Order, Pulaski Dist. Ct. Case Nos. 17-M-0343 & 17-M-0372 (April 23, 2018).

39. On information and belief, the Pulaski County Attorney and Pulaski County Sheriff's Office intend to continue citing AAR member Norfolk Southern for violations of KRS § 277.200, and enforcing those citations in District Court. Accordingly, there is a real and substantial dispute as to the legality and enforceability of KRS § 277.200, which can be definitively resolved through a declaration by this Court determining the parties' legal relations.

McCreary County Citations

40. Beginning on March 25, 2018 and continuing to the present, the McCreary Sheriff issued numerous citations to Norfolk Southern, an AAR member, for obstructing a highway in violation of KRS §§ 277.200 and 525.140.

41. The McCreary County Attorney's Office has enforced some of the aforementioned citations by pursuing fines against Norfolk Southern, including in McCreary County District Court matter *Commonwealth of Kentucky v. Norfolk Southern Railway Co.*, Case Nos. 18-M-00145.

42. On information and belief, the McCreary County Attorney and McCreary County Sheriff's Office intends to continue citing AAR member Norfolk Southern for violations of KRS §§ 277.200 and 525.140. Accordingly, there is a real and substantial dispute as to the legality and enforceability of KRS §§ 277.200 and 525.140, which can be definitely resolved through a declaration by this Court determining the parties' legal relations.

43. Plaintiff does not seek, through this action, to interfere with the pending cases or citations noted above. AAR member Norfolk Southern, for its part, will respond to the Pulaski and McCreary proceedings through appropriate action in the Kentucky state courts. Rather, this case seeks only prospective declaratory and injunctive relief, prohibiting any law enforcement officer of the Commonwealth from issuing or prosecuting new citations under Kentucky's anti-blocking statutes against any of AAR's members operating in Kentucky.

INJUNCTIVE RELIEF

44. KRS § 277.200 is preempted by federal law and regulation, and violates the Commerce Clause. As such, it is void and unenforceable.

45. KRS § 525.140, as applied to railroads, is preempted by federal law and regulation, and violates the Commerce Clause. As such, it is void and unenforceable against AAR members.

46. Plaintiff's members have suffered and will continue to suffer irreparable injury as a result of the deprivation of their constitutional rights, by virtue of the enforcement of KRS §§ 277.200 and 525.140.

47. Plaintiff's members have no adequate remedy at law, such as money damages, that could adequately compensate them for Defendants' enforcement of unconstitutional anti-blocking statutes.

48. Equitable relief is warranted in this case considering the balance of the harms between the parties. Plaintiff's members are harmed by the enforcement of unconstitutional statutes against them, whereas Defendants have no right to enforce the type of anti-blocking statute that has repeatedly been held by the Sixth Circuit and other federal jurisdictions to be preempted by the FRSA and/or ICCTA.

49. The public's interest is not disserved by the requested injunction because "it is always in the public interest to prevent the violation of a party's constitutional rights." *Doe v. Kentucky ex rel. Tilley*, 283 F. Supp. 3d 608, 616 (E.D. Ky. 2017).

50. *Ex Parte Young*, 209 U.S. 123 (1908), and its progeny permit the Plaintiff to seek prospective injunctive and declaratory relief in this Court restraining the Defendants from enforcing KRS §§ 277.200 and 525.140 to blocked crossings.

51. Plaintiff is therefore entitled to permanent injunctive relief restraining the Defendants from issuing further citations for violations of KRS §§ 277.200 and 525.140 against any of AAR's members operating in Kentucky.

COUNT I
KRS §§ 277.200 AND 525.140 ARE PREEMPTED BY THE FRSA

52. Plaintiff repeats and incorporates by reference the preceding allegations of the Complaint as if set forth at length herein.

53. KRS §§ 277.200 and 525.140 (as applied to railroads) impermissibly regulate rail safety standards and rail operating procedures, including matters such as train speed, train length, federally-mandated air brake tests, and operating procedures during grade stops and crossings, which are subject to federal regulations covering the subject matter. Accordingly, KRS §§ 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 20106.

54. Law Enforcement Officers of the Commonwealth, including specifically the Pulaski County Attorney, Pulaski Sheriff, McCreary County Attorney, and McCreary Sheriff have threatened continued enforcement of KRS §§ 277.200 and KRS 525.140 against one or more of Plaintiff's member railroads, and an actual controversy therefore exists.

55. Pursuant to 28 U.S.C. § 2201, the Plaintiff is entitled to a judgment declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 20106, and are therefore void and unenforceable.

COUNT II
KRS §§ 277.200 AND 525.140 ARE PREEMPTED BY THE ICCTA

56. Plaintiff repeats and incorporates by reference the preceding allegations of the Complaint as if set forth at length herein.

57. KRS §§ 277.200 and 525.140 (as applied to railroads) impermissibly seek to manage or govern rail transportation, including matters such as train speed, train length, and operating procedures during grade stops and crossings, and impose an unreasonable and discriminatory burden on rail carriers. Accordingly, KRS § 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 10501(b).

58. As a court in this judicial district observed, "[t]he preemptive effect of [ICCTA] has been examined by several federal circuit and district courts which have consistently held that the ICCTA preempts state common law claims with respect to railroad operations." *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836, 840 (E.D. Ky. 2004), *aff'd*, No. 04-5448 (6th Cir. Feb. 7, 2005); *see also Burlington N. Santa Fe R.R.*, 209 Cal. App. 4th at 1529 ("The 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.").

59. Law Enforcement Officers of the Commonwealth, including specifically the Pulaski County Attorney, Pulaski Sheriff, McCreary County Attorney and McCreary Sheriff have threatened continued enforcement of KRS §§ 277.200 and 525.140 against one or more of Plaintiff's member railroads, and an actual controversy therefore exists.

60. Pursuant to 28 U.S.C. § 2201, the Plaintiff is entitled to a judgment declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 10501(b), and are therefore void and unenforceable.

COUNT III
KRS §§ 277.200 AND 252.140 VIOLATE THE COMMERCE CLAUSE

61. Plaintiff repeats and incorporates by reference the preceding allegations of the Complaint as if set forth at length herein.

62. The Kentucky operations of the Plaintiff's members consist of predominantly interstate activities, including but not limited to the shipment of goods and raw materials from other states to Kentucky, from Kentucky to other states, and between other states between which Kentucky is situated.

63. To ensure compliance with KRS §§ 277.200 and 525.140, Plaintiff's members will be required to substantially modify their operating procedures, including train speed, train length, and procedures when stopped at grade crossings, at their expense and at the expense of the businesses they serve.

64. KRS §§ 277.200 and 525.140 (as applied to railroads) therefore impose a substantial burden on the flow of interstate commerce.

65. As the United States District Court for the Western District of Kentucky observed in *Hampton v. R.J. Corman R.R. Switching Co., LLC*, 2010 WL 1959184 (W.D. Ky. 2010), the primary benefit the Kentucky legislature sought to confer in enacting KRS § 277.200 was to regulate "the efficient flow of traffic." *Id.* at *4.

66. The burden imposed by Kentucky's anti-blocking statutes on interstate commerce is "clearly excessive in relation" to any benefit it confers, and therefore violates the Commerce

Clause. *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390 (1994); *Southern Pac. Co. v. State of Ariz. ex rel. Sullivan*, 325 U.S. 761 (1945).

67. Law Enforcement Officers of the Commonwealth, including specifically the Pulaski County Attorney, Pulaski Sheriff, McCreary County Attorney, and McCreary Sheriff, have threatened continued enforcement of KRS §§ 277.200 and 525.140 against one or more of Plaintiff's member railroads, and an actual controversy therefore exists.

68. Pursuant to 28 U.S.C. § 2201, the Plaintiffs are entitled to a judgment declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) violate the Commerce Clause and are therefore unconstitutional.

WHEREFORE, the Plaintiff requests the following relief:

a. On Count I, a judgment against all Defendants declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 20106, and are therefore void and unenforceable;

b. On Count II, a judgment against all Defendants declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) are preempted by 49 U.S.C. § 10501(b), and are therefore void and unenforceable;

c. On Count III, a judgment against all Defendants declaring that KRS §§ 277.200 and 525.140 (as applied to railroads) violate the Commerce Clause and are therefore unconstitutional;

d. Permanent injunctive relief restraining the Defendants from prospectively enforcing KRS §§ 277.200 and 525.140 (as applied to railroads);

e. An award of attorney's fees, as permitted by law;

f. Its other costs expended in this matter; and

g. Any and all other relief to which it may be entitled.

Respectfully Submitted,

/s/ Christopher B. Rambicure
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