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ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

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February 22, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

In re: Finance Docket No. 34662

Dear Secretary Williams:

As Chairman of the House Committee on Government Reform with jurisdiction over the District of Columbia and federalism issues, I am writing in support of CSX Transportation, Inc.'s (CSXT) emergency petition for declaratory order that the D.C. Ordinance, "Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005," is invalid.

As you know, the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005 (the "Act"), was recently passed by the District of Columbia City Council on February 1, 2005 and signed by Mayor Anthony A. Williams on February 15, 2005. The Act would ban transportation of hazardous materials through the District, except in cases of emergency. The Act seeks to challenge our nation's long-standing federal regulatory structure and establish a new precedent that will undermine the efficiency and efficacy of the national rail network. Accordingly, I urge you to declare the ordinance invalid.

First, the ordinance is invalid because it violates the Commerce Clause of the United States Constitution by unreasonably burdening interstate commerce. The Act would require CSX to add hundreds of miles and days of transit time to their routes; increase the number of times a car must be handled, and will increase the time cars spend in rail yards. Ironically, all of these actions carry their own security concerns and increase the risk of transporting hazardous materials. In addition, while safety and security in transportation should be our primary concern, it is also important to note that the transportation of these materials to their destination in a timely manner is critical to our daily lives, such as the delivery of chlorine for our drinking water systems. These consequences make clear that the District of Columbia's Ordinance unreasonably burdens interstate commerce.

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Second, Congress has made it abundantly clear that regulation of interstate transportation of hazardous materials by railroad is exclusively the subject of federal regulation through enactment of at least three federal statutes: the Federal Railroad Safety Act, the federal Hazardous Materials Transportation Act, and Section 10501 of the Interstate Commerce Commission Termination Act (ICCTA). With the passage of the Federal Railroad Safety Act (P.L. 103-272), Congress stated "Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable." Furthermore, the Federal Hazardous Materials Transportation Act provides for federal preemption of a requirement of a State, political subdivision of a State, or Indian tribe relating to the transportation of hazardous materials. Finally, Congress provides the Surface Transportation Board with jurisdiction over interstate transportation. As you can see, the intent of Congress is clear that the federal government is the exclusive authority on this issue.

As the Chairman of the Committee on Government Reform, I have worked with the relevant federal officials, city officials, and private industry to ensure that necessary actions are taken to secure this important and sensitive rail corridor. While I share the concerns of the Council regarding the safety and security of their citizens and I understand that security plans and measures must be flexible and always take into account local issues and vulnerabilities specific to the region, the regulation of rail transportation is squarely within the jurisdiction of the federal government.

To this end, CSX has been working with and continues to work with the Department of Homeland Security and the Department of Transportation in hardening the D.C. rail corridor, specifically to address security issues surrounding the movement of bulk hazardous materials. This plan utilizes national initiatives for rail security as well as taking into account the unique security needs and considerations specific to the National Capital Region. Appropriately, the federal government is leading the response to this important federal issue.

For all the foregoing reasons, I ask the Surface Transportation Board to declare the Ordinance invalid.

Sincerely,



Tom Davis
Chairman

cc: The Honorable Henry A. Waxman
Minority Ranking Member

The Honorable Eleanor Holmes Norton