No. 127603

IN THE
SUPREME COURT OF ILLINOIS

ALEJANDRO QUIROZ, an Administrator of
The Estate of Ricardo Quiroz, Deceased

Plaintiff-Appellee,

v.

CHICAGO TRANSIT AUTHORITY
a municipal corporation

Defendant-Appellant.

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS IN SUPPORT OF DEFENDANT-APPELLANT

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Association of American Railroads (AAR) is an incorporated, nonprofit trade association representing the nation's major freight railroads, many smaller freight railroads, Amtrak, and some commuter authorities. AAR's members account for the vast majority of the rail industry's line haul mileage, freight revenues, and employment.

In matters of significant interest to its members, AAR frequently appears before Congress, administrative agencies, and the courts on behalf of the railroad industry, including participation as *amicus curiae* in cases raising significant legal and policy issues. AAR's large member railroads, which operate over thousands of miles of right-of-way throughout the nation, all operate in Illinois, and therefore are impacted by rulings of this state's courts. The decision below raises an issue of great importance to AAR's many members that operate in Illinois.

In reversing the trial court's dismissal of the plaintiff's lawsuit against the Chicago Transit Authority (CTA), the First District ruled that a railroad has a duty to protect trespassers from moving trains and that the plaintiff is entitled to discover evidence to support that claim. However, this Court has ruled that moving trains are an open and obvious danger from which railroads have no duty to protect trespassers. The ruling below, which

undermines settled Illinois law, is greatly alarming to all AAR member railroads that operate in Illinois because it potentially exposes them to tort liability that should be foreclosed under current law. Given the strong presence of AAR member railroads in Illinois, AAR has a strong interest in preserving and buttressing current law.

STATEMENT OF FACTS

AAR adopts the Statement of Facts of Defendant-Appellant.

ARGUMENT

As a matter of law, moving trains constitute an open and obvious danger from which people are expected to protect themselves. *Choate v. Ind. Harbor Belt R.R.*, 2012 IL 112948 ¶35; *see Bucheleres v. Chicago Park Dist.*, 171 Ill. 2d 435, 448 (1996) ("The open and obvious nature of the condition itself gives caution and therefore the risk of harm is considered slight; people are expected to appreciate and avoid obvious risks.").[1]

[1] Underscoring the obvious risk, *Choate* described moving trains as noisy, huge, rumbling strings of railroad cars. 2012 IL 112948 ¶35. Courts throughout the nation have come to the same conclusion about the open and obvious danger posed by moving trains. *See e.g., Herrera v. Southern Pac. Ry. Co*., 188 Cal. App. 2d 441, 449 (1961) ("Nothing could be more pregnant with warning of danger than the noise and appearance of a huge, rumbling, string of railroad cars."); *McKinney v. Hartz & Restle Realtors, Inc*., 510 N.E.2d 386, 389, 31 Ohio St. 3d 244, 247 (1987). *See also Nixon v. Norfolk Southern Corp*., 2007 U.S. Dist. LEXIS 86112 *17, *aff'd*, 295 Fed. Appx. 523 (3rd Cir. 2008); *Foshee v. Consolidated Rail Corp*., 661 F.

Consequently, railroads in Illinois have no duty to protect trespassers from the hazards posed by moving trains on their property. *Choate* at ¶45. The ruling of the First District, which allowed the plaintiff to pursue an action to hold the CTA liable in tort to a trespasser who was struck by a moving train in a CTA subway tunnel, makes an end run around this settled law, providing a pathway for trespassers on railroad property to reimpose a duty this Court ruled does not exist. Such an outcome would impose an infeasible and unwarranted obligations not just on CTA, but also on all of the State's numerous railroad companies, undermining the sound policy which undergirds *Choate* and other recent decisions of Illinois courts.

I. Illinois' Extensive Freight and Passenger Rail Operations All Will Be Impacted by the Decision Below.

The defendant in this case is the CTA, the operator of Chicago's public transit system. However, the implications of the lower court's ruling extend far beyond the individual defendant and particular facts of this case because any duty owed by CTA to a trespasser on its right-of-way also might be owed by other railroads to trespassers injured by moving trains on

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Supp. 350, 355 (D.D.C. 1987), *aff'd*, 849 F.2d 657 (D.C. Cir 1988); *Holland v. Baltimore & Ohio R.R.*, 431 A.2d 597, 602-03 (D.C. 1981); *Henderson v. Term. R.R. Ass'n of St. Louis*, 659 S.W.2d 227, 230-31 (Mo. App. 1983); *Perry v. Norfolk & Western Ry. Co*., 865 F. Supp. 1292, 1302-03 (N.D. Ind. 1994); *Wolf v. Nat'l R.R. Passenger Corp*., 697 A.2d 1082, 1086-87 (R.I. 1997).

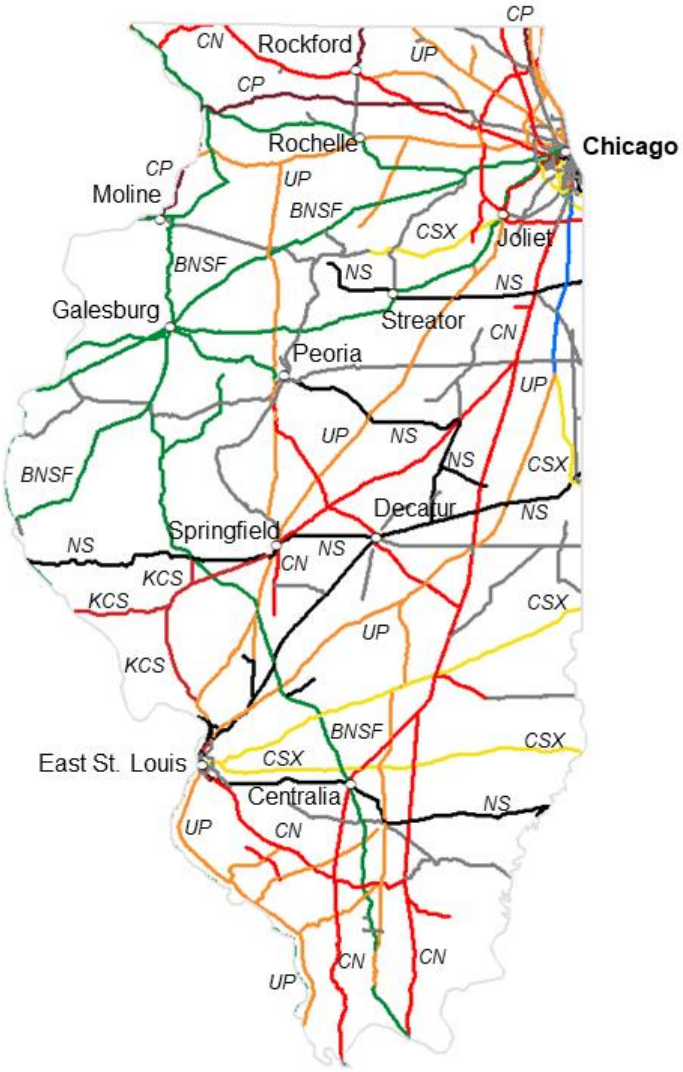
their lines. Indeed, the ruling below will impact all railroad operators in Illinois—public and private, passenger and freight. That impact will be felt in the City of Chicago and its surrounding suburbs, and throughout the State.

Railroad operations in Illinois are extensive. About 500 freight trains and 800 passenger trains pass through Chicago every day. *See* www.createprogram.org/about-create. Chicago has an extensive public transit system, with multiple rail lines that travel both above ground (some at grade and some on elevated rights-of-way) and below ground. Metra operates an extensive commuter rail system throughout the greater Chicago area, operating over nearly 500 miles of track on eleven lines, serving 242 stations. Amtrak's intercity passenger trains operate in and out of Chicago and throughout Illinois, east toward Indiana, north toward Wisconsin, and west toward Iowa and Missouri.

One out of every four U.S. freight trains passes through Chicago every day, with six of the seven Class I railroads interchanging freight in Chicago.[2] All seven Class I railroads operate in Illinois, as do four regional railroads and 41 short line railroads. As the below map indicates, these railroads operate over nearly 7,000 miles of track crisscrossing the entire

[2] Class I railroads are the largest railroads in terms of revenue, as classified by the Surface Transportation Board. 49 C.F.R. Part 1201, 1-1.

State. www.aar.org/wp-content/uploads/2021/02/AAR-Illinois-State-Fact-Sheet.pdf.



While the characteristics of passenger and freight, and large and small, railroads differ in many ways, they all have one thing in common: they all operate moving trains.

Choate involved freight rail operations and a child trespasser who was injured under different circumstances than the adult trespasser in this case.

However, in both cases the plaintiff argued that the railroad had a duty to protect the trespasser from the dangers of a moving train. Other cases involving injuries to individuals occurring under other circumstances have resulted in claims against other railroads. *See e.g., McDonald v. Northeast Ill. Reg. Comm. R.R.*, 2013 IL App (1st) 102766-B (plaintiff's decedent hit by Metra train); *Jeung-Hee Park v. Northeast Ill. Reg. Comm. R.R.*, 2011 IL App (1st) 101283 (lawsuit against Metra and Canadian Pacific, a freight operator, after plaintiff's decedent was hit by an Amtrak train). While the circumstances of plaintiffs injured by moving trains might differ, all such cases raise the issue of whether a railroad has a duty to protect individuals from the hazards posed by a moving train.

II. The Trial Court Correctly Held that Railroads Have No Duty to Look Out for and Protect Trespassers from Moving Trains.

Here, plaintiff's decedent, Mr. Quiroz, was fatally injured by a moving train after he trespassed in a CTA subway tunnel where he knew or should have known he would encounter fast-moving trains. Rather than affirm the trial court's dismissal of the lawsuit based on the open and obvious danger rule established in *Choate*, the First District revived the suit, allowing plaintiff to attempt, through discovery, to postulate and explore various theories of liability, focusing on whether the CTA knew or should have known that a trespasser was in the tunnel near an active track. Among other

things, plaintiff alleges that CTA personnel (1) "did not ... watch[ ] for objects and people who might be situated where [ ] trains were directed"; (2) "did not keep a proper and sufficient lookout on its trains . . ."; and (3) "did not look … to see whether people or objects were situated on or near the tracks." Second Amended Complaint, Count III ¶21. If in fact CTA had such a duty to look out for and identify trespassers, it logically follows that it also had a duty to take measures to protect those trespassers from moving trains in its tunnel. (Plaintiff also alleges that CTA failed to "stop or delay" its trains in order to avoid a collision with the trespasser. Second Amended Complaint, Count I ¶19, Count III ¶19.) The clear implication of the ruling below is that plaintiffs can evade the *Choate* rule if they can raise the question whether the railroad failed to properly keep a lookout for the trespassers on its property.

The trial court properly dismissed the complaint because evidence about whether CTA kept a proper lookout for a trespasser would be relevant only if CTA in fact had a duty to keep a lookout for and protect trespassers from the open and obvious hazards of a moving train. It did not. "It has never been part of our law that a landowner may be liable to a trespasser who proceeds to wantonly expose himself to unmistakable danger in total disregard of a fully understood risk." *Choate* ¶39. *See Pryor v. Chicago*

Transit Authority, 2021 IL App (1st) 200895-U ¶37 (affirming dismissal of action against CTA alleging train operator negligence because "the same outcome is required regardless of the duty alleged based on the 'open and obvious' danger posed by a moving train") (motion to publish granted).

Plaintiff argues that the *Choate* rule does not apply because Mr. Quiroz was a discovered trespasser, calling for the railroad's duty to be analyzed under *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432 (Ill. 1992). However, even accepting that premise, which calls for application of section 337 of the Restatement (Second) of Torts, does not impose a duty on CTA or change the outcome. Under section 337, a duty exists only if the plaintiff can show that the landowner knew or had reason to know of the trespasser's presence in dangerous proximity to a condition on its property *and* that the condition is of such a nature that the landowner had reason to believe the trespasser would not discover it or realize the risk it posed. *Lee*, at 447-48. Thus, even if the plaintiff could produce evidence showing that CTA knew or had reason to know of Mr. Quiroz's presence in the tunnel, the dangerous condition in the tunnel—fast-moving trains—was an open and obvious danger. Therefore, the condition was not of a nature that CTA would have reason to believe Mr. Quiroz would not discover or appreciate the danger it posed.

Plaintiff attempts to by-pass the open and obvious danger doctrine that applies to moving trains by arguing that after voluntarily entering the CTA tunnel, Mr. Quiroz was not in a condition to appreciate the apparent risk of the trains moving through the tunnel. However, the relevant consideration is the nature of the condition encountered, not the nature or condition of the trespasser. An essential element of the "discovered trespasser" rule, adopted in *Lee*, is that the "nature" of "the condition" on the land is such "that the trespasser will not discover it or realize the risk involved." The focus is on the nature of the condition (here moving trains), not the state of mind of the trespasser in a given situation, *i.e.*, the particular trespasser's ability to appreciate a risk. *Lee* at 448. In *Lee*, the Court's analysis of the second element of section 337 focused on the nature of the electrified third rail, a non-obvious danger, its proximity to the street, and the lack of adequate warning provided, not on the knowledge or state of mind of the plaintiff's decedent. *Lee*, at 452.

Allowing plaintiff's suit to proceed would eviscerate the *Choate* holding that there is no duty on railroads to protect trespassers from the open and obvious danger of moving trains. A plaintiff can always allege that a particular trespasser should have been discovered, and that for some reason—perhaps known only to the trespasser—the trespasser did not

appreciate the open and obvious risk posed by the moving train. But that is not relevant to the defendant's duty. A defendant's legal duty does not change depending on the particular circumstances of a trespasser, or the conceivable factual scenarios that can be posited to a court.[3] Here, for reasons unknown, Mr. Quiroz entered a subway tunnel and put himself in danger of moving trains, a condition this Court held unequivocally presents an open and obvious danger. No discovery is needed to reach that conclusion. Moreover, discovery to seek out evidence that the CTA should have seen Mr. Quiroz in the tunnel would only serve a purpose if CTA in fact has an obligation to look out for trespassers. But a jury is foreclosed from considering that question.

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[3] There is no suggestion that Mr. Quiroz's circumstances met the requirements of the "distraction" or "deliberate encounter" exceptions to the open and obvious danger doctrine. *See Bruns v. City of Centralia*, 2014 IL 116998 ¶20. There are no activities or events occurring in a subway tunnel that could be expected to distract a trespasser from the dangers of a moving train. *See Bucheleres*, 171 Ill. 2d at 451-52 (discussing decisions in *Ward v. K-Mart Corp.,* 136 Ill. 2d 132 (1990), *Deibert v. Bauer Bros. Constr. Co.,* 141 Ill. 2d 430 (1990); *and American Nat'l Bank & Trust Co. v. Nat'l Advertising Co.,* 149 Ill. 2d 14 (1992)). Nor were there any circumstances under which the advantages to Mr. Quiroz of trespassing in the CTA tunnel could be said to outweigh the risks of doing so.

III. The Ruling Below Would Ultimately Impose an Unwarranted and Costly Duty on Illinois Railroads That is Contrary to Illinois Law.

A. This Court must consider the burden a duty to look out for and protect trespassers from moving trains would impose on all Illinois railroads.

Establishing a duty on the part of a defendant is a prerequisite to finding liability in tort. *Choate*, 2012 IL 112948 ¶34 ("In any negligence action, the court must first determine as a matter of law whether the defendant owed a duty to the plaintiff."); *Bell v. Hutsell*, 2011 IL 110724 ¶11 ("Unless a duty is owed, there can be no recovery in tort for negligence.") In Illinois, defendants have no duty to protect against open and obvious dangers on their property because in those circumstances the foreseeability of harm is slight. *Wilfong v. L. J. Dodd Constr*., 401 Ill. App. 3d 1044, 1052-53 (2010). In addition to considering foreseeability in determining whether imposition of a duty is appropriate, courts also take into account the magnitude of the burden of guarding against the injury and the consequence of placing that burden on the defendant. *Bogenberger v. Pi Kappa Alpha Corp*., 2018 IL 120952 ¶22; *Lee* 152 Ill. 2d at 453; *Bucheleres*, 171 Ill. 2d at 456; *Deibert*, 141 Ill. 2d at 438; *Kirk v. Michael Reese Hospital & Med. Cent*., 117 Ill. 2d 507, 526 (1987). At bottom, whether, as a matter of policy, it is appropriate to place a duty on a defendant under certain circumstances calls for an assessment of society's competing interests and

their relative costs and benefits. *Kirk*, 117 Ill. 2d at 526-27 ("a court's determination of duty reflects the policy and social requirements of the time and community"); *see Bucheleres* 171 Ill. 2d at 457 (in dismissing plaintiff's claim that the city parks department was liable for injuries sustained by plaintiff from diving into Lake Michigan, the court considered the social utility of keeping Chicago's lakefront area open). These considerations strongly counsel against imposing a duty on railroads to protect trespassers who are injured by moving trains.

In *Choate*, this Court rejected the assertion that the expense and inconvenience to the defendant of remedying the dangerous condition was slight compared to the risk. 2012 IL 112948 ¶43. Indeed, this Court made it clear that in determining whether it is appropriate to impose a duty on a transportation company with extensive operations the relevant analysis may not be limited to assessing the cost and feasibility of remedying a particular condition at a specific location where the incident giving rise to the claim occurred. *Id*. Rather, courts should take judicial notice of the "magnitude of [the defendant's] operations" and the practicalities of remedying an allegedly dangerous condition throughout a defendant's entire system. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 234 (2010). *See Jones v. Chicago Transit Authority*, 206 Ill. App. 3d 736, 739 (1st Dist. 1990) ("It

would be impractical to require the CTA to replace or retrofit *each and every* bus....") (emphasis added); *Serritos v. Chicago Transit Authority,* 153 Ill. App. 3d 265, 271-72 (1st Dist. 1987) ("[I]t is impractical to impose such a duty upon *every* CTA driver who operates a bus or elevated train during the winter months.") (emphasis added).

The plaintiff alleges that CTA should have looked out for trespassers in its tunnel, ascertained that Mr. Quiroz was in the tunnel, and taken steps to protect him. But this Court's analysis must look beyond the individual defendant because any duty owed by CTA to Mr. Quiroz might be owed not only by CTA to other trespassers on its line, but also by other Illinois railroads to trespassers injured by moving trains on their lines. Therefore, in addressing whether CTA had a duty in this case, this Court should consider not just the burden of imposing a duty on the CTA to protect Mr. Quiroz (or even all trespassers on CTA property), but also the potential burden that would be imposed on all railroads in Illinois if they are to be subject to tort liability for failing to keep a lookout for trespassers who might be injured by moving trains on their lines and failing to take action to prevent those injuries from occurring.

By ignoring this Court's holding in *Choate*, the First District would create a duty on railroads to constantly be on the lookout for trespassers on

their property and to speculate whether a putative trespasser, due to a condition or state of mind, would in fact appreciate the dangers of a moving train. And if CTA would have been compelled to act because Mr. Quiroz allegedly did not appreciate the danger posed by moving trains, all railroads also might be compelled to assume that any trespassers on their property, child or adult, do not appreciate the danger posed by a moving train and will fail to take any precautions to avoid that danger. Consequently, railroads would be compelled to take action to protect the trespassers they had a duty to look out for.

Depending on the circumstances, such a duty might require a variety of actions. Indeed, exposing defendants to possible tort liability is intended not just to compensate an individual plaintiff, but also to create an incentive to modify behavior. *See Zokhrabov v. Jeung-Hee Park*, 2011 IL App (1st) 102672 ¶ 8 ("Another justification for imposing liability for negligence is to give actors appropriate incentives to engage in safe conduct.") *See also San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy."). Certainly, such tort exposure is likely to compel railroads to modify their operations or operating procedures to identify trespassers and protect them from moving trains on

their property. But for the reasons explained in *Choate* and other decisions, this is both untenable and bad policy, and not what the law in Illinois requires. Nor should it.

B. Imposing a duty on railroads to look out for and protect trespassers from moving trains would create significant safety risks and operational disruption.

Given the scope and magnitude of railroad operations in Illinois, the burden of imposing a duty on railroads to protect trespassers from the open and obvious danger posed by moving trains, and the consequences of placing that burden on railroads, would be substantial. Hundreds of trains travel in and around Chicago daily, with many more traveling through other parts of Illinois. *Supra* pp. at 3-4. Public transit and commuter rail transport millions of people annually to and from their place of employment, Chicago's major airports, as well as numerous other destinations. Chicago is the nation's busiest location for the interchange of freight moved by rail. Several thousand carloads of freight terminate in Chicago each day, with thousands more interchanging from one railroad to another. To facilitate interchange, many major rail yards are located in the Chicago area consisting of multiple sets of tracks, where many trains, or partial trains, might be moving, backwards and forwards, simultaneously in close proximity, when engaged in switching operations, preparing to embark on a

main line. Indeed, effective and efficient freight and passenger rail transportation is essential to the economy of Illinois.

A duty to look out for and protect trespassers who might encounter moving trains throughout Illinois' freight and passenger rail network would impose a host of challenges, ultimately at great cost. Given the number of locations and circumstances under which a trespasser might be on railroad property, a plaintiff could allege any number of actions a railroad should have taken to identify trespassers on its property and avoid harm to those trespassers from moving trains. Here, the plaintiff does not appear to be arguing that CTA should have taken additional steps to keep Mr. Quiroz out of its tunnel, but instead that it should have stopped or delayed its trains to protect Mr. Quiroz after he had trespassed in the tunnel.

A duty to stop or slow trains, or take other actions, on the assumption that a trespasser would not appreciate the danger moving trains pose would result in costly and disruptive interference with railroad operations. The railroad environment consists of extremely large heavy equipment, mainly rolling stock and locomotives, that move at varying rates of speed. *See* 49 C.F.R. §213.9 (establishing train speed limits based on the class of track over which the train is operated, ranging from a limit of 10 mph to a limit of 80 mph). Freight trains are massive, comprised of one or more locomotives,

which provide the train's power, typically pulling (and sometimes also pushing) a consist of numerous cars of between 50 and 100 feet long, and up to about 20 feet in height, often stretching for well over a mile. Loaded rail cars can weigh up to about three hundred thousand (300,000) pounds, and an entire train can weigh in excess of ten thousand tons. Federal Railroad Administration, *Use of Locomotive Horns at Highway-Rail Grade Crossings,* 65 Fed. Reg. 2230 (2000). When a train is moving at any significant rate of speed, it takes a very great distance to bring it to a stop. ("[I]t takes a one-hundred car train traveling 30 miles per hour approximately half a mile to stop—at 50 miles an hour that train's stopping distance increases to one and a third miles." *Id.*) While passenger trains tend to be smaller and lighter than freight trains, they usually operate at consistently higher speeds.

It is neither cost-free nor safe to stop a moving train in response to an unplanned incident such as a trespasser near the right-of-way. To begin, it would be of dubious effectiveness given the very long stopping distance typically required. In addition, unplanned or emergency stops pose their own dangers to crew and passengers and also can lead to a derailment which can result in injuries as well as damage to both the railroad equipment and surrounding property. *Andrews v. Metro North Comm. R.R.,* 882 F.2d 705,

710 (2d Cir. 1989) (noting "the danger to passengers and crew inherent in emergency brake applications on rapidly moving trains"); Federal Railroad Administration, *Emergency Order No. 15*, 56 Fed. Reg 36190 (July 31, 1991) ("emergency applications of train brakes greatly increase the risk of derailment and consequent injury or death to rail passengers and train crew"). Unplanned stops also create backups and delays to the detriment of passengers and customers who rely on timely and effective railroad service.

The disruptions caused by emergency unplanned train stoppages or inefficient modification of normal train operations would reverberate through the economy. Railroads play a vital role in transporting a vast array of goods and commodities in and through Illinois, and throughout the nation. In fact, "Chicago is the largest rail hub in the U.S. and third largest intermodal container/trailer port in the world." Illinois Commerce Commission, Rail Safety Program, Illinois Rail Facts – 2020, found at https://www.icc.illinois.gov/rail-safety. Railroads are a key participant in the domestic and international supply chain. In 2019, nearly 3.8 million carloads of freight originated in Illinois and more than 3.6 million carloads terminated in Illinois. www.aar.org/wp-content/uploads/2021/02/AAR-Illinois-State-Fact-Sheet.pdf.

Of course, a duty to protect a trespasser from a moving train would, as the plaintiff asserts multiple times in the complaint, also require the railroad to be on the lookout for trespassers along their lines, diverting resources and train crew attention to watch for people choosing to place themselves in a position of obvious peril. Among other things, the plaintiff alleges that CTA personnel failed to, but should have, constantly monitor security cameras that were never intended to be so monitored. Second Amended Complaint, Count III ¶¶18, 21. *See Anderson v. Chicago Transit Authority*, 2019 IL App (1st) 181564 ¶¶44-45 (CTA has no duty to monitor the condition of individuals on its property, including to monitor security cameras "to look out for disturbed or disoriented individuals").

The expansive and varied nature of railroad rights-of-way would render such a duty a costly endeavor. Freight railroads operate day and night, seven days a week, every day of the year. They operate over thousands of miles of track in Illinois in a host of settings, through heavily populated urban and suburban areas, as well as in the State's less populated rural areas. Railroad rights-of-way consist of bridges that traverse rivers, streams, and dry ravines; they include steep grades, both up and down. Passenger railroads operate primarily in heavily populated areas both above and below ground (although Amtrak also operates through rural parts of the

State). All of these areas would need to be monitored day and night—which would call for different techniques and allocations of resources depending on the location.

Long ago, often in cases involving child trespassers, courts recognized that imposing a duty on railroads to look out for trespassers is not consistent with sound public policy. Despite the fact that trespassing on railroads was "well known," a Kentucky court rejected a duty of "railroad companies whose lines traverse cities and towns, or other populous communities" to "maintain a lookout for children who are in the habit of jumping on and off the cars while in motion." *Swartwood's Guardian v. Louisville & Nashville R.R.*, 129 Ky. 247, 111 S.W. 305, 306 (Ky. App. 1908). The court explained that

> [r]ailroads are required to serve the public by running their trains over their tracks. They are held to a rather strict accountability in many matters connected therewith. To require this additional duty would be to put the railroad operations beneath the rights of trespassers upon the railway tracks.

Id. The court also noted that such a duty would be extensive because it would be difficult to distinguish between "those who trespass in towns and those who trespass in the country." *Id*.

Similarly, the Georgia Supreme Court held that "[a] railroad company is under no obligation to station watchmen about its crossings and rights of

way to prevent boys from swinging on its moving trains" because it would "impose upon the railroad companies a burden which it is not reasonable that they should bear." *Underwood v. Western & A. R.R.*, 105 Ga. 48, 31 S.E. 123, 124 (1898). The court also pointed out that if railroads were liable to trespassers hurt on their property, such a duty would logically extend to owners of other types of moving vehicles under similar circumstances. *Id.; Chicago & W. Ind. R.R. v. Roath*, 35 Ill. App. 349, 352 (1889) (same). *See also Catlett v. St. Louis, I.M. & S. Ry. Co.*, 57 Ark. 461, 21 S.W. 1062 (1893) (rejecting a duty on railroads to keep a lookout for trespassers); *Smith v. Illinois Cent. R.R.*, 214 Miss. 293, 313, 58 So. 2d 812, 819 (1952) (same).

The New Jersey Supreme Court summarized the policy considerations justifying a state statute that absolved railroads from liability to trespassers injured on their property. "Considering the importance of railroads as an instrument of transportation and commerce, the enormous territory encompassed by their rights of way, and the practical impossibility of adequately fencing or guarding them against trespassers, we cannot say that legislation relieving them from liability to trespassers while not so relieving other landowners is arbitrary or unreasonable." *Egan v. Erie R.R.*, 29 N.J. 243, 253, 148 A.2d 830, 835 (1959).

The *Choate* holding that there is no duty to protect trespassers from moving trains, a danger so obvious that people ought to be expected to protect themselves, is grounded in sound public policy. It properly takes into account the expense and practical difficulties of imposing such a duty on railroads, exactly what the plaintiff in this case is attempting to do. This Court should preserve the *Choate* rule and not allow it to be diluted based on the alleged circumstances of a particular trespasser.

CONCLUSION

For the reasons set forth herein, this Court should reverse the appellate court ruling and affirm the circuit court judgment in CTA's favor.

Respectfully submitted,

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Supreme Court Rule 341(c) Certification of Compliance

Pursuant to Supreme Court Rule 341(c), I certify that this Amicus Curiae Brief conforms to the requirements of Rules 341 (c) and (h). The length of this brief, excluding the pages containing the Rule 341 (d) cover and the Rule 341 (h)(1) table of contents and statement of points and authorities, is 22 pages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct and that the foregoing **Brief of *Amicus Curiae* the Association of American Railroads in Support of Defendant-Appellant** was served upon the following attorneys of record via the Court's e-filing system on February 16, 2022.

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