

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
U.S. Department of Justice, Civil Division,
Consumer Protection Branch, 450 5th Street
NW, 6th Floor, Washington, DC 20530,

Plaintiff,

v.

NORFOLK SOUTHERN
CORPORATION,
650 West Peachtree Street Northwest,
Atlanta, Georgia, 30308,

and

NORFOLK SOUTHERN RAILWAY
COMPANY,
650 West Peachtree Street Northwest,
Atlanta, Georgia, 30308,

Defendants.

Civil No. _____

COMPLAINT

INTRODUCTION

1. The Attorney General of the United States brings this action pursuant to 49 U.S.C. § 24103(a) to enforce the requirement of 49 U.S.C. § 24308(c) that, “except in an emergency, intercity . . . rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail, line, junction, or crossing.”

2. Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “Norfolk Southern”) regularly fail to provide National Railroad Passenger Corporation (“Amtrak”) passenger trains with their statutory right to preference over freight

transportation on Amtrak's Crescent service, which provides daily passenger rail service in each direction between New York, New York, and New Orleans, Louisiana.

3. To deter future preference violations, and to address the continuing harm to customers and Amtrak caused by Norfolk Southern, the United States brings this action for injunctive and other equitable relief under 49 U.S.C. § 24103(a)(1) and 49 U.S.C. § 24308(c).

PARTIES

4. Plaintiff in this action is the United States of America, represented by the Attorney General of the United States as provided in 49 U.S.C. § 24103(a)(1).

5. Defendant Norfolk Southern Corporation is a Virginia corporation with its principal place of business in Atlanta, Georgia. Norfolk Southern Corporation owns all stock in Norfolk Southern Railway Company and plays a controlling role in decisions regarding Norfolk Southern Railway Company's operations.

6. Defendant Norfolk Southern Railway Company is a Virginia corporation with its principal place of business in Atlanta, Georgia. Norfolk Southern Railway Company is one of six Class I Railroads and operates approximately 19,000 miles of rail track across 22 states and the District of Columbia. Norfolk Southern Railway Company is a wholly owned subsidiary of Norfolk Southern Corporation.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 49 U.S.C. § 24103, 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

8. Venue is proper in this District pursuant to 49 U.S.C. § 24103(c) because Amtrak maintains its headquarters and principal place of business in Washington, D.C. *See* 49 U.S.C. § 24301(b).

BACKGROUND

Amtrak

9. Amtrak is the United States' primary intercity passenger railroad carrier. Amtrak operates a nationwide system of passenger rail service in 46 states, the District of Columbia, and three Canadian provinces.

10. Amtrak is a federally chartered corporation that is operated as a for-profit company. *See* 28 U.S.C. § 24301(a). By statute, Amtrak is charged with providing nationwide “modern, cost-efficient, and energy-efficient” intercity passenger rail transportation for public convenience and necessity that provides “efficient and effective . . . high-quality service that is trip-time competitive with other intercity travel options.” *Id.* § 24101. “Modern and efficient intercity passenger and commuter rail passenger transportation” contributes “to the viability and well-being of major urban and rural areas and to the energy conservation and self-sufficiency goals of the United States.” *Id.* § 24101(a)(5). Amtrak is tasked with ensuring station arrivals within fifteen minutes of the times published in Amtrak train schedules. *Id.* § 24101(c).

11. Modern, cost- and energy-efficient passenger rail transportation for the public's convenience is essential to Amtrak's mission. Passenger train service helps alleviate overcrowding of airways, airports, and highways. It supports economic development, connects rural and urban communities, and reduces car travel times.

Amtrak's Right to Preference

12. In 1970, Congress passed the Rail Passenger Service Act (“RPSA”), creating Amtrak. Before 1970, all railroads, as common carriers, were required to provide intercity passenger rail service. The RPSA relieves railroads that choose to enter into contracts with Amtrak of their obligation to provide intercity passenger service, allowing these railroads to focus on

freight traffic exclusively. However, the RPSA requires all rail carriers to grant Amtrak access to their rail lines and facilities so that Amtrak can provide passenger rail service. Amtrak is responsible for paying the railroads the incremental costs associated with Amtrak service. Consistent with the RPSA, Amtrak has executed operating agreements with Norfolk Southern and numerous other “host” railroads that own and maintain rail lines, which govern compensation and other terms of this arrangement. *See* 49 U.S.C. § 24308(a)(1).

13. The Amtrak Improvement Act (“AIA”), passed in 1973, requires Norfolk Southern and other host railroads that own or dispatch the rail lines used by Amtrak trains to give Amtrak “preference over freight transportation in using a rail line, junction, or crossing” unless: (1) there is an emergency; or (2) a host railroad applies to the Surface Transportation Board (“STB”) for relief, and the STB orders otherwise. 49 U.S.C. § 24308(c). No host railroad has ever sought, let alone been granted, such relief from STB.

14. To provide timely service to U.S. consumers, Amtrak depends upon its host-railroad partners to adhere to the law and provide preference to Amtrak passenger trains. Amtrak owns only 3% of the 21,400 route-miles traveled by Amtrak trains, with Amtrak’s ownership largely confined to the Northeast Corridor (between Boston, Massachusetts and Washington, D.C.). Norfolk Southern and other host railroads, primarily the Class I freight railroads, own and maintain the remainder of the lines on which Amtrak passenger trains travel. Norfolk Southern and the other host railroads that own the lines control the dispatching for both passenger and freight trains traveling on those lines.

15. Norfolk Southern has repeatedly failed to give Amtrak passenger trains preference over freight trains in violation of 49 U.S.C. § 24308(c). As a result, Amtrak trains have had to

follow slower freight trains, sometimes for extended periods, or have been put into railroad sidings to wait for freight trains to pass.

16. Norfolk Southern's preference violations have a clear, adverse effect upon Amtrak's performance, business, and customers. Norfolk Southern's preference violations lead to delays that disrupt U.S. consumers' travel plans, causing them to miss important obligations or lose time that they had planned for work or personal commitments. These delays often have cascading effects across the Amtrak network, as Amtrak must respond to the delays with appropriate rolling stock and crews to serve passengers.

17. Furthermore, delays caused by Norfolk Southern harm Amtrak's reputation and make Amtrak's passenger rail service less competitive with other travel options. Amtrak's on-time performance is a key driver of customer satisfaction with train travel. Poor on-time performance harms U.S. consumers using Amtrak, reduces Amtrak's revenue, and increases Amtrak's costs.

18. In addition, Norfolk Southern's preference violations, and the resulting delays, undermine the goal of public investment in passenger rail service. Federal funds provided to Amtrak not only sustain operations; they also aim to expand routes and services and reduce congestion on highways and in air transportation through efficient, reliable train transportation. These goals cannot be fully realized if Norfolk Southern continues to violate 49 U.S.C. § 24308(c) by failing to give Amtrak's passenger trains preference over freight transportation as required by law.

The Crescent Route

19. The Amtrak Crescent train service is one of Amtrak's 15 long-distance routes. It provides daily 1,377-mile-long passenger rail service with 33 intercity stops in each direction between New York, New York, and New Orleans, Louisiana. Amtrak runs two passenger trains

along the Crescent Route each day — one northbound train and one southbound train. Before the COVID-19 pandemic, from October 1, 2018, until September 30, 2019, approximately 290,000 U.S. consumers traveled on the Crescent Route. From October 1, 2022, to September 30, 2023, approximately 266,000 passengers traveled on the Crescent Route.

20. Norfolk Southern owns or controls the dispatching of more than 1,140 miles of the 1,377 mile Crescent Route. Amtrak owns or leases and operates most of the remaining track, comprised primarily of the Northeast Corridor between New York, New York, and Washington, D.C. Non-party railroad CSX Transportation, Inc. (“CSXT”) owns and operates 7.9 miles along the Crescent Route from south of Washington, D.C., to Alexandria, Virginia.

21. The Crescent service was introduced in its present form in 1970 by Norfolk Southern’s predecessor, the Southern Railway, and was called the Southern Crescent. Upon the passage of the RPSA, Southern Railway chose to continue operating the route until 1979. Southern Railway eventually acceded and relinquished full operation of the Crescent service to Amtrak on February 1, 1979. Amtrak renamed the service the Crescent and renumbered it as Crescent 19 (southbound) and Crescent 20 (northbound).

22. When traveling from south of Alexandria, Virginia, to New Orleans, Louisiana, the Crescent service travels solely on rail lines owned or operated by Norfolk Southern. When traveling on this stretch of rail line, Amtrak passenger trains are required to follow the instructions of Norfolk Southern dispatchers, yardmasters, supervisors, and other employees or agents. Therefore, any Amtrak train operating on rail line owned or operated by Norfolk Southern relies on Norfolk Southern to provide statutory preference.

On-Time Performance of Crescent Trains

23. Pursuant to federal regulations, Amtrak and Norfolk Southern consult with one another before agreeing and certifying the Crescent Route schedule. The most recent change to

the certified Crescent Route schedule was on June 6, 2021, when Norfolk Southern and Amtrak added 90 minutes to the run time for the route without adding any additional station stops or travel length on the route.

24. When designing and calculating schedules for Crescent Route trains, Amtrak incorporates “recovery time” to mitigate ordinary and lawful delays, including certain non-preference-related delays caused by Norfolk Southern. Recovery time is the amount of time above and beyond that required for a train to run from one station to the next, allowing the train to continue running on time even if it encounters some delays along the route.

25. Notwithstanding agreement and certification of the Crescent Route service schedules, including the addition of 90 minutes to both schedules and ample recovery time in 2021, passengers on Norfolk Southern’s portion of the Crescent Route repeatedly arrive late at their designated stations. From October 1, 2021, to September 30, 2022, only 22% of Crescent 19 Trains arrived on-time or within 15 minutes of their scheduled arrival, and only 41% of Crescent 20 Trains arrived on-time or within 15 minutes of their scheduled arrival. From October 1, 2022, to September 30, 2023, just 24% of Crescent 19 Trains arrived on-time or within 15 minutes of their scheduled arrival, while 48% of Crescent 20 Trains arrived on-time or within 15 minutes of their scheduled arrival.

**NORFOLK SOUTHERN HAS VIOLATED AND CONTINUES TO VIOLATE
AMTRAK’S STATUTORY RIGHT TO PREFERENCE OVER FREIGHT
TRANSPORTATION**

26. By failing to provide preference to the two daily Amtrak intercity passenger trains on the Crescent Route as required by 49 U.S.C. § 24308(c), Norfolk Southern has engaged, and continues to engage, in conduct that violates the statutory requirement to provide preference to Amtrak’s passenger trains. On numerous occasions, Norfolk Southern has taken actions that resulted in delays to Amtrak trains that would have been avoided if those passenger trains had been

given preference, including, but not limited to: (i) requiring Amtrak trains to pull into a siding and stop to allow a freight train to pass; (ii) requiring Amtrak trains to follow behind slower freight trains; (iii) running freight trains that are longer than available sidings, thereby preventing freight trains from allowing passenger trains to pass and requiring Amtrak trains to follow behind the slower freight trains; (iv) blocking Amtrak trains from serving passenger stations; and (v) recrewed freight trains on the main line while blocking Amtrak trains.

27. Norfolk Southern's actions have caused major delays to Crescent Route trains. These delays are attributable to, among other things, freight train interference, slow orders, signals, routing, and maintenance-of way-operations.

28. Freight train interference is by far the leading cause of delay for Crescent Route trains. Freight train interference delays occur when an Amtrak train is stopped or slowed because of a freight train. The vast majority of freight train interference delays result from preference violations under 49 U.S.C. § 24308(c).

29. In Fiscal Year 2022, Amtrak trains on the Crescent Route suffered 65,775 total minutes of delay due to freight train interference, with 65,350 minutes occurring on Norfolk Southern controlled track. In Fiscal Year 2023, that number was 60,564, with 60,173 minutes occurring on Norfolk Southern controlled track. Freight train interference caused by Norfolk Southern resulted in more than a thousand hours of delay to Amtrak's passengers each year.

30. Examining where delays occur along the Crescent Route confirms that Norfolk Southern is failing to provide preference to Amtrak's passenger trains. The southbound Crescent begins its journey in New York, New York, and travels south on track owned and controlled by Amtrak before arriving in Washington, D.C. The Crescent train arrives on time, on average, at least 90% of the time at each station stop between New York and Washington, D.C. However,

once trains pass Washington, D.C., and travel south onto track controlled by Norfolk Southern, their average on-time performance rapidly decreases.

31. The Crescent Route contains a mix of single and double main line track. The majority of main line track south of Atlanta, Georgia, is single-line track with interspersed sidings off the mainline that allow trains to pull over to allow a faster train to pass, or to allow a train traveling in the opposite direction to pass. For both northbound and southbound trains, there are frequently freight train interference delays on Norfolk Southern's single-track main line south of Atlanta, Georgia. These delays are overwhelmingly the result of preference not being given to Amtrak passenger trains by Norfolk Southern on its single-track lines.

32. Amtrak passenger trains that are delayed by freight train interference due to Norfolk Southern's failure to accord preference to passenger trains along the Crescent Route are susceptible to other delays that compound the obstacles to achieving on-time performance for passengers. For example, increased trip durations cause the train crews who staff Crescent Route trains to "time-out" — to reach the maximum allowable time that they are permitted to work — at an earlier-than-planned location during the train's trip. This requires Amtrak to replace them with a different train crew at a different location than originally scheduled.

33. In areas with single-track where two trains heading in opposite directions on a single line of track "meet," one train must pull into a siding to allow the other to pass. In such circumstances, Norfolk Southern frequently does not give Amtrak trains preference over freight trains. For example:

- a. On November 25, 2022, northbound Crescent 20 was delayed for one hour and 11 minutes when Norfolk Southern dispatchers directed the train into a siding to allow Norfolk Southern freight trains 29S, 355, and 344 to pass.

- b. On May 27, 2023, southbound Crescent 19 was delayed for 30 minutes near Birmingham, Alabama, when Norfolk Southern dispatchers directed the train into a siding to allow northbound Norfolk Southern train M30 to pass.
- c. On June 19, 2023, southbound Crescent 19 was delayed for 34 minutes when Norfolk Southern dispatchers directed the train into a siding to allow northbound Norfolk Southern train 312 to pass.
- d. On February 17, 2024, northbound Crescent 20 was delayed for two hours when it met four freight trains in Mississippi, while traveling between the Tuscaloosa, Alabama, and Meridian, Mississippi, stations. The Crescent 20 was forced to stop and pull into sidings three times to allow southbound Norfolk Southern trains 131, 29S, 355, and 345 to pass.

34. Freight trains are generally required to operate at slower speeds than passenger trains. Norfolk Southern regularly forces Amtrak trains to follow behind slower freight trains instead of allowing Amtrak trains to pass. For example:

- a. On December 16, 2023, Crescent 20 was delayed for 40 minutes when Norfolk Southern dispatchers required it to follow Norfolk Southern train 384 for fifteen miles just before arriving in Birmingham, Alabama, even though, upon information and belief, there were three opportunities to allow the Crescent 20 train to pass.
- b. On January 1, 2024, southbound Crescent 19 was delayed for 55 minutes when Norfolk Southern dispatchers forced Crescent 19 to wait for and then follow CSXT train 605 (dispatched by Norfolk Southern) for three miles. Crescent 19 was due to arrive in New Orleans, Louisiana, on time, but

because Norfolk Southern forced it to follow CSXT train 605 when the Amtrak train was just ten miles from its final destination in New Orleans, passengers were instead almost an hour late.

35. Norfolk Southern regularly operates freight trains on the Crescent Route that exceed the length of any siding that Norfolk Southern has built or maintained on that route. These long freight trains cannot move into a siding to allow a faster-moving Amtrak train to pass, thus forcing the Amtrak passenger train behind them to operate at slower speeds, causing delays to Amtrak passengers. For example:

- a. On August 22, 2022, Crescent 19 was delayed for 55 minutes when it was forced to follow Norfolk Southern train 29S-22 for 115 miles from Bremen, Georgia, to Birmingham, Alabama, because there were no sidings along the route long enough to accommodate Norfolk Southern train 29S-22.
- b. On June 22, 2023, Crescent 20 was delayed for two hours and 22 minutes when it was forced to follow northbound Norfolk Southern train 130-20 for 109 miles because there was no siding long enough to accommodate the Norfolk Southern train. That same day, southbound Crescent 19 was delayed for 48 minutes after Norfolk Southern dispatchers directed it into a siding to wait for the same freight train, Norfolk Southern 130-20, to pass.

36. Passenger stations have varying arrangements of tracks to access the platforms and station buildings. Some stations have a short siding for Amtrak trains to pull into, while others may be served directly on the main line. Norfolk Southern trains regularly stop while directly blocking Amtrak's access to a passenger station. For example:

- a. On January 7, 2023, Crescent 19 was delayed for 1 hour and 42 minutes immediately after departing the Meridian, Mississippi, station because Norfolk Southern personnel were fueling a Norfolk Southern freight train, blocking the Amtrak train.
- b. On November 5, 2023, Crescent 20 was delayed for 35 minutes from accessing the Greenville, South Carolina, station because Norfolk Southern left a local freight train without a crew blocking the station track.
- c. On February 25, 2024, Crescent 19 was delayed for one hour and 20 minutes from accessing the Atlanta, Georgia, station because Norfolk Southern train 243 was blocking access to the station platform.

37. Norfolk Southern regularly delays Amtrak trains with unplanned re crews. Federal laws and regulations, as well as Norfolk Southern policies and procedures, impose requirements on how long a Norfolk Southern train crew may operate a train. Upon information and belief, Norfolk Southern does not engage in adequate planning to ensure that its need to re crew a train does not block Amtrak trains from reaching their destination. For example:

- a. On December 14, 2023, Crescent 20 was delayed for 52 minutes while Norfolk Southern train 132 blocked the only route to the Meridian, Mississippi, station, 13 miles away, while waiting for a new train crew to move the train into a siding so that the Crescent 20 train could pass.

38. Upon information and belief, all of the foregoing actions were taken by Norfolk Southern in circumstances where no emergency existed.

39. Norfolk Southern's violations of Amtrak's statutory right to preference over freight transportation as detailed herein are illustrative examples of how Norfolk Southern has engaged in

or adhered to unlawful actions, practices, or policies inconsistent with Norfolk Southern's obligations under 49 U.S.C. § 24308(c); obstructs and interferes with Amtrak's statutory rights under 49 U.S.C. § 24308(c); and refuses, fails, or neglects to discharge Norfolk Southern's duties and responsibilities under 49 U.S.C. § 24308(c).

COUNT 1
(Violations of 49 U.S.C. § 24308(c))

40. The United States incorporates by reference paragraphs 1 through 39 above as if set forth in full.

41. Norfolk Southern has repeatedly engaged in or adhered to unlawful actions, practices, or policies inconsistent with its obligation to give the statutory right to preference for intercity rail passenger transportation provided by Amtrak on rail track Norfolk Southern owns and/or operates, in violation of 49 U.S.C. § 24308(c).

42. Norfolk Southern has repeatedly obstructed or interfered with Amtrak's right to receive preference over freight transportation as required by 49 U.S.C. § 24308(c).

43. Norfolk Southern has repeatedly refused, failed, or neglected to discharge its duties and responsibilities to accord Amtrak trains preference on rail track Norfolk Southern owns and/or operates, in violation of 49 U.S.C. § 24308(c).

IRREPARABLE INJURY

44. The schedule for operation of the Crescent Route between New York City and New Orleans, Louisiana, is between 31 and 33 hours.

45. Norfolk Southern's violations of the statutory right to preference for intercity rail passenger transportation provided by Amtrak over freight transportation cause irreparable injury to Amtrak's performance, business, and customers. Such harms are a direct and foreseeable result of Norfolk Southern's preference violations. Preference violations lead to delays that disrupt

hundreds of thousands of train passengers' travel plans, causing them to miss important obligations or lose time that they had planned for work or personal commitments; time that cannot be made up. These delays also have cascading effects across the network, negatively impacting other Amtrak trains and passengers, as Amtrak seeks to keep up with the need for appropriate rolling stock and crews to serve passengers. In addition, preference violations, and their resulting delays, erode passenger trust in Amtrak and the frequency with which consumers choose rail travel over an alternative means of transportation.

46. Unless enjoined by the Court, Norfolk Southern will continue to violate the preference statute by failing to give preference to Amtrak trains on the Crescent Route and will cause serious and irreparable injury to Amtrak customers, the people who wait for them, the traveling public, and Amtrak.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests judgment to be entered in its favor and against the Defendant as follows:

- a. Enjoin Norfolk Southern from violating 49 U.S.C § 24308(c); and
- b. Order such other relief as necessary to ensure Norfolk Southern provides Amtrak passenger trains with preference over freight trains on the Crescent route as required by law.

Dated: July 30, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served by certified mail the foregoing document on July 30, 2024 on the following parties:

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/s/ Max J. Goldman

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