

United States Senate

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Statement of Senator JD Vance of Ohio

Before the Committee on Environment and Public Works

Thursday, March 9, 2023

This is the first congressional hearing on the calamity which occurred on February 3rd at East Palestine, Ohio. That night, at about eleven o'clock, 38 rail cars in a 149-car train derailed. Eleven of the cars contained hazardous materials, including nearly 900,000 pounds of vinyl chloride, a carcinogenic, flammable gas. These vinyl chloride cars were deliberately breached, and vented into the environment as a result of a controlled burn on February 4th. Breaches in other derailed tank cars released additional hazardous chemicals, around another 800,000 pounds. These chemicals entered the air and water of the surrounding residential areas, the closest of which is only 1,000 feet from the site of the accident. The company responsible for the train and the track is Norfolk Southern.

A mandatory evacuation was ordered, and thousands of people fled their homes, afraid of chemicals seeping into their water and shrapnel raining from the sky. There was a plume of smoke, thousands of feet high, visible for miles, and burning fires for days. 40,000 fish have died. I have seen myself the chemical slicks in the water, and smelled the chemical odors in the air. We need to fix this. America and its leaders must act.

For days this biblical scene was ignored by the national media and the Biden administration. It took social media, efforts by Governor DeWine, myself, Senator Brown, our congressional delegation, and President Trump to get the situation the attention it deserved. On February 13, Secretary Buttigieg was still focused on the pressing problem of too many white men in the construction industry. It took him another 10 days to visit. While 5,000 Americans fled their homes under a mandatory evacuation order, the political leadership of our nation was focused on how best to hand out racial patronage.

The residents of East Palestine are not the type of people who elicit the sympathy of the bicoastal elite: they're too white, too rural, and too conservative. Those sympathies now seem to be reserved for Ukrainians, extreme sexual minorities, and criminals. Their affection extends to everyone except Americans in our own heartland.

Instead, towns like East Palestine become worthy of notice only when their values can be used in cheap propaganda to flatter the self-image of the elite. Unfortunately for this self-image, which assumes the prosperity of the city and the deprivation of the country, it is heartland labor, heartland sweat, and heartland peril that keeps them clothed and heated. It is the East Palestinians and their people who can survive without the managerial class. It is the managers who cannot survive without them.

East Palestinians are now wondering if their homes are safe. If their lives will ever return to normal. If their livelihoods can be resumed without the possibility that they are being invisibly poisoned. This is a rich country. We have the means and the responsibility to ensure that this town and its people return to normal. I will not stop pressing until the citizens of East Palestine have returned to the regular rhythms of their lives. This town must be made as whole as government action can make it.

On February 21st, the EPA announced that they had taken over the site, and that they were going to be running the cleanup. Unfortunately, this announcement, like so many made by the Biden administration, had only a tenuous relationship to reality. The Governor of Michigan, an administration ally and rising democratic star, leapt to prevent the waste from being transported to her state. Other states soon raised their own objections, and for nearly a week a vast hill of poison soil has sat there, basically in the middle of town, kicked up by passing trains for children to breathe, falling to earth to leach into the drinking water. I'm told the waste is being moved once again after it tested negative for dioxins, but that the administrator himself has to sign off on its individual movements. Let's stop playing politics, and get this stuff to places where it can't hurt anyone else.

Our other first priority must also ensure be to ensure that the railways are safe, and reduce the possibility that another small town is going to join the grim roll call of fatal railroad accidents. Just this week we had another lethal accident, again with a Norfolk Southern train. Senators Brown, Casey, Hawley, Rubio, Fetterman and I have come together to introduce a bill, the Railway Safety Act, which would make some modest steps towards making the railroads safer. That sound you hear is machinery of the railway lobby grinding into action to demagogue against this legislation. It is a great and influential mechanism, fueled by great profits. They will deploy the usual corporate rhetoric in hopes that they can forestall action from this body.

What I would urge Senators and members of the House to keep in mind is that safety regulation is only one part of a larger scheme, one in which the government has granted the railroads extraordinary special privileges, privileges afforded to no other industry. We should consider it within this context. It is within the near memory of everyone in this chamber that the Congress bailed out the railroads by cramming down a federally negotiated deal on the railway labor unions, against the wishes of their workers. Many voted against this, but can any senator here think of another industry for whom they have settled a labor dispute? I doubt even the most pro-management legislator would support doing this with any regularity for other firms. But we have done it, and some may likely do it again on behalf of the railroads. This industry enjoys special privileges, provided by the government, that no other can lay claim to.

The government, and the taxpayers that it represents, has given these companies a great deal. In return, they have created a culture of risky behavior that puts Americans, in particular rural Americans, at extraordinary risk. Since 2000, the federal government has given Norfolk Southern and its subsidiaries nearly \$10M in subsidies. The law that the EPA has used to force Norfolk Southern to take over the site of the accident, the Comprehensive Environmental Response, Compensation, and Liability Act, doesn't require the railroads to cover economic losses. If you're an oil company, and you have a spill, the Oil Pollution Act will require you to cover tax losses, impairments to earnings, earning capacity reductions, and medical losses.

Economic damages are left to the tort system. Norfolk Southern is treated better than ExxonMobil or BP.

In order for Railroad employees to get workman's compensation, they have to prove negligence by the railroad. Workman's compensation for basically every other industry is no-fault. Railroads have seen a greater and greater reduction in the scope and applicability of their common carrier obligation but have not seen any reduction in their right to create interstate rights of way. The 1980 Staggers Rail Act radically reduced the obligations that the railroads had on rates and increased the ability of the railroads to abandon unprofitable lines.

The decline in antitrust enforcement has enabled the rise of the captive shipper. Many rail-dependent shippers are "captive." These shippers must use rail to move their freight while having access to only one railroad, meaning that the shipper is "captive" to that railroad and at its mercy regarding rates and terms of service. Other "rail-dependent shippers" also must use rail, but are connected to more than one railroad, but only one railroad will compete for its business. Rail rates have risen two and half times the level of inflation and two and a half times the level of trucking rates. According to a trade group, approximately 78 percent of customers who ship products and feedstock in the United States are captive shippers.

The railroad lobby and events have gradually thrown the architecture that Congress created to regulate this industry further and further out of balance. At this point, it is all privilege, and no responsibility. Our federal government, including this body, has subsidized the industry's dangers and socialized its risks.

The Railway Safety Act puts a small weight back on the other side of the scale.

There are some who have suggested that the Railway Safety Act isn't needed or that the rail industry is 99.9 percent successful. I object to the characterization of this radically individualist notion as somehow conservative. Any ideology which defends inaction in the face of communities being wiped off the map through environmental happenstance is not conservative, but radical. It necessarily subordinates human life and community to a false ideal of the market somehow existing independent of our society. The market exists for the benefit of places like East Palestine, not the reverse.

East Palestine has existed for 195 years, since 1828. They called it East Palestine because there was already a West Palestine, not in the Middle East, but in Ohio. Columbiana County was the site of a way station on the Underground Railroad, as well as significant abolitionist sentiment. One of John Brown's soldiers is buried twenty miles up the road, in Salem. It was said, in reference to the Civil War, that "no other county in [Ohio] proved more ready to furnish its full quota of men for the suppression of the Rebellion." These are Americans, they are our people, and their part in the warp and weft of our history should not end with this disaster.

The strength of the thread is the strength of the fabric. It's something we've forgotten and remembered, again and again, through the American System, the New Deal, and the Civil Rights Movement. Let's take this opportunity over the coming months to remember again, and show

that this chamber can act together for the nation's benefit. The Senate should pass the Railway Safety Act, and the Senate should pass relief for East Palestine.