

No. 18-1246

IN THE
Supreme Court of the United States

BNSF RAILWAY CO., NANCY AHERN,
and JOHN DOES 1– 10,
Petitioners,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY; THE HONORABLE KATHERINE
BIDEGARAY, Presiding Judge; and ROBERT DANNELS,
Respondents.

**On Petition for a Writ of Certiorari to
the Supreme Court of the State of Montana**

**MOTION FOR LEAVE TO FILE BRIEF OF
WASHINGTON LEGAL FOUNDATION
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS**

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Date: April 25, 2019

**MOTION OF WASHINGTON LEGAL FOUNDATION
FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

Pursuant to Rule 37.2 of the Rules of this Court, the Washington Legal Foundation (WLF) respectfully moves for leave to file the attached brief as *amicus curiae* in support of Petitioners. Counsel for Petitioners has consented to the filing of this brief. Counsel for Respondents did not respond to a request for consent. Accordingly, this motion for leave to file is necessary.

WLF is a nonprofit public-interest law and policy center based in Washington, D.C., with supporters nationwide, including in Montana. WLF promotes and defends free enterprise, individual rights, a limited and accountable government, and the rule of law.

WLF frequently files briefs in both state and federal courts on issues arising under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60. *See, e.g., BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *CSX Transportation, Inc. v. Hensley*, 556 U.S. 838 (2009). WLF filed a brief in support of the petition for a writ of supervisory control filed by BNSF with the Montana Supreme Court on December 11, 2018. WLF has also appeared frequently as *amicus curiae* in cases involving federal preemption issues, to point out the economic inefficiencies often created when multiple layers of government seek simultaneously to regulate the same business activity. *See, e.g., Kurns v. Railroad Friction Products Corp.*, 565 U.S. 625 (2012).

FELA is a unique federal negligence statute under which railroad employees may seek

compensation from their employing railroads for work-related injuries. The compensation scheme differs sharply from that available to most other types of employees, who generally must seek compensation for work-related injuries in no-fault administrative proceedings established by state law. In general, the compensation available to railroad employees under FELA is more generous than that available to employees whose claims are governed by state worker-compensation statutes.

WLF is concerned that Montana state courts are interfering with the efficient, uniform compensation system established by FELA by overlaying a separate state-law regime on top of the one established by Congress. WLF seeks to file this brief to urge the Court to grant the petition and rein in unwarranted state-law claims of this sort.

For the foregoing reasons, WLF requests leave to file the attached brief.

Respectfully submitted,

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Dated: April 25, 2019