No. 18-499

IN THE

Supreme Court of the United States

MARK GRIFFIOEN, *et al.*,
Petitioners,

v.

CEDAR RAPIDS AND
IOWA CITY RAILWAY COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Iowa Supreme Court

BRIEF IN OPPOSITION OF CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY AND ALLIANT ENERGY CORPORATION

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QUESTION PRESENTED

Whether the Iowa Supreme Court correctly held that the Interstate Commerce Commission Termination Act of 1995 preempted Petitioners' Iowa statutory and common-law claims against Respondents based on the railroads' placement of loaded railcars on their bridges to protect and maintain their rail lines during a flood.

CORPORATE DISCLOSURE STATEMENT

Respondent Cedar Rapids and Iowa City Railway Company is a wholly owned subsidiary of Alliant Energy Corporation. Alliant Energy Corporation has no parent corporation or affiliates that are publicly traded, and no publicly traded company owns 10% or more of Alliant Energy Corporation's stock.

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INTRODUCTION

The Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. § 10101 *et seq.*, grants the Federal Surface Transportation Board (STB) exclusive jurisdiction over "transportation by rail carriers" and "the construction, acquisition, operation, abandonment, or discontinuance of" rail tracks or facilities. 49 U.S.C. § 10501(b)(1)–(2). It broadly preempts state law remedies "with respect to regulation of rail transportation." *Id.* § 10501(b). Consistently, federal courts of appeals have construed the ICCTA as preempting state-law claims that effectively enable courts to regulate a railroad's operation and management of its rail lines — a task that is reserved exclusively for the STB. The Iowa Supreme Court correctly followed this uniform and well-established precedent in concluding that the ICCTA preempted Petitioners' Iowa-law claims, which were based on the railroads' efforts to maintain their rail lines by placing loaded railcars on their bridges to protect them from washing away during a flood. Pet.App.9–32.

Ignoring their statutory claims, which directly implicate railroad transportation and operations,[1] Petitioners

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[1] For example, Petitioners asserted a claim based on Respondent railroads' alleged violation of Iowa Code section 327F.2, which provides:

> Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section.

Iowa Code § 327F.2.

depict a choice between two extremes: either the ICCTA does not preempt any negligence claims because they are "laws of general application" or the ICCTA preempts all negligence claims and effectively "immunizes" railroads from tort liability. But neither the Iowa Supreme Court's decision, nor the well-established federal precedent, embraces either extreme. As federal appellate courts have recognized, and Petitioners ultimately concede, the ICCTA preempts negligence and other tort claims that would have the effect of "regulat[ing] rail transportation," 49 U.S.C. § 10501(b), but not those that have only an incidental impact on the management and operation of railroads. The Iowa Supreme Court simply applied this settled law to Petitioners' pleadings and determined that Petitioners' Iowa-law claims would have the effect of regulating rail transportation. Pet.App.21–26.

In reaching this conclusion, the Iowa Supreme Court did not announce any new legal standards or tests, but rather applied the legal test advocated by Petitioners: the *Franks* test.[2] Petitioners concede that the Iowa Supreme Court correctly stated that test, challenging only the Iowa Supreme Court's *application* of the test to the specific facts and Iowa-law claims pleaded in this case. Even if Petitioners were correct, certiorari is rarely appropriate to correct a lower court's misapplication of a properly stated rule of law. Sup. Ct. R. 10. It is particularly inadvisable here, given the fact-specific, state-law focus of Petitioners' challenge and the narrow holding in this case.

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[2] This test arises out of *Franks Investment Co. LLC v. Union Pacific Railroad Co.*, 593 F.3d 404 (5th Cir. 2010).

Petitioners try to distract from this shortcoming by dedicating most of their petition to peripheral legal issues:

- First, based on an isolated statement in the Iowa Supreme Court's opinion that mirrors a recent opinion from this Court, Petitioners argue that the Iowa court erred by failing to apply the presumption against preemption. Pet. at 9–15. However, the Iowa Supreme Court correctly stated the law, as dictated by this Court's jurisprudence. And regardless, the presumption had no impact here. The Iowa Supreme Court derived the scope of preemption from the unambiguous text of the ICCTA's express preemption provision, reaching the same conclusion that is the consensus among the federal appellate courts — including the Fifth Circuit in *Franks*, the case on which Petitioners primarily rely.[3]
- Second, Petitioners dedicate considerable effort to depicting the ICCTA as narrowly limited to rate making and similar economic activities. Pet. at 15–20. To the contrary, the ICCTA's jurisdictional and preemptive language is strikingly broad, as federal courts of appeals have recognized.
- Third, Petitioners argue there is no evidence to support preemption under the significant-impact test, Pet. at 29–31, an issue the Iowa Supreme Court did not need to reach, *see generally* Pet.App.1–33.

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[3] The court in *Franks* also declined to apply the presumption against preemption in light of the clear language of the ICCTA's express preemption provision. 593 F.3d at 408.

- Fourth, Petitioners dedicate a section of their brief to the interaction between the ICCTA and the savings clause in the Federal Railroad Safety Act (FRSA). Pet. at 32–37. Here again, the Iowa Supreme Court adopted the legal standard advocated by Petitioners; Petitioners simply disagree with the court's *application* of those standards to the facts of this case. The Iowa Supreme Court correctly analyzed Petitioners' actual pleadings — which Petitioners largely ignore in their petition to this Court — to conclude that Petitioners' claims were governed by the ICCTA rather than the FRSA. Even if this analysis were flawed, correction of the Iowa Supreme Court's alleged misapplication of a properly stated rule of law does not merit certiorari. Sup. Ct. R. 10.

Under Petitioners' own analysis, this case comes down to whether the specific state-law claims they pleaded would have the effect of regulating management of railroad operations or would merely affect railroads incidentally. The Iowa Supreme Court correctly concluded that this case falls in the first category based on Petitioners' pleadings and the nature of the Iowa-law claims Petitioners asserted. Pet.App.26. This conclusion is consistent with the large body of established federal appellate precedent on ICCTA preemption, much of which is detailed in the Iowa Supreme Court's thoughtful opinion. Pet.App.12–32. The cases Petitioners rely on are readily distinguishable, as the Iowa Supreme Court also carefully detailed in its opinion. Pet.App.12–20. But even if the Iowa Supreme Court had misapplied the preemption analysis, this Court's resources are not well spent correcting a fact-intensive application of well-established law.

STATEMENT OF THE CASE

A. Regulatory Background

Railroads are the archetypal channels of interstate commerce. In fact, railroads are "common carriers" that, with limited exceptions, are federally mandated to provide interstate rail services for transportation of commodities at a customer's reasonable request. 49 U.S.C. § 11101. There is a "long history of pervasive congressional regulation over the railway industry" that ensures railroads are able to fulfill this pivotal role in the Nation's interstate commerce. *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 762 (7th Cir. 2008); *see also, e.g.*, *Tex. Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 532 (5th Cir. 2012) ("Federal regulation of railroad operations has a long history in this country."). "Viewed as 'a state within a state,' the railroad industry has been 'subject to comprehensive federal regulation for nearly a century.'" *R.J. Corman R.R. Co./Memphis Line v. Palmore*, 999 F.2d 149, 151 (6th Cir. 1993) (quoting *California v. Taylor*, 353 U.S. 553, 565 (1957); *United Transp. Union v. Long Island R.R. Co.*, 455 U.S. 678, 687 (1982)). In fact, "[p]erhaps no industry has a longer history of pervasive federal regulation than the railroad industry." *Id.* (alteration in original) (quoting *Consol. Rail Corp. v. Metro-N. Commuter R.R.*, 638 F. Supp. 350, 357 (Reg'l Rail Reorg. Ct. 1986)). "This lasting history of pervasive and uniquely-tailored congressional action indicates Congress's general intent that railroads should be regulated primarily on a national level through an integrated network of federal law." *Id.* at 152.

Pervasive federal regulation of the rail industry is designed to promote "uniformity in such operations and expediency in commerce." *Tex. Cent. Bus. Lines*,

669 F.3d at 532 (quoting *Friberg v. Kan. City S. Ry. Co.*, 267 F.3d 439, 443 (5th Cir. 2001)). Because trains routinely cross — and even straddle — state lines, they could not operate efficiently if they were subjected to patchwork and Balkanized regulatory schemes by every state they pass through. Federal law protects railroads from potentially conflicting state regulations that would burden interstate commerce and hinder railroads' operations. *See, e.g.*, *Shannon*, 539 F.3d at 763.[4] The ICCTA is a critical segment of this federal regulatory scheme.

In the late 1800s, Congress established the Interstate Commerce Commission, giving it broad authority to regulate the railroad industry, a major component of the nation's interstate transportation network. *See, e.g.*, *Iowa, Chi. & E. R.R. Corp. v. Wash. Cty.*, 384 F.3d 557, 558 (8th Cir. 2004). Nearly a century later, in response to a severe decline in the industry, Congress enacted the Staggers Act of 1980, followed by the ICCTA in 1995, each of which moved the railroad industry toward deregulation. *See id.* The ICCTA transferred essential regulatory functions from the Interstate Commerce Commission to the STB and significantly reduced federal regulation of railroads. 49 U.S.C. §§ 701–703. In so doing, Congress recognized that allowing state regulation of railroads would "risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically

[4] In furtherance of national uniformity, a number of railroad statutes establish that federal law precludes state regulation over railways. *See, e.g.*, 49 U.S.C. § 20106 (FRSA); 45 USC § 151 *et seq.* (Railway Labor Act); 45 U.S.C. § 363 (Railroad Unemployment Insurance Act); 45 U.S.C. § 51 *et seq.* (Federal Employers' Liability Act); *see also ICC v. Texas*, 479 U.S. 450 (1987) (pre-ICCTA preemption of state regulation).

interstate form of transportation." H.R. Rep. No. 104-311 (1995), at 96, *as reprinted in* 1995 U.S.C.C.A.N. 793, 808. Congress observed:

> The railroad system in the United States is a nationwide network. The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would w[e]aken the industry's efficiency and competitive viability.

S. Rep. No. 104-176, at 6 (1995). Thus, in the ICCTA, Congress broadly preempted state law "with respect to regulation of rail transportation." 49 U.S.C. § 10501(b).

B. Factual Background

Respondent Cedar Rapids and Iowa City Railway Co. (CRANDIC) is a Class III railroad that operates approximately 100 miles of railroad extending southeast and southwest from Cedar Rapids, Iowa. CRANDIC operates and maintains a rail bridge across the Cedar River in Cedar Rapids (the Penford Plant Bridge). The Penford Plant Bridge was built in 1903, governs access to important nearby industrial shippers, and is used as a transit link for other rail lines.

In June 2008, the Cedar River flooded with historic and unprecedented force. The River crested at 31.12 feet, over 11 feet higher than the River's 1851 record high of 20 feet and over 19 feet higher than the River's

"flood stage" designation of 12 feet.[5] CRANDIC was concerned that the flood would cause the steel trusses on the Penford Plant Bridge to be swept from the piers. CRANDIC parked ballast-laden railcars on the bridge to increase the resistance between the piers, bearings, and steel trusses. Despite these efforts, the Penford Plant Bridge was lost to the 2008 Flood. A replacement bridge was completed in June 2009.

C. Proceedings Below

Petitioners filed a class action in Iowa state court on behalf of land owners in Linn County, Iowa, alleging that their property was damaged not by the 2008 Flood, but by the actions Respondents took to maintain their rail networks and critical bridge infrastructure in advance of the approaching flood waters. Pet.App. 77–81 (CAP ¶ 24–41). In their class-action petition, Petitioners alleged negligence, theories of strict liability for abnormally dangerous or ultra-hazardous activities, strict liability based on violations of Iowa Code §§ 468.148 and 327F.2, and veil-piercing theories. Pet.App.81–84, 90–99 (CAP ¶¶ 42–44, 52–69). Petitioners did not allege any violation of federal laws or regulations, nor did Petitioners acknowledge that CRANDIC is a common carrier subject to federal regulation. *See* 49 U.S.C. § 11101. In addition to compensatory damages, Petitioners sought punitive and treble damages "to punish" the railroads for their actions, "while deterring and discouraging [the

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[5] *See Advanced Hydrologic Prediction Service: Cedar River at Cedar Rapids*, NAT'L WEATHER SERV., *available at* https://water.weather.gov/ahps2/hydrograph.php?wfo=dvn&gage=cidi4; Christopher Maag, *In Eastern Iowa, the City that 'Would Never Flood' Goes 12 Feet Under*, N.Y. TIMES, June 13, 2008, at A18, *available at* https://www.nytimes.com/2008/06/13/us/13flood.html.

railroads] from taking similar action in the future." Pet.App.114 (CAP ¶ 99).

Respondents removed the action to federal court, asserting federal-question jurisdiction arising from complete preemption of Petitioners' claims, and Petitioners moved to remand. The United States District Court for the Northern District of Iowa found complete preemption under the ICCTA, 977 F. Supp. 2d 903, 906 (N.D. Iowa 2013), but the Eighth Circuit reversed, holding that, regardless of whether Petitioners' claims were preempted by the ICCTA, the jurisdictional doctrine of complete preemption did not apply, 785 F.3d 1182, 1190 (8th Cir. 2015). Petitioners imply the Eighth Circuit's holding supports the contention that their claims are not preempted here. But the Eighth Circuit said just the opposite: "Our holding is, of course, limited to the issue of federal-question jurisdiction, and so we offer no views regarding any preemption defense that may be raised in state court." *Id.* at 1192. As the Eighth Circuit pointed out, ordinary preemption (at issue here) and complete preemption (at issue in the removal proceedings) are distinct legal doctrines. *Id.* at 1190.

After remand, the state court granted Respondents' motion for judgment on the pleadings, holding that Petitioners' "state law claims are expressly preempted by federal law because the claims fall within the scope of the ICCTA preemption clause." Pet.App.62. The Iowa Supreme Court affirmed, holding "federal law does indeed preempt the property owners' action alleging that the railroads' design and operation of their railroad bridges resulted in flood damage to other properties." Pet.App.2. Petitioners now seek review of the Iowa Supreme Court's decision in this Court.

REASONS FOR DENYING THE PETITION

I. THERE IS NO CONFLICT: THE IOWA SUPREME COURT'S OPINION IS ENTIRELY CONSISTENT WITH FEDERAL LAW.

A. The ICCTA's preemption clause is broad, not narrowly tailored.

In 1995, Congress enacted the ICCTA, which abolished the Interstate Commerce Commission, revised the Interstate Commerce Act, and transferred regulatory functions of the Interstate Commerce Commission to the STB. *DHX, Inc. v. Surface Transp. Bd.*, 501 F.3d 1080, 1082 (9th Cir. 2007). "The ICCTA continued a decades-long trend of deregulating railroads," *BNSF Ry. Co. v. Cal. Dep't of Tax & Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018), and "significantly reduce[d] regulation of surface transportation industries in this country," *DHX*, 501 F.3d at 1082 (alteration in original) (quoting S. Rep. No. 104–176, at 2 (1995)). The ICCTA's legislative history indicates that the ICCTA's broad preemption provision was designed to "reflect the direct and complete pre-emption of State economic regulation of railroads." H.R. Rep. No. 104-311, at 95, (1995), *as reprinted in* 1995 U.S.C.C.A.N. 793, 807.

The ICCTA's express preemption provision grants the STB "exclusive jurisdiction over 'a wide range of state and local regulation of rail activity.'" *Cal. Dep't of Tax & Fee Admin.*, 904 F.3d at 760 (emphasis omitted) (quoting *Ass'n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1096 (9th Cir. 2010)). Specifically, the ICCTA provides:

> The jurisdiction of the [STB] over–
>
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b).

Contrary to Petitioners' contention that the ICCTA's express preemption provision is narrowly tailored, federal courts of appeals have consistently recognized that the provision is quite broadly written: "It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." *Cal. Dep't of Tax & Fee Admin.*, 904 F.3d at 760 (emphasis omitted) (quoting *City of Auburn v. U.S. Gov't*, 154 F.3d 1025, 1030 (9th Cir. 1998)); *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 785 F.3d 1182, 1190 (8th Cir. 2015) (recognizing "the broad language of the ICCTA's preemption provision" governs the question of ordinary preemption); *Union Pac. R.R. Co. v. Chi. Transit Auth.*, 647 F.3d 675, 678 (7th Cir. 2011) ("Congress's intent in the Act to preempt state and local regulation of railroad

transportation has been recognized as broad and sweeping."); *City of Auburn*, 154 F.3d at 1030 (observing that the case law supports "broad reading of Congress' preemption intent, not a narrow one"); *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 645 (2d Cir. 2005) (same).

Although a core aspect of the ICCTA is economic regulation — and Petitioners dedicate much of their briefing to that aspect — it is well established that the ICCTA is not limited to economic regulation, which Petitioners ultimately concede. Pet. at 24–25 ("[I]t is certainly true that 'nothing in the case law that supports [the] argument that, through the ICCTA, Congress *only* intended preemption of economic regulation of the railroads.'" (quoting *City of Auburn*, 154 F.3d at 1030)). Likewise, despite depicting "economic regulation" under the ICCTA as confined to activities like rate setting, Petitioners eventually concede the well-established law that the economic regulation governed by the ICCTA includes the broad spectrum of activities constituting rail operations. Pet. at 25. Petitioners even concede that the ICCTA preempts state-law tort claims based on a railroad's decision to park railcars on a rail crossing, Pet. at 26 — a fact scenario remarkably similar to this case, which involves Respondent railroads' decision to park railcars on rail bridges. As a result, the question presented here is extraordinarily narrow.

B. Federal and state courts have consistently applied ICCTA preemption under similar circumstances.

The Iowa Supreme Court concluded that when "a railroad is acting to protect its tracks and bridges from floodwaters and to keep the interstate shipment of goods moving, those actions are protected under

federal law." Pet.App.20. As the Iowa Supreme Court detailed in its careful legal analysis, this conclusion is consistent with the large body of case law applying ICCTA preemption to state-law claims arising out of flooding allegedly aggravated by a railroad's conduct or a condition of its facilities. *See, e.g.*, *Tubbs v. Surface Transp. Bd.*, 812 F.3d 1141, 1145–46 (8th Cir. 2015) (holding ICCTA preempted tort claims alleging railroad's raising of embankment caused flooding of their property); *Jones Creek Inv'rs, LLC v. Columbia Cty.*, 98 F. Supp. 3d 1279, 1294 (S.D. Ga. 2015) (holding ICCTA preempted state-law claims that railroad's construction of culverts caused flooding of their property); *Waubay Lake Farmers Ass'n v. BNSF Ry. Co.*, No. 12-4179-RAL, 2014 WL 4287086, at *6–7 (D.S.D. Aug. 28, 2014) (holding ICCTA preempted common-law claims against railroad for damages based on size of culvert beneath railroad bed); *In re Katrina Canal Breaches Consol. Litig.*, No. 05-4182, 2009 WL 224072, at *5–6 (E.D. La. Jan. 26, 2009) (holding ICCTA preempted property owners' negligence claims based on roadbeds and other areas of track); *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836, 837–42 (E.D. Ky. 2004) (holding ICCTA preempted state-law claims that railroad's use of sidetrack for coal loading operations caused drainage from adjoining properties onto their property); *Vill. of Big Lake v. BNSF Ry. Co.*, 382 S.W.3d 125, 126–29 (Mo. Ct. App. 2012) (holding ICCTA preempted state-law suit alleging railroad's track increased flood damage to other property); *A & W Props., Inc. v. Kan. City S. Ry. Co.*, 200 S.W.3d 342, 343–44 (Tex. App. 2006) (holding ICCTA preempted state-law claims alleging railroad's failure to enlarge culvert threatened flooding of other property).

Similar to the cases cited above, Petitioners specifically pleaded that Respondents failed to properly

build, inspect, and maintain their bridges. *E.g.*, Pet.App.80–81, 88, 91, 93, 95, 98, 112, 114, 119–22, 124–25, 127, 129 (CAP ¶¶ 37, 39, 49(h)–(j), 54(c), 57(c), 62(a), 67(a), 95(c), 100, 109, 110(c), 113, 114(c), 119, 120(a), 123(a)–(b), 128). As the *Jones Creek* court recognized, any state-law tort claims against a railroad for damages allegedly resulting from the railroad's efforts to keep its rail lines in safe, working order are necessarily preempted under the ICCTA. 98 F. Supp. 3d at 1294; *see also Tubbs*, 812 F.3d at 1145–46 (holding, in the context of state-law claims related to a flood, "the actions of a rail carrier . . . in designing, constructing, and maintaining an active rail line" are clearly part of "transportation by rail carriers" under the ICCTA).

C. The exception for non-railroad operations, such as debris disposal, is not applicable.

The cases Petitioners rely on do not support their position. None of these cases held that the claims at issue were not preempted merely because the claimants asserted generally applicable tort law. Instead, each court examined the particular claims pleaded to determine whether the conduct or condition at issue was (a) part of rail operations, and thus preempted by the ICCTA, or (b) unrelated, or only tangentially related, to rail operations, and thus not preempted by the ICCTA. *See, e.g.*, *Guild v. Kan. City S. Ry. Co.*, 541 F. App'x 362 (5th Cir. 2013); *Franks*, 593 F.3d at 408–15; *Emerson v. Kan. City S. Ry. Co.*, 503 F.3d 1126 (10th Cir. 2007).

In *Emerson*, the Tenth Circuit did not hold that the wide variety of state tort claims asserted in that suit were globally non-exempt; rather, it looked to the particular claims pleaded to determine whether they

would have the effect of regulating rail operations. 503 F.3d at 1129–32. The *Emerson* court determined that the claims pleaded in that case only incidentally affected railroads because they were based on the railroad's waste-disposal practices, which were not covered by the ICCTA's definition of "transportation" and were not part of the defendant's rail operations. *Id.* Similarly, the Fifth Circuit in *Franks* did not hold that state-law possessory actions are globally non-exempt; it determined (based in part on waiver) that the possessory action at issue was not preempted because it related to private crossings that were not "facilities" or "transportation" under the ICCTA. 593 F.3d at 409.

Here, the same approach mandates the opposite result. Petitioners' pleadings are aimed at Respondent railroads' use of railcars to protect their tracks and bridges during flooding to keep their rail lines operational. The ICCTA's definition of "railroad" expressly includes the "track" and "bridge[s] . . . used by or in connection with a railroad." 49 U.S.C. § 10102(6). Likewise the ICCTA's definition of "transportation" includes, among other things, any "property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail" and all "services related to that movement." *Id.* § 10102(9)(A)–(B). The conduct and instrumentalities at issue indisputably fall within those definitions under the ICCTA.

In *Guild*, the Fifth Circuit held that, while the plaintiffs' claim for injunctive relief to compel a railroad to upgrade its track was preempted, their negligence claim for damage to their privately owned spur track (on which they had allowed the railroad to temporarily store its cars) was not preempted. 541 F. App'x at 367.

The *Guild* court analyzed the pleadings and determined that the claim for injunctive relief would "not only interfere[] with the operation of the rail cars on the main track but also change[] and/or re-direct[] their general direction." *Id.* The court noted this was a "far cry from the passive presence of a private crossing over a railroad track, which does nothing to change, re-direct or inhibit the direction of the rail cars or to regulate their operation." *Id.* Unlike the claim for injunctive relief, the court determined that the negligence claim, which sought reimbursement for damage to the plaintiffs' private spur track, would not "affect [the railroad's] decisions regarding car weight on its mainline tracks." *Id.* at 368.

The *Guild* court drew the line between preempted and not preempted based on whether the claim would interfere with operations on the railroad's track. Thus, the same analysis led the Fifth Circuit to the opposite conclusion in *Ezell v. Kansas City Southern Railway Co.*, where it held that the ICCTA preempted an injured motorist's negligence claim against a railroad based on the railroad's parking of its trains on its tracks. 866 F.3d 294, 298–300 (5th Cir. 2017).

Unlike the negligence claim in *Guild*, which arose from action taken by the railroad on non-railroad private property, and like the negligence claim in *Ezell*, which arose from action taken by the railroad on its track, Petitioners' negligence claims against Respondent railroads in this case arise from actions taken on (and in an effort to protect) their own tracks. Respondent railroads' tracks and bridges are instrumental to rail operations. Federal courts have recognized this reality of rail transportation to apply ICCTA preemption to state-law claims based on a railroad's use of its tracks. *See Ezell*, 866 F.3d at 299–300; *see*

also Franks, 593 F.3d at 411 ("It is clear that a tort suit that attempts to mandate when trains can use tracks and stop on them is attempting to manage or govern rail transportation in a direct way . . . ."); *Friberg*, 267 F.3d at 443 ("The language of the statute could not be more precise, and it is beyond peradventure that regulation of KCS train operations, as well as the construction and operation of the KCS side tracks, is under the exclusive jurisdiction of the STB unless some other provision in the ICCTA provides otherwise.").

Even under the precedent relied on by Petitioners, the Iowa Supreme Court properly concluded that Petitioners' claims were preempted because they would not only interfere with Respondents' operations on their track, but also sought to redirect such operations. *See* Pet.App.114 (CAP ¶ 99) (seeking to "deter[] and discourag[e] [the railroads] from taking similar action in the future").

II. THE IOWA SUPREME COURT'S DECISION IS A NARROW RULING ON A FACT-INTENSIVE INQUIRY INTO THE SCOPE AND EFFECT OF THE SPECIFIC STATE-LAW CLAIMS PLEADED.

Under Petitioners' own analysis, the question of preemption in this case comes down to the question decided by the Iowa Supreme Court: whether the Iowa state-law claims pleaded by Petitioners would have the effect of regulating railroad operations or would only incidentally affect railroad operations. Pet. at 25. Although Petitioners identify this as the determinative issue in the case, they dedicate only a single paragraph of their petition to this issue. Pet. at 31–32. Perhaps because of the fact-intensive nature of such an inquiry, Petitioners do not analyze their own

pleadings or the nature of their Iowa-law claims. Instead, they discuss only their general negligence claim and raise only a single, global argument — that any impact their claims would have on rail transportation is incidental because they seek "only money damages" and not to "in any way change the manner in which the [railroads] conduct[] their rail operations." Pet. at 31–32; *see also id.* at 14.

Petitioners' argument is not viable. This Court recognized fifty years ago that common-law actions for monetary damages can have regulatory effect, and are thus subject to preemption: "[R]egulation can be as effectively exerted through an award of damages as through some form of preventative relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959); *accord Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012); *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 327–30 (2008); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504 (1992); *see also CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) (finding that preemptive clause in prior version of FRSA covered "duties imposed on railroads by the common law"). This principal is equally true in ICCTA-preemption cases, as federal courts have consistently recognized. *See, e.g.*, *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010) (holding common-law public nuisance claim was preempted by ICCTA); *Friberg*, 267 F.3d at 444 (holding common-law negligence claim was preempted by ICCTA and noting that "[n]othing in . . . the all-encompassing language of the ICCTA's preemption clause permit[s] the federal statute to be circumvented by allowing liability to accrue under state common law"). Thus, federal courts have uniformly approached ICCTA preemption of

general negligence claims as a claim-specific inquiry, with preemption predicated on whether the claims pleaded fall within the scope of the statute's express preemption clause. *See, e.g.*, *Ezell*, 866 F.3d at 298–300; *Tubbs*, 812 F.3d at 1144–45; *Pace*, 613 F.3d at 1070; *Adrian & Blissfield R.R. Co. v. Vill. of Blissfield*, 550 F.3d 533, 540–41 (6th Cir. 2008).

Moreover, Petitioners' argument is belied by Petitioners' own pleadings in this case. Contrary to Petitioners' contention in this Court that they did not seek "in any way change the manner in which the [railroads] conduct their rail operations," Pet. at 31–32, Petitioners pleaded in the Iowa courts that they sought to "punish" the railroads for their decision making regarding how best to protect their rail lines from washing away in a flood and to "deter[] and discourag[e]" the railroads "from taking similar action in the future." Pet.App.114 (CAP ¶ 99). Under Iowa law, Petitioners' pleadings are binding in this appeal from a judgment on the pleadings. Pet.App.5–6 (citing *Hussemann ex rel. Ritter v. Hussemann*, 847 N.W.2d 219, 222 (Iowa 2014)).

The Iowa Supreme Court simply followed well-established law and concluded that Petitioners' state-law claims for monetary damages are not automatically exempted from preemption analysis solely because they are common-law claims for damages instead of state regulations. Pet.App.16–19. Rather than applying a sweeping global rule, the Iowa Supreme Court recognized that "not all state-law tort claims involving railroads are preempted by the ICCTA" and identified several categories of state-law tort claims that typically are not preempted by the ICCTA. Pet.App.3. After carefully analyzing the Iowa-law claims in this suit, as articulated by Petitioners in their pleadings,

and the natural consequences of such claims, the Iowa Supreme Court correctly concluded that Petitioners' claims would have the effect of regulating railroad operations, and were thus preempted under the ICCTA. Pet.App.25–26. The Iowa Supreme Court is in the best position to interpret its own state laws and determine their likely impact. This Court should not use its resources to second-guess the Iowa Supreme Court on this fact-specific and state-law-based inquiry.

III. THE IOWA SUPREME COURT MERELY FOLLOWED THIS COURT'S BINDING AUTHORITY ON THE PRESUMPTION AGAINST PREEMPTION.

Petitioners complain that the Iowa Supreme Court erred by failing to apply the presumption against preemption. Even if Petitioners were right about the presumption, this case offers a poor vehicle to address the issue. First, the Iowa Supreme Court's opinion is not likely to have any meaningful impact on the jurisprudence of this issue because the Iowa Supreme Court simply quoted this Court's most recent statement of the law. Pet.App.12. The Iowa Supreme Court did not perform any independent analysis of the issue or expand upon this Court's binding precedent. *Id.* Second, the Iowa Court's statement regarding the presumption of preemption did not have any meaningful impact on this case. The Iowa Supreme Court went on to decide the issue of preemption under the *Franks* test, which Petitioners advocate is the correct test. *See* Pet.App.21–26.

A. The Iowa Supreme Court quoted and followed *Puerto Rico*.

The Iowa Supreme Court's discussion of the presumption against preemption is confined to two

sentences, each of which quotes this Court's opinion in *Puerto Rico*:

> Notably, when a statute contains an express preemption clause, the Supreme Court has highlighted that "we do not invoke any presumption against preemption." Instead, courts "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent."

Pet.App.12 (citations omitted) (quoting *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1946 (2016)); *see also Puerto Rico*, 136 S. Ct. at 1946 ("And because the statute 'contains an express pre-emption clause,' we do not invoke any presumption against pre-emption but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)) (citing *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016))).

The Iowa Supreme Court's opinion says nothing about this issue beyond what this Court has already said and simply applies binding precedent from this Court. Petitioners argue that *Puerto Rico* is distinguishable because it is a bankruptcy case, but nothing in *Puerto Rico* limits its statement about the presumption to bankruptcy cases. *See Puerto Rico*, 136 S. Ct. at 1946.

Regardless, it has never been the practice of this Court to presume, rather than deduce, Congress's preemptive intent when Congress has expressed its intent in plain language in the statute itself. *See Coventry Health Care of Mo., Inc. v. Nevils*, 137 S. Ct. 1190, 1197–98 (2017) (rejecting argument based on

presumption against preemption and deriving preemptive intent from express preemption clause); *Puerto Rico*, 136 S. Ct. at 1946 (deriving preemptive intent from text of express preemption provision rather than applying a presumption against preemptive intent); *Gobeille*, 136 S. Ct. at 946 (rejecting argument based on presumption against preemption when express preemption clause demonstrated scope of preemptive intent); *Whiting*, 563 U.S. at 594 ("When a federal law contains an express preemption clause, we 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent.'" (quoting *Easterwood,* 507 U.S. at 664)).

As the Fifth Circuit recognized in *Franks* (Petitioners' primary authority), the ICCTA contains such an express, unambiguous statement of Congress's preemptive intent. 593 F.3d at 408 (declining to apply presumption against preemption because ICCTA's express preemption provision unambiguously established scope of ICCTA preemption). "[T]he plain language of the [ICCTA] itself, and in particular its preemption provision, is so certain and unambiguous as to preclude any need to look beyond that language for congressional intent." *Friberg*, 267 F.3d at 443.

Moreover, the presumption against preemption "is not triggered when the State regulates in an area where there has been a history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000). "Congress has exercised broad regulatory authority over rail transportation for 122 years." *Island Park, LLC v. CSX Transp.*, 559 F.3d 96, 102 (2d Cir. 2009). As this Court has recognized, federal regulation of railroads is "pervasive and comprehensive." *Chi. & Nw. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). The ICCTA's legislative history addresses

precisely this issue, noting that the ICCTA eliminated the predecessor statute's "disclaimer regarding residual State police powers" because the disclaimer was "unnecessary, in view of the Federal policy of occupying the entire field of economic regulation of the interstate rail transportation system." H.R. Rep No. 104-311, at 95–96 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 793, 807–08.

> Although States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.

Id. at 95.

Regardless of whether the presumption applies, federal jurisprudence is uniform and clear that when Congress enacts an express preemption provision, the focus of any preemption inquiry must be "the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Easterwood*, 507 U.S. at 664; *see also, e.g.*, *Franks*, 593 F.3d at 408. The Iowa Court properly derived Congress's preemptive intent from Congress's own, unambiguous statement of the existence and scope of ICCTA preemption. Pet.App.9–12.

B. The presumption has no impact on this case.

This case presents a particularly poor vehicle for revisiting the presumption against preemption because

application of the presumption would have no meaningful impact on the analysis in this case. Petitioners argue that whether their claims are preempted is governed by the *Franks* test, which Petitioners admit the Iowa Supreme Court applied. Pet. at 31–32. Petitioners also admit the Iowa Court correctly stated the *Franks* test; they do not argue that the Iowa Court's failure to apply the presumption altered the applicable legal standard. *Id.* By Petitioners' own standards, application of the presumption against preemption would not change the operable inquiry: whether Petitioners' statutory and common-law claims under Iowa law would have the effect of regulating rail transportation, or whether they would affect rail transportation only incidentally. This fact-specific analysis of Petitioners' pleadings is the crux of Petitioners' preemption argument, though it is largely ignored in their petition.

IV. THE IOWA SUPREME COURT CORRECTLY APPLIED WELL-SETTLED PREEMPTION DOCTRINE.

A. Petitioners rely on the *Franks* test, which they admit the Iowa Supreme Court correctly stated.

Petitioners contend that the question of preemption in this case is governed by the *Franks* test, which the Iowa Supreme Court applied. And Petitioners concede that the Iowa Supreme Court correctly stated that test. Pet. at 31–32. Although the *Franks* test is not the only analytical framework that could be applied here, this case does not present the question of whether any other test should apply — Petitioners do not assert that the Iowa Supreme Court should have applied a different standard. Pet. at 31–32. Therefore, even if this Court were inclined to opine on the correctness of

the *Franks* test, this case does not present a suitable vehicle for doing so. Similarly, even if there were disagreement about the parameters of the *Franks* test, this case does not present that issue either. Petitioners do not disagree with the Iowa Supreme Court's statement of the *Franks* test — Petitioners merely disagree with the Iowa Court's conclusion under the *Franks* test as applied to these facts. Pet. at 31–32.

B. Petitioners argue the Iowa Court misapplied *Franks*, but *Franks* specifically stated that this kind of case is preempted.

Petitioners' contention that there is no preemption here under the *Franks* test is irreconcilable with *Franks* itself. In that case, the Fifth Circuit held that a property owner's right-of-way claim under state property laws was not preempted by the ICCTA because the property laws at issue "have nothing to do with railroad crossings. Railroads are only affected when the servitude happens to cross a railroad." *Franks*, 593 F.3d at 411. The Fifth Circuit distinguished this from other circumstances when state-law claims would be preempted, including the circumstances in this case: "It is clear that a tort suit that attempts to mandate when trains can use tracks and stop on them is attempting to manage or govern rail transportation in a direct way . . . ." *Franks*, 593 F.3d at 411 (distinguishing *Friberg*); *see also Friberg*, 267 F.3d at 442 (holding negligence claims against railroad for placing its trains on side track that blocked access to plaintiff's premises were preempted). "[R]egulating the time a train can occupy a rail crossing impacts, in such areas as train speed, length and scheduling, the way a railroad operates its trains, with concomitant

economic ramifications." *Franks*, 593 F.3d at 411 (citing *Friberg*, 267 F.3d at 443).

These same considerations support preemption here, where Petitioners seek to impose liability based on Respondent railroads' parking of railcars on railroad bridges. As the Iowa Supreme Court correctly observed, the Iowa-law claims Petitioners pleaded would have the effect of regulating when and how railroads use their trains and tracks and especially how they protect their bridges (which are expressly included in the definition of "railroad" under the ICCTA, 49 U.S.C. § 10102(6)(A)) against flood damage. In fact, Petitioners expressly stated in their pleadings that one purpose of their claims was to influence such decisions by railroads in the future. Pet.App.114 (CAP ¶ 99) (stating intent "to punish" the railroads for their actions "while deterring and discouraging [the railroads] from taking similar action in the future").

V. THE IOWA SUPREME COURT DID NOT NEED TO REACH THE "UNREASONABLE BURDEN" ISSUE.

Petitioners concede that when state-law claims would effectively regulate management of rail transportation, as the Iowa Supreme Court correctly found to be the case here, there is "no need for a showing as to the extent to which they actually burden rail transportation." Pet. at 26. Petitioners also concede that, even if they were correct that their state-law claims would have only a collateral effect on rail transportation, the ICCTA would still preempt their claims if the claims would unreasonably burden or interfere with rail transportation. Pet. at 29. But Petitioners argue that no showing of unreasonable burden has been made here because this case was decided on the pleadings. Pet. at 31.

That is inaccurate. Petitioners' own pleadings demonstrate that their claims would unreasonably burden rail transportation, a principle that has well-defined meaning in the context of railroad preemption. As discussed above, given the inherently interstate nature of the railroad business and the important role railroads play in national commerce, the overarching policy of extensive federal preemption of railroad operations is to ensure that railroads are governed by uniform federal standards and not subjected to varying standards of care from state to state. *See* Statement of the Case, Section A, *supra.* Petitioners' pleadings demonstrate that they seek to have an Iowa jury determine whether Respondent railroads violated several Iowa statutes and the standard of care under Iowa common law by parking loaded railcars on their bridges in an effort to protect their rail lines during the 2008 Flood. Pet.App.90–99 (CAP ¶ 52–69). This is precisely the kind of variable state-to-state law that the ICCTA's preemption provision is intended to prevent. *See* S. Rep. No. 104-176, at 6 (1995) ("Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the 'seamless' service that is essential to its shippers and would w[e]aken the industry's efficiency and competitive viability."). An Iowa court might decide that the Respondent railroads violated Iowa law here, where extreme flooding washed away several of the railroads' bridges despite the railroads' reinforcement efforts, causing the loaded railcars to allegedly dam and divert the flow of floodwaters. But another court in another state might determine that a railroad violated that state's laws by failing to reinforce its bridges with loaded railcars when doing so would have prevented the bridges from washing away in a different flood. In fact, Petitioners

themselves alleged, in the alternative, that Respondents are also liable if they did not park loaded railcars on their bridges to reinforce them during the flood. Pet.App.78 (CAP ¶ 30).

Petitioners also expressly pleaded that a purpose of this litigation is to control Respondent railroads' decisions about how to protect their rail lines in similar circumstances going forward. Pet.App.114 (CAP ¶ 99). This is precisely the kind of regulation of rail transportation over which Congress granted the STB exclusive jurisdiction, and over which states are preempted from regulating, whether through statute, administrative action, or common law. 49 U.S.C. § 10501(b); *see also* S. Rep. No. 104-176, at 6 (1995).

Moreover, because the Iowa Supreme Court correctly held that the Iowa-law claims pleaded by Petitioners were preempted due to their anticipated regulatory effect on the management of rail transportation, the Iowa Supreme Court never reached the secondary unreasonable-burden test for preemption. Pet.App.26. This Court should not decide that issue for the first time without the benefit of any analysis from the Courts below — particularly in light of the fact that the burden to be measured is that imposed by Iowa statutes and common law.

VI. AS THE STB HAS RECOGNIZED, THE IOWA SUPREME COURT CORRECTLY APPLIED THE "INTERPLAY" BETWEEN THE ICCTA AND THE FRSA.

The FRSA was enacted in 1970 "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. The FRSA requires that "[l]aws, regulations, and orders related to railroad safety and . . . railroad

security shall be nationally uniform to the extent practicable" and generally preempts state laws relating to railroad safety, subject to certain exceptions. 49 U.S.C. § 20106(a). But unlike the ICCTA, the FRSA has a savings clause, which provides that "[n]othing in [the FRSA] shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party . . . has failed to comply with a State law, regulation, or order that is not incompatible with subsection a(2)." *Id.* § 20106(b)(1)(C).

Petitioners argue that, even if the ICCTA would otherwise preempt their claims, the FRSA's savings clause operates to shield their claims from preemption, relying on *Tyrrell v. Norfolk Southern Railway Co.*, 248 F.3d 517 (6th Cir. 2001), and *Iowa, Chicago & Eastern Railroad Corp. v. Washington County*, 384 F.3d 557 (8th Cir. 2004). In *Tyrrell* and *Washington County*, the courts of appeals held that rail-safety claims are governed by the FRSA (and its savings clause) rather than the ICCTA. *See Tyrrell*, 248 F.3d at 522–23 (holding that Ohio track-clearance regulation was a safety regulation governed by FRSA rather than ICCTA); *Wash. Cty.*, 384 F.3d at 560 (holding that county's suit for order from Iowa Department of Transportation requiring railroad to replace several bridges that created unsafe conditions at rail-highway crossings was governed by FRSA rather than ICCTA). The courts in *Tyrrell* and *Washington County* concluded that railroad's safety-related regulations should be analyzed under the FRSA rather than the ICCTA, because otherwise the ICCTA might be read to preempt all of the claims covered by the FRSA's savings clause. *Tyrrell*, 248 F.3d at 522–23; *Wash. Cty.*, 384 F.3d at 560.

The Iowa Supreme Court agreed with Petitioners that railroad safety claims are governed by the FRSA rather than the ICCTA. Pet.App.4–5 (identifying "[t]wo categories of state-law tort claims [that] typically are not preempted by the ICCTA," including "those relating to rail safety, where a separate, narrower preemption provision in the [FRSA] applies," and citing *Tyrrell*). After carefully examining the FRSA and the state-law claims pleaded by Petitioners, the Iowa Supreme Court concluded that Petitioners' claims were not railroad safety claims. Pet.App.29–32. Thus, here again, Petitioners do not challenge the Iowa Supreme Court's statement of applicable law; they quibble with the court's application of the law to the specific pleadings in this case. Even if the Iowa Supreme Court's analysis of Petitioners' pleadings were incorrect, this Court should decline Petitioners' invitation to grant certiorari to correct the Iowa Supreme Court's fact-laden application of a properly stated rule of law. Sup. Ct. R. 10.

Moreover, the Iowa Supreme Court correctly analyzed Petitioners' pleadings and determined that their claims related to rail operations rather than railroad safety. Pet.App.29–32. Petitioners asserted that Respondent railroads "failed to build, maintain, inspect, and keep in good repair" their railroad bridges, Pet.App.80–81 (CAP ¶¶ 37, 39–40), and proposed a class action of "all persons and entities who suffered real and/or personal property damage and/or loss and/or the diminished value of such property and/or other damages as the result of the flooding in Cedar Rapids, Linn County, Iowa in June of 2008," Pet.App.85 (CAP ¶¶ 47). Thus, the Iowa Supreme Court correctly observed, "[t]he petition challenges decisions made by the railroads regarding the construction of their bridges and the placement of

trains on those bridges not because they caused a personal injury, but because they allegedly had the foreseeable effect of causing flood-related property losses." Pet.App.32. Petitioners stress that the FRSA's savings clause covers state-law claims "seeking damages for personal injury, death, or *property damage*" based on certain allegations. 49 U.S.C. § 20106(b)(1). But Petitioners do not contest that such property damages still must arise out of *railroad safety* claims. Pet. at 36–37. As the Iowa Supreme Court accurately observed, the claims pleaded by Petitioners below were not for violations of railroad safety standards, they were for conducting rail operations in a manner that allegedly damaged their property interests. Pet.App.31–32.

Notably, the STB has expressly recognized that the Iowa Supreme Court's decision in this case is entirely consistent with *Tyrrell*, *Washington County*, and their progeny:

> The position expressed in *Tyrrell* and [*Washington County*] is consistent with numerous other subsequent court decisions. For example, the Iowa Supreme Court in *Griffioen v. Cedar Rapids & Iowa City Railway* recently found that state law claims concerning property damage from flooding were not safety-related, and therefore were subject to ICCTA preemption and not FRSA preemption. In so holding, the court explained that "courts have uniformly held that FRSA deals with rail safety" and that when state law addresses rail safety matters, preemption is analyzed under FRSA, not ICCTA. Other cases dealing with the interplay of the two statutes have reached the same result.

Waneck, et al., Docket No. FD 36167, 2018 WL 5723286, *1 (S.T.B. Oct. 31, 2018) (citation omitted) (further noting that FRSA and ICCTA would overlap "in rare cases").

This case offers a poor vehicle for addressing the interaction between the ICCTA and the FRSA because the Iowa Supreme Court stated and applied the same legal standards advocated by Petitioners here, and because Petitioners' argument that the court misapplied those legal standards to the specific pleadings in this case is factually inaccurate and unworthy of this Court's resources in any event.

VII. PETITIONERS' RELIANCE ON *SILKWOOD* IS MISPLACED.

Petitioners assert that the Iowa Supreme Court's holding immunizes railroads from liability for misconduct, citing this Court's opinion in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984), for the proposition that "[i]t is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." Pet. at 37–38. Petitioners' reliance on *Silkwood* is doubly flawed.

First, no party argues here that Congress preempted state-law remedies "without comment." The issue in *Silkwood* was whether the Atomic Energy Act of 1954, which had no express preemption provision, nevertheless impliedly preempted state-law claims against Kerr-McGee, a manufacturer of plutonium fuel pins for use in nuclear power plants. 464 U.S. at 241. Examining the statutory text and legislative history, this Court found no indication that Congress intended to preempt state-law claims, *id.* at 251–56; to the contrary, the legislative history demonstrated that Congress "assumed that persons injured by nuclear

accidents were free to utilize existing state tort law remedies." *Id.* at 252. Just the opposite scenario is presented here: the ICCTA is not silent on preemption; it contains an express preemption provision that plainly "preempt[s] the remedies provided under . . . State law" "with respect to regulation of rail transportation." 49 U.S.C. § 10501(b).

Second, because Petitioners have not alleged any violation of federal laws and regulations, there is no "illegal conduct." The plaintiff in *Silkwood* alleged and put forth evidence that Kerr-McGee failed to comply with certain federal regulations governing atomic energy. 464 U.S. at 243–45. This is important because the reason for granting exclusive jurisdiction over certain aspects of nuclear energy to the federal regulatory commission was Congress's determination that the commission "was more qualified to determine what type of safety standards should be enacted in this complex area." *Id.* at 250. This Court determined that allowing state law to impose punitive-damage liability for violations of these federal standards, on top of any civil penalties that might be awarded by the commission, was consistent with Congress's purpose. *Id.* at 257–58. The Court also rejected the argument that Congress "intended to preclude dual regulation" in the area of atomic energy. *Id.* at 258.

Here, in contrast, Petitioners have not pleaded any violation of any federal standards governing railroads, and Congress expressly and unambiguously precluded dual regulation of rail transportation. 49 U.S.C. § 10501(b). A fundamental congressional purpose of the federal regulation of railroads is to prevent railroads from being subject to different duties and standards of care from state to state, a circumstance that would thwart fulfillment of railroads' federally

imposed common-carrier duties. *See* Statement of the Case, Section A, *supra.* The effect of preemption here is not to immunize railroads from liability for illegal conduct, but rather to ensure that the legality of railroads' conduct is determined under a single, uniform set of federal standards set by a single federal entity: the STB. *Id.* Because Petitioners have not alleged any violation of any federal standard, they have not alleged any illegal conduct. To hold otherwise would make operating a railroad infeasible as a practical matter — a principle specifically reflected in the ICCTA's legislative history. *See* S. Rep. No. 104-176, at 6 (1995). In the ICCTA and its predecessor statutes, Congress acted to prevent precisely that disastrous scenario by expressly vesting exclusive jurisdiction over rail transportation in the STB and preempting any state remedies that operate to regulate rail transportation. 49 U.S.C. § 10501(b).

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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