No. 19-386

IN THE

Supreme Court of the United States

MONROE COUNTY COMMISSION,

Petitioner,

v.

A.A. NETTLES, SR. PROPERTIES LIMITED AND EULA LAMBERT BOYLES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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November 12, 2019

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Association of American Railroads (AAR) is an incorporated, nonprofit trade association representing the nation's major freight railroads, many smaller freight railroads, Amtrak, and some commuter authorities. AAR's members operate the vast majority of the rail industry's line haul mileage. In matters of significant interest to its members, AAR frequently appears on behalf of the railroad industry before Congress, the courts and administrative agencies. AAR seeks to participate as *amicus curiae* to represent the views of its members when a case raises an issue of importance to the rail industry as a whole.

This case meets that criterion. The decision of the Supreme Court of Alabama removed a rail line from the national rail network through the operation of state law. That decision undermines the exclusive authority granted by Congress to the Surface Transportation Board (STB) to regulate the removal of railroad property from the national rail network.

The decision below conflicts with decisions of this Court, the federal courts of appeals, the federal statute governing railroad regulation, and agency decisions implementing the governing statute, all of which recognize

1. Pursuant to Supreme Court Rule 37, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part, and no person or entity other than *amicus curiae* and its counsel contributed money that was intended to fund preparing or submitting the brief. *Amicus curiae* gave timely notice of its intention to file this brief, and the parties have consented in writing to the filing of this brief under Rule 37(b).

the STB's exclusive authority over rail line abandonments. By sanctioning the use of state law to remove railroad property from the national rail network, the decision will create uncertainty and encourage challenges to railroad property rights under state law. If left to stand, the decision could lead to a patchwork removal of property from rail service under state law that would adversely affect railroads' ability to carry out their statutory obligations as common carriers.

SUMMARY OF THE ARGUMENT

For nearly a century, federal law has provided that a rail line used to provide common carrier service cannot be removed from the national rail network until the federal agency responsible for railroad regulation, currently the STB, authorizes its abandonment. *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 323 (1981) ("*Kalo Brick*"). Here, a railroad ceased using its rail line to support rail operations but it did not obtain authority from the STB to remove the property from the national rail network. Nevertheless, the Alabama Supreme Court concluded that "[w]hen the railroad undisputedly ceased using the right-of-way for railroad purposes, under Alabama property law, its right-of-way across Eula's property lapsed by nonuse . . . divesting [the railroad] of any further interest in the property." Pet. App. 12a. The decision concluded that the federal law governing rail line abandonments did not apply because the federal law governing rail transportation preempts only the States' "economic" regulation of railroads, not state property law.

The case below arose in the context of the National Trails System Act Amendments of 1983, Pub. L. 98-11, 97

Stat. 48, to the National Trails System Act (Trails Act), Pub. L. 90-543, 82 Stat. 919 (codified, as amended, at 16 U.S.C. § 1241 *et seq.*). Specifically, the railroad quitclaimed its right-of-way to Petitioner for conversion to interim trail use pursuant to the regulations implementing the Trails Act.[2] In the Trails Act, Congress authorized the Interstate Commerce Commission (ICC), the STB's predecessor, "to preserve for possible future railroad use rights-of-way not currently in service and to allow interim use of the land as recreational trails." *Preseault v. ICC*, 494 U.S. 1, 6 (1990). The Trails Act provides that the interim trail use "shall not be treated, for any purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. § 1247(d). The STB approved the interim use of the rail line as a trail pending possible future reactivation and use in railroad operations.

AAR agrees with Petitioner that the decision below, which relied on state law to prevent the conveyance of the railroad's property interest to Petitioner, conflicts with numerous court decisions upholding the conversion of rail lines to trails under the Trails Act. But AAR is also concerned about a broader conflict with federal law on the regulation of rail line abandonments that arises from the reasoning of the Alabama Supreme Court. The Alabama Court concluded that the railroad's property rights in the rail line could not be conveyed to Petitioner for trail use because those rights had been extinguished under state law through non-use. That conclusion effectively removed the rail line from the national rail network

2. Petition for Certiorari at 7. AAR adopts the description of relevant facts as set out in the Petition for Certiorari and does not repeat those facts except as relevant to AAR's argument.

through the operation of state law, in direct conflict with numerous court and agency decisions acknowledging Congress's explicit grant of exclusive authority over rail line abandonments to the STB. The Alabama Court's conclusion is wrong and could seriously undermine the administration of the national rail network by the STB and the effective management by railroads of property that is needed to carry out their common carrier obligations.

If the decision is left to stand, railroads will inevitably face increased state law claims seeking to extinguish railroads' rights to rail property. Patchwork regulation of property in the national rail network under varying state law standards would undermine the unified federal scheme of railroad regulation that Congress established over a century ago and would interfere with railroads' ability to carry out their common carrier service obligations. AAR urges the Court to grant certiorari to eliminate this uncertainty before an expansion of litigation under state law leads to a fragmentation of the national rail network.

ARGUMENT

I. The Uncertainty Created by the Decision Below Requires Guidance from This Court.

The federal scheme of rail regulation calls for a uniform approach to the abandonment of rail lines that have been used to provide rail transportation service, to be administered by a single federal regulator. The decision below defies that federal regulatory regime. Not only does the decision conflict with numerous federal court decisions involving the use of rail lines under the Trails Act, it also conflicts with long-standing law regarding the

regulation of common carrier railroads. If left to stand, it will encourage property owners in Alabama and in other states to seek to divest railroads of their interests in railroad property, potentially leading to the fragmentation of the national rail network.

A. Congress Expressly Placed Rail Line Abandonments Under Exclusive Federal Authority

Before 1920, railroads seeking to initiate or terminate common carrier service over rail lines were subject to a range of conflicting state and federal requirements. Congress concluded that this patchwork of entry and exit regulation of the national rail network needed to be eliminated. As this Court explained:

> Prior to . . . 1920, regulations . . . by federal and state authorities were frequently conflicting, and often the enforcement of state measures interfered with, burdened, and destroyed interstate commerce. Multiple control . . . of matters affecting [interstate rail] transportation has been found detrimental to the public interest as well as to the carriers. Dominant federal action was imperatively called for.

Transit Comm'n v. United States, 289 U.S. 121, 127 (1933).

The Transportation Act of 1920, ch. 91, § 402(18)–(22), 41 Stat. 477–478, expressly addressed rail line abandonments, replacing the existing patchwork of state and federal entry and exit regulation with a unified federal regulatory scheme administered by a single federal agency, the ICC. "The Transportation Act [of 1920]

prohibited a carrier from abandoning any portion of a line without first obtaining from the [ICC] a certificate of abandonment verifying that the future public convenience and necessity permitted the cessation of the carrier's rail service." *Hayfield N. R.R. Co., Inc. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 628 (1984).

Unified federal control over the removal of rail lines from the national rail network was and continues to be a crucial element in the federal rail regulatory scheme. So long as a rail line is in the national rail network, a railroad authorized to operate over that line is subject to common carrier obligations toward the public. "[I]f a line of rail track has not been abandoned or embargoed [a temporary cessation of service], there is 'an absolute duty to provide rates and service over the [l]ine upon reasonable request,' and a 'failure to perform that duty [is] a violation of [the statutory provision establishing common carrier obligations]." *Riffin v. Surface Transp. Bd.*, 733 F.3d 340, 347 (D.C. Cir. 2013) (citations omitted). Since abandonment of a line "terminates a rail carrier's public service obligation," *Gibbons v. United States*, 660 F.2d 1227, 1234 (7th Cir. 1981), the public has a strong interest in rail line abandonments.

In 1995, Congress abolished the ICC and transferred the ICC's responsibilities to the STB, including responsibility for rail line abandonment. ICC Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, 109 Stat. 803 (1995). Consistent with prior law, ICCTA establishes that the STB's authority over rail line abandonments is exclusive: "The jurisdiction of the Board over . . . transportation by rail carriers . . . is exclusive." 49 U.S.C. § 10501(b). "Transportation" is broadly defined in the statute to include "property . . . of any kind related

to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use." *Id.* at § 10102(9)(A). Moreover, to reinforce the STB's exclusive authority over regulatory matters such as rail line abandonment, ICCTA included a broad preemption provision stating that "the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *Id.* at § 10501(b).

ICCTA specifically addresses rail line abandonments. The statute provides that "[a] rail carrier providing transportation subject to the jurisdiction of the Board . . . who intends to . . . abandon any part of its railroad lines . . . must file an application relating thereto with the Board. An abandonment . . . may be carried out only as authorized under this chapter." 49 U.S.C. § 10903(a)(1). The statute further provides that "[a] rail carrier providing transportation subject to the jurisdiction of the Board under this part may . . . abandon any part of its railroad lines . . . only if the Board finds that the present or future public convenience or necessity require or permit the abandonment. . . ." *Id.* at § 10903(d). The right-of-way at issue in the decision below is a "rail line" subject to the Section 10903 requirement for obtaining STB approval for abandonment, as evidenced by the STB's treatment of the right-of-way as a "rail line" in its decision implementing interim trail use. *See Alabama Railroad Co.—Abandonment Exemption—in Monroe Cty., Ala.*, STB Docket No. AB 463 (Sub-No. 1X), 2013 1701800, at *3 (STB served Apr. 19, 2013).[3]

3. ICCTA provides an exception to the STB approval requirement for the abandonment of certain types of tracks, not at issue here, that are ancillary to rail lines. 49 U.S.C. § 10906. The STB continues to have jurisdiction over these "excepted"

B. The Decision Below Conflicts With Numerous Court and Agency Decisions Ruling that Rail Lines Cannot Be Removed From the National Rail Network Without STB Authorization.

The Alabama Supreme Court failed to give effect to the STB's exclusive role in authorizing rail line abandonments, as mandated by the federal statute, 49 U.S.C. § 10903. It found that a railroad right-of-way created by reservation in a quitclaim deed with a local property owner was "extinguished by operation of [state] law." Pet. App. 11a. While the railroad had ceased using the right-of-way for active railroad purposes, the STB did not allow the rail line to be removed from the national rail network but instead approved the interim use of the rail line as a trail under the Trails Act. Approval of interim trail use means that the rail line is not removed from the national rail network and may, if necessary, be returned to rail service in the future. *See, e.g.*, *Norfolk & W. Ry.—Abandonment Between St. Marys & Minster in Auglaize Cty., Ohio*, 9 I.C.C. 2d 1015, 1993 WL 427730 (ICC effective Oct. 25, 1993). The Alabama Court found that the railroad could not convey the right-of-way to Petitioner because the railroad had lost its underlying interest in the property through non-use: "When the railroad undisputedly ceased using the right-of-way for railroad purposes, under Alabama property law, its right-of-way across Eula's property lapsed by nonuse." Pet. App. 12a. The Court further explained: "In other words, the railroad's inaction in failing to use its right of

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tracks, but the "construction and disposition" of excepted tracks "are left in the hands of railroad management." *Allied Erecting & Dismantling Co., Inc. v. Surface Transp. Bd.*, 835 F.3d 548, 550 (6th Cir. 2016) (quoting *Port City Prop. v. Union Pac. R.R. Co.*, 518 F.3d 1186, 1188 (10th Cir. 2008)).

way terminated the right-way-of [sic], divesting it of any further interest in the property." *Id.*

The Petition explains that the ruling of the Court below conflicts with the Trails Act and with numerous federal court decisions holding that the Trails Act preempts state property law in the circumstances presented here. AAR submits that the ruling below also conflicts with other long-standing federal precedent on the regulation of rail line abandonments. Those decisions, including decisions by this Court, recognize that the federal rail regulator must authorize rail line abandonments, and that this requirement applies regardless of the rail carrier's underlying property or contract rights to the rail line.

In *Thompson v. Texas Mexican Railway Co.*, 328 U.S. 134 (1946) ("*TexMex*"), this Court held that when a trackage rights agreement allowing a rail carrier to provide service over an existing rail line was terminated pursuant to its terms, the rail carrier could not be forced off of the rail line without first obtaining abandonment authority from the ICC. Noting that termination of service obligations over rail lines involves "phases of the public interest," the Court found that "[t]hough the contract were terminated pursuant to its terms, a certificate [of abandonment] would still be required under [a predecessor to 49 U.S.C. § 10903.] *Id.* at 143-45.

Consistent with this Court's ruling in *TexMex*, this Court recognized that "the exclusive and plenary nature of the [ICC/STB's] authority to rule on carriers' decisions to abandon lines is critical to the congressional scheme, which contemplates comprehensive regulation of interstate commerce." *Kalo Brick*, 450 U.S. at 321. As this Court explained:

> [T]he construction of the applicable federal law is straightforward and unambiguous. Congress granted to the [ICC] plenary authority to regulate, in the interest of interstate commerce, rail carriers' cessations of service on their lines. And at least as to abandonments, this authority is exclusive.

Id. at 323. The ruling in the decision below that rail lines can be removed from the national rail network based on state law, without regard to the STB's abandonment authority under federal law, directly conflicts with these decisions of this Court.

The reasoning of the Alabama Court also conflicts with decisions of the federal courts of appeals which, following the Supreme Court precedent, have repeatedly found that state and local law cannot be used to bypass the exclusive authority of the ICC/STB over rail line abandonments. In *City of Des Moines v. Chicago & Northwest Railway Co.*, 264 F.2d 454, 457 (8th Cir. 1959), the City of Des Moines sought to oust a railroad from occupation of a city street on grounds that the railroad "had violated the conditions of the grant by which it originally had been permitted to use the street for right of way purposes. . . ." *Id.* at 455. Relying on *TexMex*, the Eighth Circuit found that "[r]egardless, however, of whether a valid forfeiture would have existed under the ordinance [creating the railroad's right-of-way], a court could still not decree an ouster of the Railway from the street . . . until the [ICC] gave its permission to such abandonment or discontinuance being made." *Id.* at 457.

The Sixth Circuit has also acknowledged that the federal statute governing rail regulation, 49 U.S.C.

§ 10903, provides the STB with exclusive authority to remove rail lines from the national rail network: "if a railroad line falls within its jurisdiction, the STB's authority over abandonment is both exclusive and plenary." *R.R. Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523, 530-31 (6th Cir. 2002) (citations omitted).

The Court of Appeals for the District of Columbia similarly concluded that the City of South Bend, Indiana, could not acquire certain rail lines that ran through the city without first obtaining the STB's abandonment authority, noting that "[a] rail carrier may abandon a line . . . 'only if the Board finds that the present or future public convenience and necessity require or permit the abandonment.'" *City of S. Bend v. Surface Transp. Bd.*, 566 F.3d 1166, 1168 (D.C. Cir. 2009) ("*City of S. Bend*"). As in the case below, the rail lines in *City of S. Bend* had not been maintained by the rail carrier and were not being used for rail purposes, but an STB-authorized abandonment was still necessary before the lines could be removed from the national rail network.

Lower federal courts and state courts have consistently followed the Supreme Court and appellate court decisions in finding that the STB's authority over rail line abandonments is exclusive and plenary and is not diminished or displaced by state law. For example, in *Cedarapids, Inc. v Chicago, Central & Pacific Railroad Co.*, 265 F. Supp. 2d 1005 (N.D. Iowa 2003), a railroad leased land to the plaintiff that included a railroad right-of-way but reserved all railroad operating rights. When the railroad subsequently decided to use the property for rail car storage, the plaintiff brought an action in state court arguing, among other things, that the railroad's interest in the land "has been extinguished by its lack

of use of the tracks" under Iowa law. *Id.* at 1007. After removal of the action to federal court, the court concluded that the plaintiff's attempt to force the railroad to abandon the line under state law due to alleged non-use of the tracks conflicted with the STB's exclusive authority over abandonment: "the issues of the classification and the abandonment of the tracks in question are within the exclusive jurisdiction of the STB." *See also Calumet Realty, L.P. v. Chi. Rail Link, LLC and Omnitrax—Memorandum Opinion and Order*, No. 16 CH 7380 (Ill. Cir. Ct. Cook County June 5, 2019) (railroad's right to use a rail line could not be extinguished under state law even though the railroad had not used the property for railroad purposes for over 20 years).

The federal agency responsible for administering the federal rail regulatory regime is often asked to resolve disputes over rail line abandonments and it has repeatedly followed the established precedent described above in confirming that "[t]he Board has exclusive and plenary jurisdiction over rail line abandonments and discontinuances of service to protect the public from unnecessary discontinuance, cessation, interruption, or obstruction of available rail service." *Cerro Gordo Cty., Iowa—Adverse Abandonment—Backtrack, Inc.*, STB Docket No. AB 1063, 2010 WL 3285655, at *1 (STB served Aug. 19, 2010). Consistent with the federal court decisions described above, the STB recognizes that this authority exists regardless of the existence of a valid state law right to the underlying property. *See, e.g., Fillmore & W. Freight Serv., LLC—Emergency Pet. for Declaratory Order*, STB Docket No. FD 35813, 2015 WL 1119740, at *3 (STB served Mar. 12, 2015) ("any party seeking the abandonment of a rail line, or discontinuance of rail

service, must first obtain appropriate authority from the Board . . . notwithstanding any contractual arrangement (or the termination thereof) between parties regarding cessation of rail service or use of a rail line").

C. Without Guidance from this Court, the Decision Below Will Create Confusion and Promote Unnecessary Litigation Over Property That Is In the National Rail Network.

The Alabama Court's conclusion that state law can determine when a rail line can be removed from the national rail network is wrong as a matter of law. Moreover, it undermines the effective regulation by the STB of the national rail network and railroads' management of their extensive property holdings. The ruling that non-use of rail property may result in its removal from the national rail network through operation of state law is particularly troubling in light of the diverse circumstances in which such claims have already been made.

In *Jie Ao and Xin Zhou—Petition for Declaratory Order*, STB Docket No. FD 35539, 2012 WL 2047726, at *1 (STB served June 6, 2012) ("*Ao Zhou*"), two property owners adjacent to a rail line sought adverse possession of certain portions of the right-of-way that were not currently being used for railroad operations. The STB stated that its "broad and exclusive jurisdiction over railroad operations and activities prevents application of state laws that would otherwise be available, including condemnation to take rail property for another use that would conflict with the rail use." *Id.* at *5. The STB acknowledged that in the particular circumstances of the case (as here, the rail line was being used as a trail),

adverse possession of the property "might have little actual, practical effect on current plans for active railroad operations, [but] circumstances can change." *Id.* at *7. *See also 14500 Limited LLC—Petition for Declaratory Order*, STB Docket No. FD 35788, 2014 WL 2608812, at *1 (STB served June 5, 2014) (adverse possession claim under Ohio law could not proceed even though the rail property at issue had been used for non-rail purposes for more than 20 years).

If state courts could extinguish railroads' property rights based on their varying views of what constitutes a railroad's non-use of property, the national rail network would become fragmented and unmanageable, with segments of rail lines being removed from the rail network without federal oversight or approval. Congress wisely put a single federal agency in charge of determining when rail lines can be removed from the network. That agency regularly applies its expertise in assessing the future needs of those using and relying on the national rail network. *See, e.g., Norfolk S. Ry. Co.—Petition for Declaratory Order*, STB Docket No. FD 35196, 2010 WL 691256, at *4 (STB served Mar. 1, 2010) (recognizing the value of railroad property that the railroad was not using and had no current plans to use, but which might be needed later for railroad purposes); *City of S. Bend,* 566 F.3d at 1168 (affirming the STB's decision to deny efforts by the city to acquire rail property that was not currently being used for rail purposes but which had a reasonable potential for future use); *City of Lincoln v. Surface Transp. Bd.* 414 F.3d 858, 860 (8th Cir. 2005) (recognizing that "[c]ondemnation is a permanent action, and it can never be stated with certainty at what time any particular part of the right of way may become necessary for railroad uses") (citation and internal quotations omitted).

Property disputes involving railroad property are frequent, as reflected in the cases cited above, which are only a sample of property and contract law challenges to railroad property rights. State law claims against railroad property arise in a multitude of circumstances, ranging from local ordinances, expiration of property leases, adverse possession claims, and contract conveyances. The STB recognized the danger in allowing persons with a purported interest in railroad property to remove that property from the national rail network through state law claims, noting that such an approach "would permit landowners to carve off strips of railroad [right-of-way] all over the country for non-rail use, even though the Board has not authorized the [right-of-way] to be permanently removed from the nation's rail system under Title 49." *Ao Zhou*, 2012 WL 2047726, at *7. If left undisturbed, the decision below will inevitably encourage even more challenges to railroad property interests that could fragment the regulation of railroad property and undermine the comprehensive regulatory scheme that Congress established for interstate rail transportation.

II. A Grant of Certiorari Will Allow This Court to Address the Conflict Between the Decision Below and Federal Court Decisions Regarding the Scope of ICCTA Preemption.

Beyond failing to recognize the exclusive role of federal law over the abandonment of railroad property, the decision below creates uncertainty over the entire scope of ICCTA preemption. In reaching its conclusion that the rail line could be removed from the national rail network under state law, the Alabama Supreme Court concluded that it was not bound by federal law governing

rail line abandonments because ICCTA was intended only to preempt "attempts by states to impose economic regulation on rail transportation," which did not extend to "state property laws that existed before the advent of railroads. . . ." Pet. App. 9a. That narrow construction of ICCTA's preemption provision conflicts with numerous federal court decisions on the scope of ICCTA preemption and is yet another reason for this Court to grant certiorari.

ICCTA's express preemption provision provides that "the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b). The Alabama Supreme Court concluded that its authority over the property at issue in the case turned on the scope of this statutory preemption provision, which the Court concluded only applies to "attempts by states to impose economic regulation on rail transportation" and did not extend to "state property laws that existed before the advent of railroads . . ." Pet. App. 9a. Granting certiorari would give this Court an opportunity to resolve the confusion that will be created by the decision below, which conflicts with numerous federal court decisions applying ICCTA preemption.

As explained in detail by Justice Shaw in dissent from the decision below, "[n]umerous federal court decisions, however, have rejected the idea that the ICCTA is limited only to 'economic' regulation." Pet. App. 29a. Indeed, the reading of ICCTA preemption as limited to "economic" regulation was put to rest shortly after ICCTA was enacted. In *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998), the City of Auburn sought to apply local environmental permitting

requirements to a rail construction project, arguing that ICCTA preemption did not extend beyond "economic" regulation to encompass environmental regulation. The court rejected the City's reading of ICCTA preemption, finding that "there is nothing in the case law that supports [the City's] argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads." *Id.* at 1030. Since *City of Auburn*, the decision's narrow reading of ICCTA preemption has been disavowed numerous times. *See, e.g., N.Y. Susquehanna & W. Ry. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (ICCTA "does not preempt only explicit economic regulation."); *Wis. Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1014 (W.D. Wis. 2000) ("The ICCTA expressly preempts more than just state laws specifically designed to regulate rail transportation"); *CSX Transp., Inc.—Petition for Declaratory Order*, STB Docket No. FD 34662, 2005 WL 584026, at *7 (STB served Mar. 14, 2005) ("as the courts that have examined that provision have uniformly concluded, any notion that the statutory preemption in section 10501(b) is limited to direct state and local economic regulation is contrary to the broad language of the statute and unworkable in practice.").

By construing ICCTA preemption as limited to traditional "economic" regulation, the decision conflicts with established precedent. This Court plays a critical role in resolving questions about federal law preemption. A grant of certiorari here will allow the Court to resolve the confusion that will be created by the decision below on the role and scope of ICCTA preemption of state law. If the decision below is left to stand, railroads could be subject to expanded regulation of a broad range of railroad activities under state laws characterized as non-economic

regulation—ranging from application of state property law, tort law and local environmental laws—that would undermine the interstate rail transportation network and frustrate Congress's objective to unify rail regulation under standards administered by a single federal agency.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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November 12, 2019