No. 20-807

IN THE
Supreme Court of the United States

BRADLEY LEDURE,
Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether a locomotive is in use on a railroad's line and subject to the Locomotive Inspection Act and its safety regulations when its train makes a temporary stop in a railyard as part of its unitary journey.

PARTIES TO THE PROCEEDINGS

Petitioner Bradley LeDure was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Union Pacific Railroad Company was the defendant in the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

Petitioner is unaware of any other proceedings that are directly related to this case.

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INTRODUCTION

Petitioner Bradley LeDure was injured when he slipped on an oil slick while working on respondent Union Pacific's locomotive. The locomotive was part of a train traveling from Chicago, Illinois, to Dexter, Missouri, and had arrived at an intermediate stop in Salem, Illinois, minutes before the incident. The locomotive was still powered on and idling, on an active track, and set to depart for Dexter in under an hour.

LeDure brought a claim under the Federal Employers' Liability Act ("FELA"), which Congress designed to shift the "human overhead" of the railroad industry from employees to railroads. *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 542 (1994). Under FELA, a railroad is negligent *per se* when it violates a safety standard under the Locomotive Inspection Act ("LIA"). One such standard is that the locomotive's surfaces must be free from oil or other slipping hazards.

The LIA applies broadly to any locomotive that a railroad "use[s] or allow[s] to be used . . . on its railroad line." 49 U.S.C. § 20701. This plain language is expansive. Congress did not limit the LIA's coverage to locomotives that are moving, engaged in hauling trains, or performing any other specific function. Instead, it selected language that would apply to any "use" of a locomotive – including moving the locomotive to a destination when it is powered off. And, even more broadly, Congress also specified that any locomotive that a railroad "allow[s] to be used" – not just one actively being used at a particular moment – would be subject to LIA regulation.

An unbroken line of decisions from this Court stretching back more than a century has recognized the breadth of this language, both in the LIA itself and in its identically phrased and interpreted companion

statute, the Safety Appliance Act ("SAA"). Those cases hold that railcars remain in use under the LIA and the SAA even when they are not moving or not part of a fully assembled train. What matters is whether the car was engaging in an essential part of its approved undertaking. Such a car remains in use.

The court of appeals erroneously departed from the statute's plain text and this Court's precedents. The court relied on three principal factors to conclude that respondent's locomotive was not in use: it was stationary, on a sidetrack, and part of a train that was not fully assembled. But those factors do not determine whether a locomotive is in use: they appear nowhere in the statute, and this Court expressly has held that train cars remain in use even in the presence of these three factors, both individually and in combination.

The LIA, SAA, and FELA are important and wide-ranging remedial statutes designed to safeguard the health and lives of railroad workers. In accordance with the statutes' expansive text and purpose, this Court consistently has interpreted them to cover a broad range of activities that qualify as "use." Constraining "use" as respondent urges would threaten the substantial progress in promoting rail workers' safety achieved since the historical period before Congress enacted the Acts.

OPINIONS BELOW

The court of appeals' opinion (App. 1-5) is reported at 962 F.3d 907. The district court's memorandum and order granting respondent's motion for summary judgment (App. 7-21) is not reported (but is available at 2019 WL 399924). The district court's memorandum and order denying petitioner's motion to alter or amend the judgment (App. 23-28) is not reported (but is available at 2019 WL 2176319).

JURISDICTION

The court of appeals entered its judgment on June 17, 2020, and denied a petition for rehearing on July 16, 2020 (App. 29-30). The petition for a writ of certiorari was filed on December 10, 2020, and was granted on December 15, 2021 (JA135). The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions of the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.*, the Locomotive Inspection Act, 49 U.S.C. § 20701 *et seq.*, the Safety Appliance Act, 49 U.S.C. § 20301 *et seq.*, and Chapter 229 of Title 49 of the Code of Federal Regulations are reproduced in the Addendum to this brief.

STATEMENT

A. Legal Background

In the nineteenth century, the railroad industry was among the most dangerous in the country, as this Court has recognized: "[i]n 1888 the odds against a railroad brakeman's dying a natural death were almost four to one," and "the average life expectancy of a switchman in 1893 was seven years." *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 3 (1964). In his first annual message to Congress in 1889, President Benjamin Harrison urged Congress to pass legislation requiring "the use of improved safety appliances" on trains, observing that the dramatic rates of death and injury among railroad workers "subjected [them] to a peril of life and limb as great as that of a soldier in time of war." Office of the Historian, U.S. Dep't of State, *Annual Message of the President* 26 (Dec. 3, 1889), https://history.state.gov/historicaldocuments/frus1889/Message.

Congress's response was to enact a series of laws imposing greater safety requirements on railroads and a federal cause of action for injured railroad workers.

Under the Federal Employers' Liability Act ("FELA"), Congress created a federal cause of action for injured railroad workers against the railroads that employ them. *See* 45 U.S.C. § 51 *et seq*. This cause of action is an injured railroad worker's only means of recovering damages against his employer for workplace injuries. *See New York Cent. R.R. Co. v. Winfield*, 244 U.S. 147, 153-54 (1917).

A railroad worker suing under FELA must show that his injury resulted from the railroad's negligence. *See* 45 U.S.C. § 51. This Court long has held that a railroad's violation of "'any statute enacted for the safety of employees'" is negligence *per se* under FELA. *Urie v. Thompson*, 337 U.S. 163, 188-89 (1949) (quoting 45 U.S.C. §§ 53-54).

Two such safety statutes are the Safety Appliance Act ("SAA") and the Locomotive Inspection Act ("LIA"; together with the SAA, "the Acts"). Congress enacted those laws in the late nineteenth and early twentieth centuries "to obviate and reduce the loss of life and the injuries" that plagued the railroad industry. *Johnson v. Southern Pac. Co.*, 196 U.S. 1, 19 (1904). The SAA and the LIA "are substantively . . . amendments to [FELA]" because proving that a violation of either statute (or their associated regulations) resulted in a railroad worker's injury "is effective to show negligence as a matter of law." *Urie*, 337 U.S. at 189.

The SAA came first. Congress enacted it as a series of laws between 1893 and 1910. *See* Act of Mar. 2, 1893, ch. 196, 27 Stat. 531 ("1893 Act"), as amended by Act of Mar. 2, 1903, ch. 976, 32 Stat. 943, as supplemented by Act of Apr. 14, 1910, ch. 160, 36 Stat.

298 ("1910 Act"). These laws required railroads to maintain specified safety equipment on railcars and locomotives used on their lines. For example, Section 2 of the 1893 Act made it "unlawful" for a railroad "to haul or permit to be hauled or used on its line any car . . . not equipped with" automatic couplers. 27 Stat. 531. Section 6 established penalties against common carriers "using any locomotive engine, running any train, or hauling or permitting to be hauled or used" noncompliant equipment. *Id.* at 532. The 1910 Act simplified that language to penalize "using, hauling, or permitting to be used or hauled" noncompliant equipment. 1910 Act § 4, 36 Stat. 299.

In 1911, the same Congress that amended the SAA enacted the first version of the LIA (then called the Boiler Inspection Act) and borrowed the SAA's "use" language in doing so. The 1911 LIA made it "unlawful" for a railroad "to use any locomotive engine propelled by steam power in moving interstate or foreign traffic unless the boiler" was "in proper condition and safe to operate." Act of Feb. 17, 1911, ch. 103, § 2, 36 Stat. 913, 913-14 ("1911 Act").

Congress amended the LIA in 1915 and 1924. The 1915 amendments extended the LIA to cover not only the boiler but also "the entire locomotive and tender and all parts and appurtenances thereof." Act of Mar. 4, 1915, ch. 169, § 1, 38 Stat. 1192, 1192. Notably, the 1924 amendments removed the requirement that locomotives be "in moving interstate or foreign traffic." *See* Act of June 7, 1924, ch. 355, § 1, 43 Stat. 659, 659 ("1924 Act"). The 1924 amendments also rephrased Section 2 of the LIA to say that a railroad may not "use or permit to be used on its line any locomotive" that is not "in proper condition and safe to operate," more

closely tracking Section 2 of the 1910 SAA by adding the "permit to be used" language. *Id.*

These early versions of the LIA authorized the Interstate Commerce Commission "to prescribe the rules and regulations by which" a locomotive's "fitness for service shall be determined." *Napier v. Atlantic Coast Line R.R. Co.*, 272 U.S. 605, 612 (1926). Congress later transferred that rulemaking authority to the Secretary of Transportation, who acts through the Federal Railroad Administration ("FRA"). *See* Department of Transportation Act, Pub. L. No. 89-670, § 6(e)(1)(E), (F), 80 Stat. 931, 939 (1966); 49 U.S.C. § 103(g). The FRA since has promulgated regulations requiring, among other things, that "[f]loors of cabs, passageways, and compartments shall be kept free from oil . . . or any obstruction that creates a slipping . . . hazard." 49 C.F.R. § 229.119(c).

Congress continued amending the Acts until 1994, when it repealed those and other statutes regulating railroad transportation and partially recodified them in Title 49. *See* Act of July 5, 1994, Pub. L. No. 103-272, 108 Stat. 745; 49 U.S.C. §§ 20301-20306 (SAA as recodified); *id.* §§ 20701-20703 (LIA as recodified). Under the 1994 recodification, Congress replaced the term "permit" with "allow" and standardized the remaining language, such that both Acts now state in parallel that a "railroad carrier may use or allow to be used" on "its railroad lines" a locomotive "only" if the locomotive meets the statutory safety requirements. 49 U.S.C. § 20302(a)(1); *id.* § 20701.

Thus, while the Acts have undergone many changes over more than a century, one thing has remained constant: these statutes apply only to locomotives (and other rail vehicles) that are "used" or (at least since 1924) "allowed to be used." If a railroad is not

using a locomotive or allowing a locomotive to be used (such as when the locomotive is in a dedicated repair facility), then the Acts do not apply and they cannot form the basis for a negligence *per se* claim under FELA.

B. Factual Background

On August 12, 2016, locomotive UP5683 was part of a train transporting freight from Chicago, Illinois, to Dexter, Missouri. It arrived in Salem, Illinois, around 2:00 a.m. and was scheduled to depart around 3:00 a.m. with a new crew. That crew included LeDure, a long-time locomotive engineer employed by Union Pacific. JA80, 108-09. LeDure and his conductor were to add and remove some cars from the train before departing for Dexter.

The train had three diesel locomotives at the front, the third being UP5683. JA29. Upon the train's arrival in Salem, all three locomotives were powered on and idling on tracks Union Pacific owned and controlled. JA25-27, 30. Union Pacific's fuel-conservation policy required LeDure to decide how many locomotives the train needed for the rest of the trip and to power down any that were not needed. "LeDure decided that only one locomotive would be powered on" for the remainder of the trip to Dexter. App. 2. He then walked on the second locomotive and UP5683 while they were idling to power them off and leave a tag inside the cabs to identify them as such. JA25-27, 30.

While walking on the powered-on and idling UP5683, LeDure slipped and fell, striking his head, back, and shoulders. JA29, 43, 48-49, 51, 53, 57; JA67-68; JA69. He identified an oily substance where he had slipped. JA32, 43. LeDure reported the incident to his supervisor, and Union Pacific's post-

incident inspection confirmed the presence of oil on the platform. JA31; JA67-68; JA69; JA70; JA126-27, 129-30. LeDure's doctors diagnosed him with spine, shoulder, and head injuries; performed multiple surgeries; and declared him permanently disabled from railroad work. JA56; JA97-99.

At the time of the incident, UP5683 was on "an active track." JA91-92, 94; JA67-68. It was not in a location dedicated to repair, maintenance, or service. Union Pacific has a separate mechanical department that services and repairs its locomotives when needed. But that department had no facility at the Salem Rail Yard; the closest facility was located about 1.5 hours away. JA84; Dist. Ct. ECF #88-1, at 23-24. Engineers like LeDure are not responsible for locomotive maintenance, repair, and servicing.

Federal regulations required Union Pacific to conduct an inspection of UP5683 each calendar day to, among other things, identify and remove slipping hazards *before* assigning it to a crew. *See* 49 U.S.C. § 20701(2); 49 C.F.R. § 229.21. But UP5683 had not been inspected for at least four days before the incident. JA83, 87; JA133-34.

C. Proceedings Below

LeDure filed a complaint under FELA against Union Pacific in the United States District Court for the Southern District of Illinois. He asserted two theories of liability: (1) a negligence *per se* theory based on Union Pacific's failure to comply with the safety standards set forth in the LIA and associated regulations, and (2) a general negligence theory.

Union Pacific moved for summary judgment on all claims, and the district court granted the motion. With regard to the LIA-based claim, the district court concluded that UP5683 was not in use at the time

of the incident because it was not moving, was not on the mainline, and was not part of a fully assembled train. App. 14-15. It therefore held that the LIA and its safety regulation prohibiting oil on locomotive passageways did not apply to UP5683 at the time of the incident and could not support a claim as a matter of law. App. 15-17.

The court of appeals affirmed. It held that UP5683 was not in use because it "was stationary, on a side-track, and part of a train needing to be assembled before" resuming its journey to Dexter. App. 4. And because UP5683 was not, in the court of appeals' view, in use at the time of the incident, the LIA and its safety regulations did not apply. *Id.*

SUMMARY OF ARGUMENT

Locomotives are "use[d] or allow[ed] to be used" when they are part of or available to be deployed as part of a train. Such "use" includes locomotives that are stopped in a railyard mid-journey and preparing to resume travel on the line to their assigned destination.

The Acts' plain language and structure compel that result. More than a century's worth of precedent from this Court confirms that the Acts apply to rail vehicles in such circumstances. And advancing the Acts' remedial and regulatory purposes requires applying those statutes to vehicles – including stationary vehicles – that a railroad includes or has available to include as part of a train. The court of appeals' contrary judgment is erroneous and should be reversed.

I.A. The terms "use" and "allow to be used" are expansive. Dictionaries from the time the Acts were enacted define "use" as "put to a purpose" or "employ." Congress could have limited the Acts' application to cases where locomotives were being used in a specific

way, such as when "moving" or when "hauling" a train. It did not do so. And "allow to be used" is even broader; that phrase encompasses not just locomotives that currently are being put to a purpose, but also those that the railroad permits to be used or does not prohibit from being used on its railroad line.

B. This Court's past cases construing the SAA and the LIA confirm their application on these facts. In *Brady v. Terminal Railroad Ass'n of St. Louis*, 303 U.S. 10 (1938), the Court's seminal (and most recent) decision on the scope of "use" under the Acts, the Court held that a railcar that was temporarily stopped on a sidetrack, pending inspection, remained in use, because it had not completed its journey and had not reached a repair yard. Prior decisions reached similar results: a dining car left on a sidetrack to be picked up by another train remained in use because it had not completed its roundtrip travel; defective cars that needed to be removed from their trains remained in use because they had not reached repair yards; and stopped cars on sidetracks remained in use because removing them from trains was incidental to their overall use in transportation from an origin to a destination.

C. Decisions by this Court addressing similar language in other statutes confirm the breadth of the terms: someone can "use" a gun not only by firing it, but also by trading it for drugs; clothing is "in actual use" not only when it is being worn, but also when it is in a wardrobe and available to be worn in the future.

D. Under a proper construction of the Acts, the locomotive here was in "use or allow[ed] to be used" at the time of LeDure's injury. The locomotive was temporarily stopped during its journey from Chicago to Dexter, with a scheduled departure less than an hour away; it remained on an active track; and it even

was powered on at the time of the incident. At no point was it diverted to a repair yard, and it certainly had not reached one; the closest one was about 80 miles away. These facts are consistent with the Acts' broad language as well as this Court's line of cases holding that railcars remain in use under similar circumstances.

II.A. The reasons the court of appeals and respondent offered for rejecting the foregoing construction of the Acts are unpersuasive. The court of appeals relied on three principal facts to support its holding: the locomotive was stationary, it was on a sidetrack, and its train was not fully assembled. But this Court has considered each of those factors, individually and collectively, and concluded that they do not suffice to remove a vehicle from use.

B. The court of appeals also offered two other unpersuasive explanations. First, it reasoned that locomotives that are "service[d]" while "out of use" are not "in use." App. 4. This reasoning is circular, as it assumes in the first step that the locomotive is not in use. It also is incorrect as a factual matter, because the locomotive here was not being "serviced." That term refers to maintenance or repair – a function distinct from preparing for travel, and one beyond the scope of LeDure's job duties. Second, the court of appeals opined that the LIA should be given a "narrow" construction. But nothing in the LIA's text supports that reading, and this Court's precedents unambiguously reject it.

C. Respondent advances two additional factors that supposedly inform whether a locomotive is in use: whether pre-departure procedures and inspections had been completed, and the specific activity that the employee was performing at the time. But those factors also are inconsistent with the Acts' text and the

Court has considered and rejected them. Respondent also attempts to draw a distinction between locomotives and other railcars, but that distinction finds no basis in the statutory text or this Court's precedents.

III. The Acts serve a broad remedial purpose in promoting railroad employee safety. They have been successful in that goal, with railroad injuries and fatalities significantly declining over time. Unduly narrowing the Acts' application threatens to reverse that success and jeopardize workers whom Congress specifically aimed to protect.

ARGUMENT

I. A LOCOMOTIVE TEMPORARILY STOPPED DURING ITS ASSIGNED TRIP IS "USE[D]" OR "ALLOW[ED] TO BE USED" WITHIN THE MEANING OF THE ACTS

A. Under The Statutory Text's Plain Meaning, Locomotives Temporarily Stopped During Their Assigned Trips That Are Set For Inclusion In Fully Assembled Trains Are In "Use" Or "Allow[ed] To Be Used"

Both the SAA and LIA state that a "railroad carrier may use or allow to be used" on "its railroad lines" a locomotive "only" if the locomotive meets the statutory safety requirements. 49 U.S.C. § 20302(a)(1); *id.* § 20701. "[S]ettled principles of statutory construction" require giving "a consistent meaning" to words and phrases across statutes that "pertain to the same subject." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972). Here, both Acts contain the phrase "use or allow to be used." 49 U.S.C. §§ 20302(a), 20701. And both Acts pertain to the same subject – railroad safety. The Acts share a "prime purpose, the protection of employees and others by requiring the use of safe equipment." *Lilly v. Grand Trunk W.R.R. Co.*,

317 U.S. 481, 486 (1943). The Court even has said that both Acts "are substantively . . . amendments to [FELA] . . . , having the purpose and effect of facilitating employee recovery." *Urie v. Thompson*, 337 U.S. 163, 189 (1949). Accordingly, the identical language in both Acts must be construed identically. *See Tipton v. Atchison, T. & S.F. Ry. Co.*, 298 U.S. 141, 151 (1936) ("the same principles apply in an action under the [LIA] as in one under the [SAA]").

Neither statute defines "use." "When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning" at the time of enactment. *Smith v. United States*, 508 U.S. 223, 228 (1993).

When Congress enacted the first versions of the SAA and the LIA in 1893 and 1911, respectively, leading dictionaries defined "use" broadly as "[t]o make use of, convert to one's service, [or] put to a purpose." *Use*, *Webster's Practical Dictionary* 481 (1910); *accord Use*, *Webster's A Dictionary of the English Language* 788 (1892) ("1. To make use of; to convert to one's service; to put to a purpose."); *Use*, *Century Dictionary* 6674 (4th ed. 1904) ("To employ for the attainment of some purpose or end . . . .").[1] That definition is expansive, reaching scenarios in which a locomotive is "put to a purpose" as a rail vehicle, including tasks incidental to that intended function.

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[1] A substantially identical definition also applied in 1994, when Congress recodified the Acts. *See Use*, *Webster's Third New International Dictionary* 2523-24 (2002) ("to put into action or service"; "have recourse to or enjoyment of"; "make instrumental to an end or process"; "apply to advantage"); *Use*, *Black's Law Dictionary* 1541 (6th ed. 1990) ("To make use of; to convert to one's service; to employ; to avail oneself of; to utilize; to carry out a purpose or action by means of").

The "allow to be used" clause is complementary and, in certain applications, even more expansive. Predecessors of that phrase (using the word "permit" instead of "allow") have appeared in certain sections of the SAA since its original enactment and in the LIA since 1924. Dictionaries at both times defined "permit" as "[t]o suffer or allow to be, come to pass, or take place, by tacit consent or by not prohibiting or hindering; allow without expressly authorizing." *Permit*, *Century Dictionary* 4407 (4th ed. 1904); *accord Permit*, *Century Dictionary* 4407 (1895) (same); *Permit*, *Webster's A Dictionary of the English Language* 533 (1892) ("To grant express liberty to do; less strictly, to put up with; to tolerate; to suffer."); *Permit*, *Webster's Practical Dictionary* 293 (1910) (same).[2] Thus, a railroad "permits" a locomotive to be used when it allows, consents to, or does not prohibit the locomotive's use on its line. Taken together with "use," the Acts reach locomotives that are performing their assigned task or are authorized and available to perform the task for that or another railroad.

The statutory structure confirms that the transit of a locomotive to a destination, even if the locomotive is not engaged in hauling, qualifies as a "use" under the Acts. *See Bailey v. United States*, 516 U.S. 137, 143

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[2] The 1994 recodification converted the language to "allow," but that simply means to "permit." *Allow*, *Webster's Third New International Dictionary* 58 ("4. Permit"); *Permit*, *Black's Law Dictionary* 1140 ("To suffer, *allow* . . . .") (emphasis added). And the definition of "permit" has not meaningfully changed since the SAA's original enactment. *See Permit*, *Webster's Third New International Dictionary* 1683 ("to consent to expressly or formally"; "grant leave for or the privilege of"); *Permit*, *Black's Law Dictionary* 1140 ("To suffer, *allow*"; "to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act") (emphasis added).

(1995) ("'Use' draws meaning from its context, and we will look not only to the word itself, but also to the statute . . . , to determine the meaning Congress intended."). The SAA – which contains the same "use or allow to be used" provision as the LIA – includes an express, limited safe harbor for transporting defective vehicles.[3] Specifically, it provides that defective equipment "may be moved when necessary to make repairs, without a penalty being imposed," to the nearest repair yard. 49 U.S.C. § 20303(a).[4] This carveout confirms that towing a powered-down and defective locomotive to a destination (even when the destination is a repair yard) is one form of "use" under the SAA and the LIA. If it were not, then this carveout would have been worded differently: Congress would have provided that relocating a defective vehicle was not "us[ing] or allow[ing] [the vehicle] to be used" in the first place. Instead, by eliminating the penalty for using a presumptively noncompliant vehicle during transportation to a place of repair, Congress evinced an intent that the rail vehicle was still being "used" within the meaning of the Acts.

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[3] A "vehicle" is "a [train] car, locomotive, tender, or similar vehicle." 49 U.S.C. § 20301(a).

[4] This safe harbor protects a railroad from statutory and regulatory penalties only. A railroad transporting a noncompliant locomotive (or other rail vehicle) to a place of repair is still subject to FELA's negligence *per se* standard should the defect cause an employee injury. *See Texas & Pac. Ry. Co. v. Rigsby*, 241 U.S. 33, 43 (1916) (although the safe harbor "relieves the carrier from the statutory penalties while a car is being hauled to the nearest available point for repairs," it does not "relieve a carrier from liability in a remedial action for the death or injury of an employee caused by . . . a car with defective equipment").

B. More Than A Century Of Precedent From This Court Confirms That On-Rail Equipment Including A Temporarily Stopped Locomotive Remains In "Use"

This Court confronted the question whether a given railroad vehicle was "in use" many times during the first decades after Congress enacted the Acts. Consistent with the Acts' clear text, those cases hold that a locomotive or other rail vehicle temporarily stopped in the middle of its journey is "use[d] or allow[ed] to be used."

1. *Brady v. Terminal Railroad Ass'n of St. Louis*

The Court last directly addressed what constitutes "use" under the Acts in *Brady v. Terminal Railroad Ass'n of St. Louis*, 303 U.S. 10 (1938). There, a train in the middle of its journey needed to switch onto another railroad's line. *Id.* at 11. The new railroad had to inspect railcars in the train before receiving them, so the train was "placed on a receiving track temporarily pending" the inspection and "the continuance of transportation." *Id.* at 13. If the inspection found no defect, the train would continue to its planned destination; if the inspection found a defect in any car, though, that car would be "subject to removal for repairs." *Id.* During the inspection, the inspector fell when a grab iron he was holding became loose. *Id.* at 12.

The Court held that the railcar remained in use on the rail lines at the time of the accident, even though it was stopped "temporarily" while awaiting inspection "on a receiving track" in a "yard." *Id.* at 13. The Court reasoned that this was "not a case where a defective car has reached a place of repair." *Id.* Therefore, "[t]he car in this instance had not been

withdrawn from use. The car was still in use, though motionless." *Id.* (citations omitted).

The rule *Brady* establishes is clear: A rail vehicle remains in use throughout its entire journey, even when it stops temporarily. And it remains in use throughout any tasks ancillary to that journey, such as inspections.

2. Predecessor Cases

a. *Brady* was the culmination of a series of cases supporting that rule. That series began with *Johnson v. Southern Pacific Co.*, 196 U.S. 1 (1904). There, a dining car was on a round-trip journey from San Francisco to Ogden. *Id.* at 21. The railroad left the car on a sidetrack to wait for the return train to pick it up. *Id.* at 12, 21. But the dining car lacked a compliant coupler, which caused an injury to a rail worker when he tried to attach the car to the engine of the return train. *Id.* at 12.

The Court held that the dining car was in use despite being stopped and left for another train to pick up. The SAA applied to the dining car "while in the act of making its interstate journey" and remained "so when waiting for the train to be made up for the next trip" – even if the dining car was "empty" and obviously not providing food service as an active car on a moving train. *Id.* at 22. The Court reasoned that the dining car "was being regularly used in the movement of interstate traffic, and so within the law." *Id.* *Johnson* therefore confirms that a rail vehicle remains in use throughout its journey, even while temporarily stopped and waiting alone on a sidetrack for the rest of its train.

b. Then, in *Delk v. St. Louis & San Francisco Railroad Co.*, 220 U.S. 580 (1911), a railcar hauling lumber was stopped mid-shipment when the railroad

found it had a defective coupler. *Id.* at 582. Because "the coupler was one easily repaired without being taken to a repair shop," the railroad put the car on a "dead track," marked it "in bad order," and sent for "a repair piece." *Id.* at 583, 585. While waiting for the repair piece, the defective coupler caused an injury to a rail worker during a switching operation. *Id.* at 585.

The Court held that the railcar remained in use when the injury occurred, despite the various precautions the railroad had taken. The railcar's temporary "stoppage in the yard was an incident to the transportation" of the lumber, which "had not reached its destination." *Id.* at 584-85. Given that the railcar's mission had not yet been completed – its cargo of lumber was still in transit – the Court concluded that the railcar remained in "use" even when it stopped for simple repairs.

c. Next, in *Great Northern Railway Co. v. Otos*, 239 U.S. 349 (1915), a train arrived in Minnesota that needed "breaking up" so its constituent cars could proceed to their final destinations. *Id.* at 350. One of the cars had a defective coupler, which caused serious injuries. *Id.* The defective car "had been marked for repairs and was to be switched to the repair track before going further." *Id.* But the car had not yet reached that place of repair. *Id.*

The Court held that the car remained in use within the meaning of the SAA. *Id.* at 351.[5] The Court reasoned that the car was "merely subjected to a delay

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[5] The Court's technical holding was that the car "had not been withdrawn from interstate commerce" rather than not withdrawn from "use." *Otos*, 239 U.S. at 351. At that time, 1915, the SAA still contained an explicit requirement that the car be in use specifically in interstate commerce. *Id.* To be in use in interstate commerce, the car had to be in "use."

in carrying [its cargo] to its destination." *Id.* The car still was in the midst of its unitary journey, and so still was in use.

d. In *Texas & Pacific Railway Co. v. Rigsby*, 241 U.S. 33 (1916), a railcar was on a very short journey from the spur tracks on one side of the main line to the repair shop on the other side. *Id.* at 36. Despite the short distance, the crew stopped the railcar while on the main line, short of the repair shop. *Id.* There, a switchman fell from the top of a boxcar due to a defective grab iron. *Id.*

Again, the Court found the railcar was in use. *Id.* at 42-43. The Court reasoned that the SAA specifically provides that a railroad is liable "for the death or injury of an employee caused by or in connection with the movement of a car with defective equipment" even when the car is on its way to a repair facility. *Id.* at 43. Thus, the injury in that circumstance was "in connection with the movement" even though the car was temporarily stopped during that movement.

e. Finally, in *Chicago Great Western Railroad Co. v. Schendel*, 267 U.S. 287 (1925), a railcar's drawbar[6] failed, and the crew removed the train from the main line to a side track. The crew planned "[t]o cut this car out of the train" and proceed without it. *Id.* at 289, 291-92. During that process, a crew member was killed when the train rolled backward down a grade. *Id.* at 289.

The railroad argued that "since the car had come to rest on the side track [it] had ceased to be 'used,'

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[6] A drawbar is a solid connector used to couple railcars. Drawbars eliminate the free movement that can occur in the trailing vehicle when vehicles are coupled with more flexible connectors such as chains.

within the meaning of the [SAA]." *Id.* at 290. The Court disagreed:

> [W]e think it clear that the use, movement or hauling of the defective car, within the meaning of the statute, had not ended at the time of the accident. To cut this car out of the train so that the latter might proceed to [its] destination was the thing in view, an essential part of the undertaking in connection with which the injuries arose.

Id. at 291-92. In other words, the railcar remained in "use" throughout the entire duration of the overall undertaking of sending a train from its origin to its destination.

* * *

Together, these cases lead to and confirm the rule that *Brady* made explicit and that the Acts' plain text provides: a rail vehicle remains in use throughout its entire journey, even if it temporarily stops partway. That interpretation of the term "use" had been in place for decades when Congress elected to preserve that term in its 1994 recodification of the Acts.

C. This Court's Constructions Of "Use" In Other Statutes Support Construing "Use" Here To Include Temporarily Stopped Locomotives

The Court's interpretations of "use" in other contexts further reinforce the broad scope of the Acts' text. For example, in a decision just one year before the Acts' recodification, the Court held that a criminal defendant "used" a firearm in connection with a drug trafficking offense when he traded that firearm for drugs, even though he had not used it as a weapon. *See Smith*, 508 U.S. at 229 (construing the phrase

"uses or carries a firearm" in the pre-1998 version of 18 U.S.C. § 924(c)(1)(A) (1994)). As the Court explained, "the word 'use' is 'expansive' and extends even to situations where" a thing is not used for its "intended purpose." *Id.* at 229-31 (quoting *United States v. Long*, 905 F.2d 1572, 1576-77 (D.C. Cir. 1990) (Thomas, J.)). Therefore, a locomotive that is not actively hauling a train (its intended use) still may be in use.

Indeed, the Court articulated that same principle in construing "use" in another statute shortly before the SAA's enactment. In *Astor v. Merritt*, 111 U.S. 202 (1884), the plaintiff sought a refund of customs duties he had paid on imported clothing. *Id.* at 203. He claimed the clothing was exempt from duties under the relevant statute, which exempted from duty "'[w]earing apparel *in actual use* and other personal effects.'" *Id.* (quoting Act of Mar. 2, 1861, ch. 68, § 23, 12 Stat. 178, 196 ("Customs statute")) (emphasis added). Much of the clothing was unworn when it entered the United States. *Id.* at 208.

The Court held that the defendant's construction of the exemption as covering only clothing that actually had been worn before importation was "arbitrary[] and without support in the statute." *Id.* at 213. Rather, "being placed in with, and as a part of, what is called a person's wardrobe, is, in common parlance, in use, in actual use, . . . as well before it is worn as while it is being worn or afterwards." *Id.* Thus, the term "actual use" was broad enough to encompass clothing that generally was available for wearing – even if it actually was not being worn, had not yet been worn, and might not ever be worn. Similarly, the term "use or allow to be used" in the Acts is broad enough to encompass locomotives that are available

for a railroad to power a train, even when they are not actually doing so.

D. Under A Proper Construction Of The Acts, LeDure Was Injured While The Locomotive Was In "Use" Or "Allow[ed] To Be Used"

The Acts' plain meaning and this Court's long history of decisions interpreting the Acts all indicate that UP5683 was in "use or allow[ed] to be used" when LeDure was injured.

1. As a matter of plain language, UP5683 was being "put to a purpose" or "employed" – i.e., "used" – at the time of the incident. It was partway through a journey from Chicago to Dexter. LeDure stepped onto UP5683 precisely because Union Pacific put the locomotive to those purposes. That UP5683 actually was powered on only reinforces that conclusion: it was in the middle of a journey in which it was helping, or available to help, haul railcars to their destinations, and therefore was in use. Even assuming counterfactually that UP5683 never was powered on in the first place, it still performed its assigned purposes of being available to power the train if necessary and of being relocated to Dexter, where it would be available for further work.

UP5683's status as temporarily motionless and on a sidetrack does not change that conclusion. When LeDure's injury occurred, UP5683 still was on the course of its journey to Dexter and located on an active track. It had arrived just minutes before and was to leave in less than an hour as the train continued to its destination. That train was switching out a few cars and was not yet ready to resume its journey as a fully assembled train, but the LIA focuses on the *locomotive*, not the *train*. Here, the locomotive was idling on an active track, partway through its journey. It was

neither located at a place of repair nor designated as inaccessible to LeDure's crew. To the contrary, his crew's explicit task was to finish taking the locomotive, along with the train, to its final destination. All of those facts indicate that the locomotive was being put to the purpose of transiting to Dexter – a form of "use" within the Acts' meaning.

Even if the temporarily stopped locomotive were not in "use," it was still "allow[ed] to be used" as the Acts use that term. It had just powered a train from Chicago, was still powered on from that trip, and was available to haul a train the rest of the way to Dexter if its towing power was needed. JA26-27. Indeed, had UP5683 been the first locomotive rather than the third, it likely would have remained powered on for the trip to Dexter. Although the term "use" extends to more than just a device's primary purpose, UP5683 was available to perform its quintessential function as a locomotive – i.e., it was "allow[ed] to be used" to haul a train at the time of the incident. Indeed, Union Pacific had allowed Norfolk Southern to use UP5683 for the two months leading up to LeDure's injury. JA77-78, 83. Union Pacific did nothing to prohibit the use of UP5683 to power a train.[7]

2. This Court's prior decisions construing the SAA (and, by extension, the LIA) further confirm that UP5683 was in "use or allow[ed] to be used" under a

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[7] To be sure, UP5683 had not been inspected by Union Pacific or Norfolk Southern for multiple days. But the text of the Acts applies to any locomotive that a *common carrier* "allow[s] to be used." Whether Union Pacific *lawfully* used the locomotive is a different question. Indeed, if passing an inspection were a prerequisite to the application of the LIA, railroads would have a perverse incentive *not* to conduct required inspections of their locomotives. Nothing in the Acts suggests that Congress intended to include such an open invitation to bad-faith conduct.

proper construction of the Acts. This Court has found railcars and locomotives in "use" in circumstances that support LeDure:

- When rail vehicles are stopped mid-journey and waiting to be coupled to a fully assembled train, *see Johnson*, 196 U.S. at 22;
- When vehicles are stopped mid-journey on a sidetrack and awaiting inspection, *see Brady*, 303 U.S. at 13;
- When cars are being "broken up" and not yet ready to travel as part of a fully assembled train, *see Schendel*, 267 U.S. at 291-92; *Otos*, 239 U.S. at 350-51; and
- When a locomotive or a car is being towed to (but has not yet arrived at) a repair yard, *see Rigsby*, 241 U.S. at 36; *Delk*, 220 U.S. at 584-85.

This case is analogous: UP5683 was stopped mid-journey, stationary, on a sidetrack, and in the process of being placed into a fully assembled train that was scheduled to depart within the hour. It had not been sent to, much less reached, a designated place of maintenance or repair. It instead was available for continued travel on the line.

Indeed, we have found no case from this Court holding that a vehicle that is on the track, or that is stopped at an intermediate point before its final destination, or that is available to become part of a fully assembled train, or any combination of these circumstances, is not in "use" or "allow[ed] to be used." To be sure, the Court has suggested that a vehicle is not in "use" when it actually has arrived at a designated place of maintenance or repair. *See*, *e.g.*, *Brady*, 303 U.S. at 13 (railcar in use because it had not "reached a place of repair"); *Rigsby*, 241 U.S. at 42-43

(railcar in use when it "was being taken to the shop for repairs," but had not yet arrived); *Otos*, 239 U.S. at 350 (railcar in use where it "had been marked for repairs and was to be switched to the repair track," but had not yet arrived); *Delk*, 220 U.S. at 585 (railcar in use where railroad decided to repair it "without being taken to a repair shop"). But it is undisputed that UP5683 was not in a designated place of repair when LeDure's injury occurred; the closest such place was about 80 miles away.

Locomotives that, like this one, are available for inclusion in fully assembled trains are within the LIA's scope under this Court's precedents. So too are locomotives that, like this one, are temporarily stopped partway through their journey; remain on active tracks; are being "broken up" and reassembled for further travel; or have not yet reached a designated place of maintenance or repair. Any one of those facts would be sufficient to place this case within the scope of this Court's precedents. Taken together, they compel the conclusion that LeDure's injury occurred while the locomotive was in "use or allow[ed] to be used." To hold otherwise would be inconsistent with a century of this Court's decisions.

3. Construing "use" here to include locomotives temporarily stopped mid-journey is consistent with this Court's construction of "use" in other statutes. The defendant in *Smith* "used" a gun not by firing it or threatening others with it, but simply by exchanging it for drugs. 508 U.S. at 229-30. The plaintiff in *Astor* had clothing "in actual use" when it was simply in his wardrobe available to be worn. 111 U.S. at 213-14. In each of these cases, the object was put to or made available for *some* purpose. So too here, where Union Pacific "used" the locomotive – and, even more

broadly, "allowed" it to be used – by transporting it from Chicago to Dexter. Union Pacific employed its locomotive by transporting it to Dexter and having it available to power a train if necessary, which are "uses" as this Court previously has construed the term.

Indeed, the SAA and the LIA apply more broadly even than the Customs statute at issue in *Astor*. "Use" in the LIA lacks the "actual" modifier that narrowed "use" in *Astor*. And, unlike the Customs statute, the LIA is a remedial statute. Given their remedial nature, the Acts are "to be *liberally* construed in the light of its prime purpose, the protection of employees and others by requiring the use of safe equipment." *Lilly*, 317 U.S. at 486 (emphasis added). The Court therefore specifically has rejected narrow interpretations of the SAA and the LIA. *See*, *e.g.*, *Rigsby*, 241 U.S. at 41 ("we are unwilling to place the decision upon so narrow a ground, because we are convinced that there is no constitutional obstacle in the way of giving to the act in its remedial aspect as broad an application as" possible). Accordingly, the terms "use" and "allow to be used" in the LIA should be given the ordinary meanings this Court has applied to similar language in other statutes – which encompass not only hauling by locomotives, but also the simple movement of locomotives from one point to another and the preparation or availability of locomotives for such movement.

II. THE COURT OF APPEALS' AND RESPONDENT'S REASONS FOR REJECTING THE ACTS' PLAIN MEANING AND THIS COURT'S PRECEDENT ARE UNPERSUASIVE

Both the court of appeals and Union Pacific have advanced various unpersuasive reasons for departing from the Acts' plain text and this Court's prior decisions.

A. The Factors On Which The Court Of Appeals Relied To Find UP5683 Not In Use Are Insufficient

The Seventh Circuit concluded that the LIA was "inapplicable" because "UP5683 was stationary, on a sidetrack, and part of a train needing to be assembled before its use in interstate commerce." App. 4. Whether taken individually or collectively, those three factors cannot bear the weight the court placed on them.

1. Stopping a vehicle does not mean it has ceased being in "use" or "allow[ed] to be used"

The fact that a vehicle is motionless does not stop it from being in "use or allow[ed] to be used." That is the express holding of *Brady*: the railcar there "was still in use, though motionless." 303 U.S. at 13. And the Court has applied that principle consistently in affirming decisions that the SAA and the LIA applied to stationary vehicles (and therefore must have been "in use"). *See*, *e.g.*, *Lilly*, 317 U.S. at 483-85 (the presence of ice on top of a tender that was waiting to be filled with water violated LIA); *Rigsby*, 241 U.S. at 36-38 (SAA applied to defective car on which plaintiff had just "set the brakes" to "stop [it] and hold [it]" in place); *Johnson*, 196 U.S. at 12, 22 (SAA applied to

stationary dining car to which an engine was attempting to couple).

Those decisions are consistent with the Acts' plain text and structure; the Seventh Circuit's reliance on motionlessness is not. As an initial matter, very early versions of the SAA and the LIA *did* include text limiting their application to "moving" vehicles. 1911 Act § 2, 36 Stat. 913-14 (prohibiting "use [of] any locomotive engine propelled by steam power in *moving* interstate or foreign traffic unless" LIA provisions were satisfied) (emphasis added); 1893 Act § 1, 27 Stat. 531 (prohibiting "use" of "any locomotive engine in *moving* interstate traffic not equipped with" appropriate safety equipment) (emphasis added). But Congress later chose to remove that requirement from the statutes. *See* 1924 Act § 2, 43 Stat. 659. Conflating movement with use ignores that deliberate decision.

Moreover, relying on motionlessness ignores the LIA's plain language extending its scope to locomotives that are "use[d] *or allow[ed] to be used*." Even assuming *arguendo* that motion is necessary for a locomotive to be in "use," it is not required to show whether a locomotive is *allowed* to be used. A locomotive that is not currently moving is still "allow[ed] to be used" if a train crew can bring it online and put it in motion – which a crew could have done with UP5683 in this case. Thus, a railroad's temporary stopping of a locomotive does not withdraw it from the LIA's scope.

2. Taking the vehicle off the main line does not withdraw it from use

A vehicle may be on a sidetrack or a backtrack and still be "use[d] or allowed to be used." This Court repeatedly has said so: the defective railcar in *Delk* was still in use even though it was "on what is known

as 'the dead track' in" a railyard. 220 U.S. at 583. The car in *Schendel* was within the SAA even though the crew had moved "the whole train" from "the main line" and "onto the adjacent siding" where the plan "was to detach the damaged car and leave it." 267 U.S. at 289. The dining car in *Johnson* was "used in the movement of interstate traffic, and so within the [SAA]" while it "was standing on a side track." 196 U.S. at 12, 22. And the railcar in *Brady* "was still in use" despite having "been brought into the yard . . . and placed on a receiving track" before the accident occurred. 303 U.S. at 13.

Relying on a vehicle's placement on a sidetrack or backtrack to determine whether it is being "use[d] or allowed to be used" also is inconsistent with the statutory text. The LIA prohibits a railroad from "us[ing] or allow[ing] to be used . . . *on its railroad line*" any noncompliant equipment. 49 U.S.C. § 20701 (emphasis added); *see also id.* § 20302(a) (SAA prohibition on "us[ing] or allow[ing] to be used on any of its railroad lines" any noncompliant equipment). This text is not limited to a railroad's *main* line. It applies to any "line" (i.e., tracks) the railroad has, which includes sidetracks, backtracks, and any other tracks on the railroad's line. Those adjacent tracks – which typically connect to main lines – enable the railroad to engage in switching and other operations that are essential to train service and function. The court of appeals' reading would insert into the statute another word ("main" line) that Congress did not impose. That is not a valid statutory construction. *See Romag Fasteners, Inc. v. Fossil, Inc.*, 140 S. Ct. 1492, 1495 (2020) ("Nor does this Court usually read into statutes words that aren't there."); *Bates v. United States*, 522 U.S. 23, 29 (1997) ("[W]e ordinarily resist reading words or

elements into a statute that do not appear on its face.").

3. Taking (or leaving) the vehicle out of a fully assembled train does not withdraw it from use

A vehicle may be separated from a fully assembled train and still be "use[d] or allow[ed] to be used." Once again, this Court has made that specific holding in multiple cases. *See*, *e.g.*, *Schendel*, 267 U.S. at 291-92 (SAA applied where crew was actively working "[t]o cut [the defective] car out of the train" at the time of the accident); *Otos*, 239 U.S. at 350 (SAA applied where plaintiff "was breaking up a train" that included the defective car); *Johnson*, 196 U.S. at 12, 22 (SAA applied to dining car that was "waiting for the train to be made up for the next trip" and had not yet been coupled to the engine). And vehicles involved in generic switching operations, and so not intended for any given train, are in use. *See*, *e.g.*, *Delk*, 220 U.S. at 583 (SAA applied where plaintiff "undertook to switch certain cars out of [a] string of nine cars," which included the defective car, on a "dead track").

Here again, the Seventh Circuit's reasoning ignores the statute's plain language, particularly its "allow to be used" phrase. A train car can be "allow[ed] to be used" before it is coupled to a fully assembled train, just as an automobile may be "allow[ed] to be used" even if it needs to be filled with gas first. Indeed, if an uncoupled railcar or locomotive were *not* "allow[ed] to be used," then it never permissibly could be included as part of a fully assembled train in any event. That is not the case here. UP5683 was traveling from Chicago to Dexter; that was the reason why LeDure was on it in the first place. It therefore was being "use[d] or allow[ed] to be used" within the meaning of the LIA.

4. Even viewed in combination, those three factors are still insufficient to show that a locomotive is not in "use or allow[ed] to be used"

The conditions discussed above rarely appear in isolation. Just as those factors individually cannot withdraw a vehicle from use, nor can any combination of them. *See*, *e.g.*, *Brady*, 303 U.S. at 11-13 (defective car was motionless, on a receiving track, and undergoing inspection, but still in use); *Delk*, 220 U.S. at 583, 585 (defective car not withdrawn from use despite being on a "dead track," marked "in bad order," awaiting repair, and not part of a fully assembled train).

Indeed, this Court already has ruled on the combination of the three factors on which the Seventh Circuit erroneously relied. In *Johnson*, the defective dining car was stationary (waiting for an engine to couple to it), "on a side track," and part of a train "waiting . . . to be made up for the next trip," 196 U.S. at 12, 22 – precisely the combination on which the Seventh Circuit erroneously relied. Yet this Court held that the dining car was still being "used." *Id.* at 22.

B. The Remainder Of The Seventh Circuit's Reasoning Is Unpersuasive

The court of appeals also relied on two other lines of reasoning to justify its decision. Neither is sound.

First, the court of appeals relied on circuit precedent to reason incorrectly that "'to service an engine while it is out of use, to put it in readiness for use, is the antithesis of using it.'" App. 4 (quoting *Lyle v. Atchison T. & S.F. Ry. Co.*, 177 F.2d 221, 222 (7th Cir. 1949)). But this statement begs the question; it begins with the assumption that the engine "is out of use" and from that concludes that the engine is indeed not in use.

The factual assumption underlying this logical fallacy also is incorrect. "Preparing" an engine is different from "servicing" it, as that term was used in *Lyle*. "Preparing" for travel is part of the overall process of running a train on its journey, and therefore is within the meaning of the term "use" – as more than a century of precedent holds. *See*, *e.g.*, *Lilly*, 317 U.S. at 483-85; *Schendel*, 267 U.S. at 291-92 (holding that "use" encompassed any "essential part of the undertaking" of "proceed[ing] to [a] destination"); *Johnson*, 196 U.S. at 22. The "servicing" that occurred in *Lyle*, by contrast, occurred in a place of repair: the court expressly noted that the train had completed its journey and been brought to a roundhouse (a maintenance or repair facility). 177 F.2d at 222. It is undisputed that UP5683 was not undergoing maintenance or repairs in a place of repair at the time of LeDure's injury.

Second, the court of appeals reasoned that LeDure "essentially seeks . . . to say a locomotive is not 'in use' only when it is being repaired," which it considered "unduly narrow." App. 4. That mischaracterizes petitioner's argument; petitioner's position is that a locomotive that temporarily is stopped during its journey still is being "use[d] or allow[ed] to be used." In any event, this Court's precedents *require* a narrow understanding of when a vehicle is no longer in use and have acknowledged that vehicles are not in use only when they have *reached* (not merely begun moving toward) the "place of repair." *Brady*, 303 U.S. at 13. The Court construes the LIA "liberally" to promote its "prime purpose, the protection of employees and others by requiring the use of safe equipment." *Lilly*, 317 U.S. at 486; *accord Brady*, 303 U.S. at 15; *Urie*, 337 U.S. at 191 (recognizing that

LIA and SAA were broadly intended to "protect[] . . . railroad employees" "from injury due to industrial accident"). That is why *Brady* expressly contrasted a vehicle that remained in use with one that *actually had reached* a "place of repair" and thereby fell out of use. 303 U.S. at 13.

Moreover, even if a narrow reading of "use" were appropriate, the Acts already contain internal limitations that make unnecessary the further constraints the court of appeals sought to impose. For example, the Acts apply only where a railroad uses defective equipment, or allows defective equipment to be used, "on" its "railroad lines." 49 U.S.C. § 20302(a); *id.* § 20701. These statutes therefore do not apply to rail vehicles in places that are not on the line, such as those in a roundhouse or a repair yard (dedicated places of repair).

C. Respondent's Additional Arguments Are Unpersuasive

In addition to the three factors on which the Seventh Circuit relied, respondent has advanced two others during this litigation: (1) whether pre-departure inspections have been completed, and (2) the nature of the work the injured party was doing. These factors likewise do not remove a locomotive from being in "use" under the Acts.

Respondent also argues that locomotives and railcars warrant different treatment under the Acts. Specifically, respondent argues that, although railcars may be motionless and in use, locomotives may not. This argument lacks any basis in statute or precedent.

1. The status of pre-departure inspections and preparations is irrelevant to the use analysis

This Court has held that a rail vehicle's status during pre-departure inspection and preparations does not remove that vehicle from the Acts' ambit. In *Brady*, the accident occurred *during* an inspection; the fact that no inspection had been completed (much less successfully) did not withdraw the car from use. 303 U.S. at 11. Similarly, the defective car in *Delk* was awaiting repair on "the dead track" when the accident occurred. 220 U.S. at 583-84. Although the car was not ready to continue its journey, it still was in "use." *Id.* at 586. And, in *Lilly*, the tender in question was waiting to be filled with water (part of the pre-departure procedures, meaning those procedures had not yet been completed) when the injury occurred. 317 U.S. at 483. Despite not being ready to move, the tender was subject to the LIA. *Id.* at 485.

Making inspections a touchstone for "use" also is inconsistent with the statute and with the FRA's inspection regulations. The LIA provides that "[a] railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when [it] . . . ha[s] been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter." 49 U.S.C. § 20701(2). If inspection status determined whether a locomotive was in "use," then this phrasing would prohibit nothing at all: it would be impossible for a locomotive to be in "use" without having been inspected first. Likewise, the regulations promulgated under the LIA state that "each locomotive *in use* shall be inspected at least once during each calendar day." 49 C.F.R. § 229.21(a) (emphasis added). This requirement would

make no sense if a locomotive requiring or undergoing inspection were not in "use": only locomotives in use would require an inspection, but those needing inspection by definition would not be in use.

Indeed, if the status of pre-departure inspections were relevant, that would open the door to gamesmanship by railroads. A railroad could fail to perform an inspection before departing (as Union Pacific did in this case), then argue that the locomotive never came into use because it was not inspected. Or it could postpone inspections until the last minute, forcing employees to bear the risks of unsafe equipment while they worked on the equipment and prepared it for travel – which is directly counter to the express intent of the SAA, the LIA, and FELA. *See Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 542 (1994); *Lilly*, 317 U.S. at 486.

2. The activity of the injured party does not determine whether a locomotive is in use or allowed to be used

Respondent also has suggested (Opp. 9) that the injured worker's functions or activities may be relevant to whether the train is in "use." Specifically, respondent suggests that, because LeDure was "putting UP5683 in readiness for use," *id.*, the locomotive must not have been within the LIA's scope. That theory again conflicts with this Court's decisions. *Brady* expressly stated that liability does not depend on "'the position the employee may be in, or the work which he may be doing at the moment when he is injured,' provided the defective equipment is the proximate cause of the injury." 303 U.S. at 16 (quoting *Louisville & N.R.R. Co. v. Layton*, 243 U.S. 617, 621 (1917)); *accord Layton*, 243 U.S. at 621 ("The language of the acts . . . make[s] it entirely clear that the liability

. . . springs from its being made unlawful to *use* cars not equipped as required[] – not from the position the *employee* may be in, or the work which he may be doing at the moment when he is injured.") (emphases added); *Rigsby*, 241 U.S. at 41 (reasoning that SAA "require[s] certain safety appliances . . . irrespective of the use made of any particular car at any particular time"). It would be inappropriate to narrow the scope of statutory protection by imposing another requirement through an atextual addition to the "use" analysis.

Respondent's suggestion that "putting [a locomotive] in readiness for use" falls outside the Acts' protection also ignores the statute's language. An employee's action of "putting [a locomotive] in readiness for use" is effectuating "use" of a locomotive that is "allow[ed] to be used." If anything, it provides affirmative evidence that the locomotive was allowed to be used: a locomotive not in use or allowed to be used would provide no work for an engineer, whose job duties do not include maintenance and repair work.

3. Respondent's proposed distinction between locomotives and railcars is unpersuasive

Respondent has attempted to distinguish some of this Court's precedents by arguing that, because "rail cars and locomotives perform very different functions," a railcar can be motionless and in use, but a locomotive cannot. Opp. 19. There is no textual basis in the Acts for that distinction. Regardless of the difference in their primary functions, both locomotives and railcars can be in the employ or put to the purpose of (i.e., "used" by) being transported to a new location for further assignment there. Nothing in the text of the Acts limits the scope of potential uses or specifies

that the only relevant "use" for locomotives is to "haul" a train. *See Rigsby*, 241 U.S. at 41 (SAA applies "irrespective of the use made of any particular car at any particular time").

In any event, respondent's proposed distinction between locomotives and railcars ignores the reasoning of this Court's precedents, which provides no basis for the distinction. None of this Court's cases has relied on any distinction between the primary or intended purposes of railcars compared to locomotives. If that distinction were relevant, then empty railcars (which are not fulfilling their primary function of carrying goods or passengers) or inoperable locomotives (which are not fulfilling their function of hauling trains) should be treated differently from loaded railcars or functioning locomotives. This Court's decisions draw no such distinctions and, in fact, disavow them. *See*, *e.g.*, *Rigsby*, 241 U.S. at 36 (non-operational railcar heading to repair yard still considered to be in use, even though it could not have been serving the ordinary "function" of a railcar in doing so); *Johnson*, 196 U.S. at 21-22 (non-operational dining car still considered to be in use, even though it could not have been serving the ordinary "function" of a dining car at the time).

Finally, the Court's cases confirm that the equipment deficiencies on railcars that have given rise to injuries are similar to equipment on locomotives. No rational basis exists to distinguish between railcars and locomotives for defective grab irons (*Brady*), defective couplers (*Johnson*/*Otos*), the presence of ice (*Lilly*), or brake failures that cause a vehicle to move at an unintended moment.

III. APPLYING THE ACTS TO STOPPED LOCOMOTIVES ADVANCES CONGRESS'S SOUND POLICY JUDGMENTS AND REMEDIAL PURPOSES

Congress enacted the Acts and FELA to protect railroad workers by requiring railroads to use adequate safety equipment and creating a rule of negligence *per se* when a failure to do so causes injury. Achieving these goals requires applying the Acts to temporarily stopped locomotives and other railroad vehicles, which account for most injuries involving such vehicles.

Maintaining a stable regulatory regime also requires applying the Acts to stationary locomotives and railcars. When the Acts apply, the FRA has jurisdiction over the vehicle. Interpreting "use" to exclude temporarily stopped vehicles therefore would cause regulatory jurisdiction to oscillate on and off on a regular basis, causing confusion and interfering with the FRA's longstanding regulatory authority.

A. The Acts, With Their Longstanding Remedial Construction, Have Significantly Improved Safety For Rail Workers

In the late nineteenth and early twentieth centuries, "the physical dangers of railroading . . . resulted in the death or maiming of thousands of workers every year." *Gottshall*, 512 U.S. at 542. Congress enacted FELA to pass some of this "'human overhead' of doing business from employees to their employers." *Id.* (quoting *Tiller v. Atlantic Coast Line R.R. Co.*, 318 U.S. 54, 58-59 (1943)); *see also Wilkerson v. McCarthy*, 336 U.S. 53, 68 (1949) (Douglas, J., concurring) (FELA "was designed to put on the railroad industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operation"). Likewise, the "prime purpose" of the SAA and the LIA is "protecti[ng] . . .

employees and others by requiring the use of safe equipment." *Lilly*, 317 U.S. at 486.[8]

For the past 130 years, Congress's and the FRA's regulatory efforts have made great progress advancing these goals. Deaths and injuries among on-duty railroad employees have significantly decreased over the years.[9] In the modern era (since 1975), deaths and injuries have decreased by more than 90%.[10]

That success has come against the backdrop of the liberal construction this Court has afforded to the Acts. *See Lilly*, 317 U.S. at 486 (instructing that the LIA must "be *liberally* construed in the light of its prime purpose, the protection of employees and others by requiring the use of safe equipment") (emphasis

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[8] Congress reaffirmed this intent when it recodified the Acts in 1994, expressly stating as its purpose "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. At that same time, Congress also authorized the Secretary of Transportation (who acts through the FRA) to "prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970." *Id.* § 20103(a).

[9] Despite significant improvements in reducing deaths and injuries – spurred in part by FELA liability and the Acts' regulatory rules – the railroad industry still is disproportionately dangerous, with "a fatal injury rate more than twice the all-industry rate." Dino Drudi, *Railroad-related work injury fatalities*, Monthly Labor Review 17 (Sept. 14, 2007), https://www.bls.gov/opub/mlr/2007/07/art2full.pdf. When Congress in 1906 considered a predecessor version of what eventually became FELA, one representative noted that the railroad industry had 931 fatalities and 13,217 injuries in just three months. *See* 40 Cong. Rec. 4607 (1906).

[10] *See* U.S. Dep't of Transp., Bur. of Transp. Statistics, *Fatalities and Injuries of On-Duty Railroad Employees*, Table 2-44, https://www.bts.gov/content/fatalities-and-injuries-duty-railroad-employees (last accessed Jan. 20, 2022).

added); *Rigsby*, 241 U.S. at 41 (indicating that "the act in its remedial aspect" should be given "as broad an application as" possible).

B. A Majority Of Rail Worker Casualties Occur On Stationary Equipment, And Withdrawing That Equipment From The Acts' Scope Would Make Rail Workers Significantly Less Safe

Interpreting "use" to exclude vehicles not moving or not part of a fully assembled train would threaten to undo much of that progress. Thousands of railroad casualties involving locomotives and railcars still occur every year.[11] Undoing this Court's longstanding interpretive approach to the Acts would undermine the FRA's ability adequately to regulate this dangerous industry and injured workers' ability to receive fair compensation for their workplace injuries.

That risk is particularly acute with regard to the specific issue this case presents: whether a temporarily stopped locomotive not part of a fully assembled train is outside the scope of the LIA. In fact, the majority of locomotive-related injuries involve stopped locomotives. For example, in 2020 alone, there were 142 employee casualties (deaths and injuries) on stationary locomotives on or near the line, compared to 50 casualties on moving locomotives.[12] Similarly,

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[11] *See* FRA, *Casualties (Deaths and Injuries) to Employees on Duty*, https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/Query/castally1.aspx (last accessed Jan. 29, 2022).

[12] *See id.* (select "January 2020" in the "Start Month for Report" field and December 2020 in the "End Month for Report" field, "On or Near Track" in the "Location" field, and then "Generate Report"; the relevant statistics then appear in the fifth table, entitled "Equipment Involved"). The stationary locomotive casualties are the sum of the "Locomotive(s) – standing" and

386 casualties occurred on railcars (excluding locomotives) not part of fully assembled trains, compared to 299 casualties on cars that were part of fully assembled trains.[13] Interpreting "use" not to include vehicles that are stationary or not part of a fully assembled train thus would deprive a majority of injured rail workers of the Acts' protections.

Reading such a gap into the Acts would be inconsistent with Congress's remedial intent. After all, the only way locomotives can become part of a fully assembled train is to have railroad employees prepare them for transport in trains. If the Acts' protections do not apply at that time, it would mean that Congress excluded an enormous portion of employees' work – and the risks they face – from their scope. Nothing in the text, structure, or decades of this Court's decisions applying the Acts suggests that Congress sought to leave such a glaring hole in the regulatory scheme.

C. Allowing Railroads To Avoid Liability By Leaving Noncompliant Vehicles Stationary On Sidetracks Thwarts The Acts' Remedial Goals

The position advanced by the court of appeals and respondent – that a temporarily stopped locomotive is not in use, even though it is partway through its

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"Locomotive(s), remote control – standing" rows; the moving locomotive casualties are the sum of the "Locomotive(s) – moving" and "Locomotive(s), remote control – moving" rows.

[13] *See id.* The casualties for not fully assembled trains are the sum of the "Passenger car(s) – standing," "Freight car(s) – standing," "Passenger car(s) – moving," "Freight car(s) – moving," "Camp car – standing," and "Camp car – moving" rows; the casualties for fully assembled trains are the sum of the "Freight train – moving," "Passenger train – moving," "Passenger train – standing," and "Freight train – standing" rows.

journey and is available to be added to a fully assembled train for further travel – would allow railroads to frustrate the Acts' operation.

As an initial matter, the Court long has recognized that the LIA's purpose is one of "facilitating employee recovery, not of restricting such recovery or making it impossible." *Urie*, 337 U.S. at 189. Interpreting "use" to exclude stopped vehicles, or vehicles not part of a fully assembled train, would have precisely that effect: for the majority of employees whose injuries occur on such vehicles, recoveries would be severely restricted, if not impossible.

Moreover, excluding from the LIA's scope stopped vehicles or vehicles not part of a fully assembled train would leave minor repair work (and work on stationary vehicles generally) on the lines unregulated. In general terms, a railroad with defective equipment has two options: it can move disabled vehicles to fully equipped repair yards, or it can send repair teams out to disabled vehicles wherever they may be found without the full capability of the repair yard. If regulating stationary vehicles were beyond the scope of the LIA as well (and thus beyond the FRA's regulatory authority), the resulting legal regime would create great uncertainty for rail workers in the very situations that most frequently cause injury. That would be a highly ironic outcome, however, in light of the fact that Congress enacted the Acts and FELA because it viewed then-prevailing state remedies as inadequate. *See Gottshall*, 512 U.S. at 542-43.

Excluding temporarily stopped vehicles from the FRA's regulatory regime also would create unworkable ambiguity. If the FRA has regulatory authority over moving vehicles only, then its regulations regarding inspections and testing, *see*, *e.g.*, 49 C.F.R.

§§ 229.21-229.33, would become largely unworkable or nonsensical. *See*, *e.g.*, *id.* § 229.23(a) (requiring inspection of "the entire underneath portion of the locomotive," which would be highly dangerous, if not impossible, while the locomotive is moving); *id.* § 229.29(a) (requiring air brake calibration, which would be impossible while the locomotive is moving). The FRA's regulations make sense under the LIA's text and this Court's longstanding construction of it; abandoning that construction would throw this regulatory scheme into disarray. *Cf. Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1903 (2019) (plurality) (rejecting proposed interpretation that would create a regulatory gap and cripple the government's ability to regulate the unique risks of uranium mining).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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ADDENDUM

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STATUTES AND REGULATIONS INVOLVED

1. 45 U.S.C. § 51 provides:

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

2. 45 U.S.C. § 53 provides:

§ 53. Contributory negligence; diminution of damages

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

3. 45 U.S.C. § 54a provides:

§ 54a. Certain Federal and State regulations deemed statutory authority

A regulation, standard, or requirement in force, or prescribed by the Secretary of Transportation under chapter 201 of title 49 or by a State agency that is participating in investigative and surveillance activities under section 20105 of title 49, is deemed to be a statute under sections 53 and 54 of this title.

4. 49 U.S.C. § 20301 provides:

§ 20301. Definition and nonapplication

(a) DEFINITION.—In this chapter, "vehicle" means a car, locomotive, tender, or similar vehicle.

(b) NONAPPLICATION.—This chapter does not apply to the following:

(1) a train of 4-wheel coal cars.

(2) a train of 8-wheel standard logging cars if the height of each car from the top of the rail to the center of the coupling is not more than 25 inches.

(3) a locomotive used in hauling a train referred to in clause (2) of this subsection when the locomotive and cars of the train are used only to transport logs.

(4) a car, locomotive, or train used on a street railway.

5. 49 U.S.C. § 20302 provides:

§ 20302. General requirements

(a) GENERAL.—Except as provided in subsection (c) of this section and section 20303 of this title, a railroad carrier may use or allow to be used on any of its railroad lines—

(1) a vehicle only if it is equipped with—

(A) couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles;

(B) secure sill steps and efficient hand brakes; and

(C) secure ladders and running boards when required by the Secretary of Transportation, and, if ladders are required, secure handholds or grab irons on its roof at the top of each ladder;

(2) except as otherwise ordered by the Secretary, a vehicle only if it is equipped with secure grab irons or handholds on its ends and sides for greater security to individuals in coupling and uncoupling vehicles;

(3) a vehicle only if it complies with the standard height of drawbars required by regulations prescribed by the Secretary;

(4) a locomotive only if it is equipped with a power-driving wheel brake and appliances for operating the train-brake system; and

(5) a train only if—

(A) enough of the vehicles in the train are equipped with power or train brakes so that the engineer on the locomotive hauling the train can control the train's speed without the necessity of brake operators using the common hand brakes for that purpose; and

(B) at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train.

(b) REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.—A railroad carrier complying with sub-

section (a)(5)(A) of this section may refuse to receive from a railroad line of a connecting railroad carrier or a shipper a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier.

(c) COMBINED VEHICLES LOADING AND HAULING LONG COMMODITIES.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles are combined to load and haul long commodities, only one of the vehicles must have hand brakes during the loading and hauling.

(d) AUTHORITY TO CHANGE REQUIREMENTS.—The Secretary may—

(1) change the number, dimensions, locations, and manner of application prescribed by the Secretary for safety appliances required by subsection (a)(1)(B) and (C) and (2) of this section only for good cause and after providing an opportunity for a full hearing;

(2) amend regulations for installing, inspecting, maintaining, and repairing power and train brakes only for the purpose of achieving safety; and

(3) increase, after an opportunity for a full hearing, the minimum percentage of vehicles in a train that are required by subsection (a)(5)(B) of this section to be equipped and used with power or train brakes.

(e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying out subsection (d)(2) and (3) of this section, the Secretary may use the services of the Association of American Railroads.

6. 49 U.S.C. § 20303 provides:

§ 20303. Moving defective and insecure vehicles needing repairs

(a) GENERAL.—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made—

(1) on the railroad line on which the defect or insecurity was discovered; or

(2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

(b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue train or in association with commercially-used vehicles may be moved under this section with chains instead of drawbars only when the vehicle contains livestock or perishable freight.

(c) LIABILITY.—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.

7. 49 U.S.C. § 20701 provides:

§ 20701. Requirements for use

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.

8. 49 C.F.R. § 229.1 provides:

§ 229.1 Scope.

This part prescribes minimum Federal safety standards for all locomotives except those propelled by steam power.

9. 49 C.F.R. § 229.21 provides:

§ 229.21 Daily inspection.

(a) Except for MU locomotives, each locomotive in use shall be inspected at least once during each calendar day. A written report of the inspection shall be made. This report shall contain the name of the carrier; the initials and number of the locomotive; the place, date and time of the inspection; a description of the non-complying conditions disclosed by the

inspection; and the signature of the employee making the inspection. Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that do not comply with § 229.137 or § 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137 or § 229.139 may be noted on the report, or in electronic form. The person making the repairs shall sign the report. The report shall be filed and retained for at least 92 days in the office of the carrier at the terminal at which the locomotive is cared for. A record shall be maintained on each locomotive showing the place, date and time of the previous inspection.

(b) Each MU locomotive in use shall be inspected at least once during each calendar day and a written report of the inspection shall be made. This report may be part of a single master report covering an entire group of MU's. If any non-complying conditions are found, a separate, individual report shall be made containing the name of the carrier; the initials and number of the locomotive; the place, date, and time of the inspection; the non-complying conditions found; and the signature of the inspector. Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that do not comply with § 229.137 or § 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137

or § 229.139 may be noted on the report, or in electronic form. A notation shall be made on the report indicating the nature of the repairs that have been made. The person making the repairs shall sign the report. The report shall be filed in the office of the carrier at the place where the inspection is made or at one central location and retained for at least 92 days.

(c) Each carrier shall designate qualified persons to make the inspections required by this section.

10. 49 C.F.R. § 229.23 provides:

§ 229.23 Periodic inspection: general.

(a) Each locomotive shall be inspected at each periodic inspection to determine whether it complies with this part. Except as provided in § 229.9, all non-complying conditions shall be repaired before the locomotive is used. Except as provided in § 229.33 and paragraph (b) of this section, the interval between any two periodic inspections may not exceed 92 days. Periodic inspections shall only be made where adequate facilities are available. At each periodic inspection, a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive.

(b) For each locomotive equipped with advanced microprocessor-based on-board electronic condition monitoring controls:

(1) The interval between periodic inspections shall not exceed 184 days; and

(2) At least once each 33 days, the daily inspection required by § 229.21, shall be performed by a quali-

fied mechanical inspector as defined by § 229.5. A record of the inspection that contains the name of the person performing the inspection and the date that it was performed shall be maintained in the locomotive cab until the next periodic inspection is performed.

(c) Each new locomotive shall receive an initial periodic inspection before it is used.

(d) At the initial periodic inspection, the date and place of the last tests performed that are the equivalent of the tests required by §§ 229.27, 229.29, and 229.31 shall be entered on Form FRA F 6180-49A. These dates shall determine when the tests first become due under §§ 229.27, 229.29, and 229.31. Out of use credit may be carried over from Form FRA F 6180-49 and entered on Form FRA F 6180-49A.

(e) Each periodic inspection shall be recorded on Form FRA F 6180-49A. The form shall be signed by the person conducting the inspection and certified by that person's supervisor that the work was done. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive. A railroad maintaining and transferring records as provided for in § 229.20 shall print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180-49A that is displayed in the cab of each locomotive.

(f) At the first periodic inspection in each calendar year, the carrier shall remove from each locomotive Form FRA F 6180-49A covering the previous calendar year. If a locomotive does not receive its first periodic inspection in a calendar year before April 2, or July 3 if it's a locomotive equipped with advanced microprocessor-based on-board electronic condition monitoring controls, because it is out of use, the form

shall be promptly replaced. The Form FRA F 6180-49A covering the preceding year for each locomotive, in or out of use, shall be signed by the railroad official responsible for the locomotive and filed as required in § 229.23(f). The date and place of the last periodic inspection and the date and place of the last tests performed under §§ 229.27, 229.29, and 229.31 shall be transferred to the replacement Form FRA F 6180-49A.

(g) The railroad mechanical officer who is in charge of a locomotive shall maintain in his office a secondary record of the information reported on Form FRA F 6180-49A. The secondary record shall be retained until Form FRA F 6180-49A has been removed from the locomotive and filed in the railroad office of the mechanical officer in charge of the locomotive. If the Form FRA F 6180-49A removed from the locomotive is not clearly legible, the secondary record shall be retained until the Form FRA F 6180-49A for the succeeding year is filed. The Form F 6180-49A removed from a locomotive shall be retained until the Form FRA F 6180-49A for the succeeding year is filed.

(h) The railroad shall maintain, and provide employees performing inspections under this section with, a list of the defects and repairs made on each locomotive since the date that the last inspection required by this section was performed;

(i) The railroad shall provide employees performing inspections under this section with a document containing all tests conducted since the last periodic inspection, and procedures needed to perform the inspection.

11. 49 C.F.R. § 229.25 provides:

§ 229.25 Tests: Every periodic inspection.

Each periodic inspection shall include the following:

(a) All mechanical gauges used by the engineer to aid in the control or braking of the train or locomotive, except load meters used in conjunction with an auxiliary brake system, shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose.

(b) All electrical devices and visible insulation shall be inspected.

(c) All cable connections between locomotives and jumpers that are designed to carry 600 volts or more shall be thoroughly cleaned, inspected, and tested for continuity.

(d) ***Event recorder.*** A microprocessor-based self-monitoring event recorder, if installed, is exempt from periodic inspection under paragraphs (d)(1) through (5) of this section and shall be inspected annually as required by § 229.27(c). Other types of event recorders, if installed, shall be inspected, maintained, and tested in accordance with instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written or electronic copy of the instructions in use shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request to FRA.

(2) The event recorder shall be tested before any maintenance work is performed on it. At a minimum,

the event recorder test shall include cycling, as practicable, all required recording elements and determining the full range of each element by reading out recorded data.

(3) If the pre-maintenance test reveals that the device is not recording all the specified data and that all recordings are within the designed recording elements, this fact shall be noted, and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of the data-verification results shall be maintained in any medium with the maintenance records for the locomotive until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if 90 percent of the recorders on locomotives inbound for periodic inspection in any given calendar month are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

(e) ***Remote control locomotive.*** Remote control locomotive system components that interface with the mechanical devices of the locomotive shall be tested including, but not limited to, air pressure monitoring devices, pressure switches, and speed sensors.

(f) ***Alerters.*** The alerter shall be tested, and all automatic timing resets shall function as intended.

12. 49 C.F.R. § 229.27 provides:

§ 229.27 Annual tests.

(a) All testing under this section shall be performed at intervals that do not exceed 368 calendar days.

(b) Load meters that indicate current (amperage) being applied to traction motors shall be tested. Each device used by the engineer to aid in the control or braking of the train or locomotive that provides an indication of air pressure electronically shall be tested by comparison with a test gauge or self-test designed for this purpose. An error greater than five percent or greater than three pounds per square inch shall be corrected. The date and place of the test shall be recorded on Form FRA F 6180-49A, and the person conducting the test and that person's supervisor shall sign the form.

(c) A microprocessor-based event recorder with a self-monitoring feature equipped to verify that all data elements required by this part are recorded, requires further maintenance and testing only if either of the following conditions exist:

(1) The self-monitoring feature displays an indication of a failure. If a failure is displayed, further maintenance and testing must be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be available at the location where the locomotive is maintained until a record of a subsequent successful test is filed; or,

(2) A download of the event recorder, taken within the preceding 30 days and reviewed for the previous

48 hours of locomotive operation, reveals a failure to record a regularly recurring data element or reveals that any required data element is not representative of the actual operations of the locomotive during this time period. If the review is not successful, further maintenance and testing shall be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed. The download shall be taken from information stored in the certified crashworthy crash hardened event recorder memory module if the locomotive is so equipped.

13. 49 C.F.R. § 229.29 provides:

§ 229.29 Air brake system calibration, maintenance, and testing.

(a) A locomotive's air brake system shall receive the calibration, maintenance, and testing as prescribed in this section. The level of maintenance and testing and the intervals for receiving such maintenance and testing of locomotives with various types of air brake systems shall be conducted in accordance with paragraphs (d) through (f) of this section. Records of the maintenance and testing required in this section shall be maintained in accordance with paragraph (g) of this section.

(b) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the air flow method (AFM) indicator shall be calibrated in accordance

with § 232.205(c)(1)(iii) at intervals not to exceed 92 days, and records shall be maintained as prescribed paragraph (g)(1) of this section.

(c) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the extent of air brake system maintenance and testing that is required on a locomotive shall be in accordance with the following levels:

(1) ***Level one:*** Locomotives shall have the filtering devices or dirt collectors located in the main reservoir supply line to the air brake system cleaned, repaired, or replaced.

(2) ***Level two:*** Locomotives shall have the following components cleaned, repaired, and tested: brake cylinder relay valve portions; main reservoir safety valves; brake pipe vent valve portions; and, feed and reducing valve portions in the air brake system (including related dirt collectors and filters).

(3) ***Level three:*** Locomotives shall have the components identified in this paragraph removed from the locomotive and disassembled, cleaned and lubricated (if necessary), and tested. In addition, all parts of such components that can deteriorate within the inspection interval as defined in paragraphs (d) through (f) of this section shall be replaced and tested. The components include: all pneumatic components of the locomotive equipment's brake system that contain moving parts, and are sealed against air leaks; all valves and valve portions; electric-pneumatic master controllers in the air brake system; and all air brake related filters and dirt collectors.

(d) Except for MU locomotives covered under § 238.309 of this chapter, all locomotives shall receive

level one air brake maintenance and testing as described in this section at intervals that do not exceed 368 days.

(e) Locomotives equipped with an air brake system not specifically identified in paragraphs (f)(1) through (3) of this section shall receive level two air brake maintenance and testing as described in this section at intervals that do not exceed 368 days and level three air brake maintenance and testing at intervals that do not exceed 736 days.

(f) Level two and level three air brake maintenance and testing shall be performed on each locomotive identified in this paragraph at the following intervals:

(1) At intervals that do not exceed 1,104 days for a locomotive equipped with a 26-L or equivalent brake system;

(2) At intervals that do not exceed 1,472 days for locomotives equipped with an air dryer and a 26-L or equivalent brake system and for locomotives not equipped with an air compressor and that are semi-permanently coupled and dedicated to locomotives with an air dryer; or

(3) At intervals that do not exceed 1,840 days for locomotives equipped with CCB-1, CCB-2, CCB-26, EPIC 1 (formerly EPIC 3102), EPIC 3102D2, EPIC 2, KB-HS1, or Fastbrake brake systems.

(g) Records of the air brake system maintenance and testing required by this section shall be generated and maintained in accordance with the following:

(1) The date of AFM indicator calibration shall be recorded and certified on Form F6180-49A.

(2) The date and place of the cleaning, repairing and testing required by this section shall be recorded on Form FRA F 6180-49A, and the work shall be certified. A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the railroad's files or in the cab of the locomotive.

(3) At its option, a railroad may fragment the work required by this section. In that event, a separate record shall be maintained under a transparent cover in the cab. The air record shall include: the locomotive number; a list of the air brake components; and the date and place of the inspection and testing of each component. The signature of the person performing the work and the signature of that person's supervisor shall be included for each component. A duplicate record shall be maintained in the railroad's files.

14. 49 C.F.R. § 229.31 provides:

§ 229.31 Main reservoir tests.

(a) Before it is placed in service, each main reservoir other than an aluminum reservoir shall be subjected to a pneumatic or hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180-49A, block eighteen. Except as provided in paragraph (c) of this section, at intervals that do not exceed 736 calendar days, each main reservoir other than an aluminum reservoir shall be subjected to a hydrostatic pressure of at least 25 percent more than the maximum working pressure

fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180-49A, and the person performing the test and that person's supervisor shall sign the form.

(b) Except as provided in paragraph (c) of this section, each main reservoir other than an aluminum reservoir shall be hammer tested over its entire surface while the reservoir is empty at intervals that do not exceed 736 calendar days. The test date and place shall be recorded on Form FRA F 6180-49A, and the person performing the test and that person's supervisor shall sign the form.

(c) Each welded main reservoir originally constructed to withstand at least five times the maximum working pressure fixed by the chief mechanical officer may be drilled over its entire surface with telltale holes that are three-sixteenths of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the formula—

D = (.6PR/S-0.6P)

Where:

D = extreme depth of telltale holes in inches but in no case less than one-sixteenth inch;

P = certified working pressure in pounds per square inch;

S = one-fifth of the minimum specified tensile strength of the material in pounds per square inch; and

R = inside radius of the reservoir in inches.

One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. A reservoir so drilled does not have to meet the requirements of paragraphs (a) and (b) of this section, except the requirement for a pneumatic or hydrostatic test before it is placed in use. Whenever any such telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service. A reservoir now in use may be drilled in lieu of the tests provided for by paragraphs (a) and (b) of this section, but shall receive a hydrostatic test before it is returned to use or may receive a pneumatic test if conducted by the manufacturer in an appropriately safe environment.

(d) Each aluminum main reservoir before being placed in use and at intervals that do not exceed 736 calendar days thereafter, shall be—

(1) Cleaned and given a thorough visual inspection of all internal and external surfaces for evidence of defects or deterioration; and

(2) Subjected to a hydrostatic pressure at least twice the maximum working pressure fixed by the chief mechanical officer, but not less than 250 p.s.i. The test date, place, and pressure shall be recorded on Form FRA F 6180-49A, and the person conducting the test and that person's supervisor shall sign the form.

15. 49 C.F.R. § 229.33 provides:

§ 229.33 Out-of-use credit.

When a locomotive is out of use for 30 or more consecutive days or is out of use when it is due for

any test or inspection required by § 229.23, § 229.25, § 229.27, § 229.29, or § 229.31, an out-of-use notation showing the number of out-of-use days shall be made on an inspection line on Form FRA F 6180-49A. A supervisory employee of the carrier who is responsible for the locomotive shall attest to the notation. If the locomotive is out of use for one or more periods of at least 30 consecutive days each, the interval prescribed for any test or inspection under this part may be extended by the number of days in each period the locomotive is out of use since the last test or inspection in question. A movement made in accordance with § 229.9 is not a use for purposes of determining the period of the out-of-use credit.

16. 49 C.F.R. § 229.119 provides:

§ 229.119 Cabs, floors, and passageways.

(a) Cab seats shall be securely mounted and braced. Cab doors shall be equipped with a secure and operable latching device.

(b) Cab windows of the lead locomotive shall provide an undistorted view of the right-of-way for the crew from their normal position in the cab. (See also, Safety Glazing Standards, 49 CFR part 223, 44 FR 77348, Dec. 31, 1979.)

(c) Floors of cabs, passageways, and compartments shall be kept free from oil, water, waste or any obstruction that creates a slipping, tripping or fire hazard. Floors shall be properly treated to provide secure footing.

(d) Any occupied locomotive cab shall be provided with proper ventilation and with a heating arrange-

ment that maintains a temperature of at least 60 degrees Fahrenheit 6 inches above the center of each seat in the cab compartment.

(e) Similar locomotives with open-end platforms coupled in multiple control and used in road service shall have a means of safe passage between them; no passageway is required through the nose of car body locomotives. There shall be a continuous barrier across the full width of the end of a locomotive or a continuous barrier between locomotives.

(f) Containers shall be provided for carrying fusees and torpedoes. A single container may be used if it has a partition to separate fusees from torpedoes. Torpedoes shall be kept in a closed metal container.

(g) Each locomotive or remanufactured locomotive placed in service for the first time on or after June 8, 2012, shall be equipped with an air conditioning unit in the locomotive cab compartment.

(h) Each air conditioning unit in the locomotive cab on a locomotive identified in paragraph (g) of this section shall be inspected and maintained to ensure that it operates properly and meets or exceeds the manufacturer's minimum operating specifications during the periodic inspection required for the locomotive pursuant to § 229.23 of this part.

(i) Each locomotive or remanufactured locomotive ordered on or after June 8, 2012, or placed in service for the first time on or after December 10, 2012, shall be equipped with a securement device on each exterior locomotive cab door that is capable of securing the door from inside of the cab.