No. 20-807

In the Supreme Court of the United States

BRADLEY LEDURE, PETITIONER

v.

UNION PACIFIC RAILROAD COMPANY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a locomotive is in "use" under the Locomotive Inspection Act, 49 U.S.C. 20701 *et seq.*, when it is stopped on a sidetrack of a railyard, undergoing preparations for the next movement in its journey.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

This case arises under the Locomotive Inspection Act (LIA), 49 U.S.C. 20701 *et seq.* The United States has a substantial interest in the regulation of the railroad industry, and Congress has granted the Secretary of Transportation the authority to adopt regulations under the LIA and to enforce the Act administratively. Department of Transportation Act, Pub. L. No. 89-670, § 6(e)(1)(E) and (F), 80 Stat. 939. The Secretary currently exercises that authority through the Federal Railroad Administration, see 49 U.S.C. 103(g). At the Court's invitation, the United States filed an amicus brief in this case at the petition stage.

STATEMENT

A. Legal Background

1. The Locomotive Inspection Act (LIA), 49 U.S.C. 20701 *et seq.*, establishes safety and inspection requirements for locomotives in "use" on a "railroad line." 49 U.S.C. 20701. The statute was first enacted in 1911 as part of a broad congressional effort to "reduce the loss of life and the injuries" caused by the dangerous conditions that prevailed on the railroads in the late 19th and early 20th centuries. *Johnson* v. *Southern Pac. Co.*, 196 U.S. 1, 19 (1904); see *Napier* v. *Atlantic Coast Line R.R.*, 272 U.S. 605, 607-608 (1926).

Congress initially addressed those railroad safety concerns through a series of statutes enacted between 1893 and 1910 that came to be known collectively as the "Safety Appliance Act" (SAA), now codified at 49 U.S.C. 20301 *et seq.* See *Napier*, 272 U.S. at 608. As the Act's name suggests, the statutes composing the SAA mandated that locomotives, trains, and cars had to be equipped with a variety of safety appliances. *Ibid.* For example, Section 2 of the 1893 SAA made it "unlawful" for a "common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with" automatic couplers. Act of Mar. 2, 1893, ch. 196, § 2, 27 Stat. 531. And Section 2 of the 1910 SAA broadened that mandate, making it "unlawful" for a common carrier "to haul, or permit to be hauled or used on its line any car subject to the provisions of [the SAA] not equipped with" a range of safety appliances, including handholds, grab bars, ladders, and running boards. Act of Apr. 14, 1910 (Act of 1910), ch. 160, § 2, 36 Stat. 298.

In 1911, Congress enacted the first iteration of the LIA to address the harms posed by locomotive boilers.

Act of Feb. 17, 1911 (Act of 1911), ch. 103, 36 Stat. 913. That statute—known as the Boiler Inspection Act, see *Kurns* v. *Railroad Friction Prods. Corp.*, 565 U.S. 625, 629 (2012)—continued the work of the SAA and borrowed from its text. Like the 1893 SAA, the 1911 LIA made it "unlawful" for a common carrier "*to use any* locomotive engine propelled by steam power *in moving interstate or foreign traffic* unless the boiler of said locomotive and appurtenances thereof are in proper condition and safe to operate in the service to which the same is put." Act of 1911, § 2, 36 Stat. 913-914 (emphasis added).

In 1915, Congress amended the LIA to make it applicable to the entire locomotive, rather than just the boiler. Act of Mar. 4, 1915, ch. 169, 38 Stat. 1192. And in 1924, Congress again expanded the Act's scope, dropping the requirement that the locomotive be used in moving interstate or foreign traffic and adding a bar on "permit[ting]" unsafe locomotives "to be used" on a carrier's lines. Act of June 7, 1924 (Act of 1924), ch. 355, § 2, 43 Stat. 659. In broadening the LIA in this manner, Congress again borrowed from a provision of the SAA. The 1924 LIA provided that a common carrier may not "*use or permit to be used on its line* any locomotive" that is not "in proper condition and safe to operate," *ibid.* (emphasis added), closely tracking Section 2 of the 1910 SAA, which made it unlawful for a carrier "to haul, or *permit to be hauled or used* on its line any car" lacking certain safety equipment, Act of 1910, § 2, 36 Stat. 298 (emphasis added).[1]

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[1] The relevant language of the LIA provision differed from the SAA in that it did not include the term "haul." Act of 1910, § 2, 36 Stat. 298. But a contemporary treatise explained that the term

Over the ensuing decades, Congress made significant changes to both the LIA and SAA, removing some sections and recodifying others, but it left intact the key provisions prohibiting a carrier from "us[ing] on" its "line" railcars and locomotives that do not satisfy the statutes' safety requirements. 49 U.S.C. 20302(a) (SAA); 49 U.S.C. 20701 (LIA). In their current iterations, both statutes provide that a "railroad carrier may use or allow to be used" on "its railroad line" a covered vehicle "only" when certain safety requirements are met. 49 U.S.C. 20701; see 49 U.S.C. 20302(a).

2. Congress has provided for both administrative and judicial enforcement of the LIA. The original version of the LIA gave the Interstate Commerce Commission (ICC) the authority to "prescribe the rules and regulations by which [a locomotive's] fitness for service shall be determined," *Napier*, 272 U.S. at 612, and permitted the appointment of federal locomotive inspectors whose "first duty" was to ensure that carriers were inspecting and repairing their locomotives "in accordance with the [ICC's] rules and regulations," Act of 1911, § 6, 36 Stat. 915. Where an inspector found a violation of the LIA or its implementing regulations, the Act directed the inspector to "notify the carrier in writing that the locomotive is not in serviceable condition, and thereaf-

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"haul[]" had no independent significance in the SAA because the term "use" "is broad enough to include any employment of a car for any purpose in railroad service"—including hauling the car. 2 M. G. Roberts, *Federal Liabilities of Carriers* 1305 (1918). And Congress confirmed that "haul" was superfluous in later iterations of the SAA, which dropped the term from the Act altogether. See 49 U.S.C. 20302(a).

ter such boiler shall not be used until in serviceable condition." *Ibid.* The Act provided administrative penalties for violations. *Ibid.*

In 1966, Congress transferred rulemaking authority under the LIA from the ICC to the Secretary of Transportation. Department of Transportation Act, Pub. L. No. 89-670, § 6(e)(1)(E) and (F), 80 Stat. 939. The Secretary currently exercises that authority through the Federal Railroad Administration (FRA), see 49 U.S.C. 103(g), which has promulgated a number of regulations regarding locomotive safety. Those regulations include—as most relevant here—a requirement that the "[f]loors of cabs, passageways, and compartments shall be kept free from oil, water, waste or any obstruction that creates a slipping, tripping or fire hazard." 49 C.F.R. 229.119(c).

In addition to the provision for enforcement by the FRA, railroad employees may obtain damages for injuries caused by a violation of the LIA through a private right of action provided by the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.* See *Urie* v. *Thompson*, 337 U.S. 163, 188 (1949). Under FELA, a railroad is generally liable to its employees for injuries resulting from its negligence, and the defenses of contributory negligence and assumption of the risk do not apply. 45 U.S.C. 51, 53, 54. This Court has explained that the LIA and SAA "are substantively if not in form amendments to" FELA because proving a violation of the LIA or SAA "is effective to show negligence as a matter of law." *Urie*, 337 U.S. at 189.

B. Facts And Procedural History

1. Petitioner Bradley LeDure worked as a locomotive engineer for respondent Union Pacific Railroad Company at the railroad's Salem, Illinois railyard. Pet.

App. 7. At approximately 2:10 a.m. on August 12, 2016, petitioner reported for work at the railyard and was assigned to "reliev[e] the crew that had brought [a] train from the north to Salem." C.A. App. A41; see Pet. App. 7. The train had arrived "shortly before [petitioner] came on duty," and it was scheduled to leave for Dexter, Missouri in approximately one hour. C.A. App. A41; see *id.* at A42. Before the train could leave, petitioner had to determine how many of the train's three locomotives would need to be powered on "to provide enough juice" for the next leg of the journey, turn off the power in the locomotives whose "juice" was not needed, and switch out some of the cars that the locomotives would pull. Pet. App. 8.

After determining that only one locomotive needed to be powered on, petitioner climbed aboard the train and tagged the first locomotive for operation and the second locomotive for "non-operation." Pet. App. 2. He then "moved to the final locomotive" "to shut it down and tag it accordingly." *Ibid.* But before petitioner could shut it down, he slipped and fell on the locomotive's exterior walkway. *Id.* at 8. After petitioner got up and turned off and tagged the locomotive, he returned to the scene of his accident, where he identified a "slick" substance on the locomotive's walkway. *Id.* at 2. Respondent later conducted its own inspection and cleaned a "small amount of oil" from the spot. *Ibid.*

2. Petitioner filed this action under the LIA and FELA, alleging—as relevant—that the locomotive on which he fell was not "in proper condition and safe to operate" as required by the LIA, and that respondent's negligence had given rise to his accident. C.A. App. A35; see *id.* at A35-A36. The district court granted re-

spondent's motion for summary judgment and dismissed petitioner's claims with prejudice. Pet. App. 7, 20-21.

The district court first determined that petitioner could not proceed under the LIA "at all" because the court concluded that the locomotive on which petitioner fell was not "in use" at the time of the accident. Pet. App. 12, 14; see *id.* at 12-17. The court observed that the courts of appeals are "all over the place" in how they analyze whether a locomotive is in use. *Id.* at 14. The district court concluded, however, that it was bound to follow the Seventh Circuit's precedent in *Lyle* v. *Atchison, T. & S. F. Ry. Co.*, 177 F.2d 221 (1949), cert. denied, 339 U.S. 913 (1950), in which the court held that a locomotive being serviced in a roundhouse was out of use and explained that "[t]o service an engine while it is out of use, to put it in readiness for use, is the antithesis of using it," *id.* at 223.

The district court acknowledged that petitioner "was not repairing the locomotive in a roundhouse like in *Lyle*," but the court found that petitioner was merely "putting the locomotive 'in readiness for use'" because "the train was (1) stationary; (2) on a backtrack in the depot yard; (3) had not yet been inspected or tagged; and (4) perhaps most importantly, the engineers had not yet assembled the cars on the train for its next use in interstate commerce." Pet. App. 14-15.

3. The court of appeals affirmed. Pet. App. 1-5. The court recognized that the circuits have "various tests" for determining when a locomotive is in use under the LIA, *id.* at 3, but it concluded that "the district court properly applied *Lyle* and its holding that 'to service an engine while it is out of use, to put it in readiness for use, is the antithesis of using it,'" *id.* at 4 (quoting *Lyle*,

177 F.2d at 223). The court stated that a finding that the locomotive in this case was in use would "essentially" "limit [*Lyle*'s] holding to say a locomotive is not 'in use' only when it is being repaired." *Ibid.* The court viewed that reading of *Lyle* as "unduly narrow," and affirmed the district court's conclusion that the locomotive in this case was not "in use" because it "was stationary, on a sidetrack, and part of a train needing to be assembled before its use in interstate commerce." *Ibid.*

SUMMARY OF ARGUMENT

The LIA makes it unlawful for a railroad carrier to "use" an unsafe locomotive "on its railroad line." 49 U.S.C. 20701. Applying the ordinary meaning of the term "use" at the time the LIA was enacted, a locomotive is in "use" when it is in the "employment" of a railroad carrier, *Astor* v. *Merritt*, 111 U.S. 202, 212 (1884), and it is out of "use" when it has been withdrawn from the carrier's service for repair, storage, or retirement. Accordingly, the locomotive on which petitioner fell was in "use" and within the coverage of the LIA because it had not been withdrawn from respondent's service and was instead standing on a side-track undergoing preparations for the next movement in its journey.

Respondent contends that the term "use" should be given a narrower interpretation, applying only to locomotives that are currently hauling cars on a line or that will be doing so imminently. That interpretation is contradicted by this Court's precedents construing the term "use" in the Safety Appliance Act, 49 U.S.C. 20301 *et seq.*, on which the LIA is based. In a series of cases, this Court has recognized that a rail vehicle is in "use" on a carrier's "line" for purposes of the SAA whenever it is in the service of a railroad carrier, even if the vehicle is stationary on a sidetrack, awaiting assemblage

into a train, or otherwise between movements. See, *e.g.*, *Brady* v. *Terminal R.R. Ass'n*, 303 U.S. 10, 13 (1938); *Johnson* v. *Southern Pac. Co.*, 196 U.S. 1, 19 (1904). Those SAA cases apply with full force to the LIA because the two statutes pertain to the same subject matter and because Congress borrowed the SAA's "use" language when it enacted and amended the LIA. Moreover, this Court's LIA precedents repeatedly counsel in favor of a broad interpretation of the statute, and the Court's precedents interpreting an earlier version of FELA similarly support the proposition that a locomotive is in "use" so long as it has not been withdrawn from service by, for example, relocation to a shop for repairs.

That broad understanding of the term "use" garners additional support from the text and history of the LIA. As first enacted, the statute made it "unlawful" for a common carrier "*to use* any locomotive engine propelled by steam power *in moving interstate or foreign traffic*" unless the locomotive was safe and had been properly inspected. Act of 1911, § 2, 36 Stat. 913-914 (emphasis added). The ICC, which was empowered to enforce the Act, interpreted that iteration of the statute to cover all locomotives that were in a carrier's service, excluding those in repair or reserve. When Congress amended the LIA in 1924, it broadened the statute's reach, deleting the qualification that locomotives must be used "in moving interstate" traffic, and adding language making it unlawful not just to "use" but also "to permit" the use of unsafe locomotives. Act of 1924, § 2, 43 Stat. 659. Those amendments further undermine respondent's arguments to limit the statute's scope.

The narrow understanding of "use" that respondent advocates is also at odds with Congress's stated purpose in enacting the LIA—"[t]o promote the safety of

employees and travelers upon railroads by compelling common carriers * * * to equip their locomotives with safe and suitable boilers and appurtenances thereto." Act of 1911, 36 Stat. 913. An Act designed to compel carriers to "equip" their locomotives safely is best read to apply to locomotives from the moment they are placed into a carrier's employment or service. And adopting a narrower view would impede Congress's goal to promote railway safety because many locomotive accidents, including serious boiler explosions, involve locomotives that are not hauling cars at the moment of the accident.

Arguments to the contrary lack merit. The court of appeals suggested that the locomotive on which petitioner fell was not in "use" because it was stationary, on a sidetrack, and waiting to be assembled into a train. But those same factors were present in many of the SAA cases in which this Court held that a rail vehicle was in "use." And the court of appeals' apparent desire to adopt a narrow understanding of when a locomotive is in "use" is at odds with this Court's repeated instructions that the LIA should be read broadly. Nor is respondent correct that the Court's SAA precedents are somehow inapplicable to the LIA. To the contrary, this Court has found that the "same principles apply in an action under the [LIA] as in one under the [SAA]," *Tipton* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 298 U.S. 141, 151 (1936).

ARGUMENT

I. A LOCOMOTIVE IS IN USE WHEN IT IS IN A RAILROAD'S REGULAR EMPLOYMENT AND SERVICE

The LIA provides that "[a] railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender" is, among other

things, "in proper condition and safe to operate." 49 U.S.C. 20701. Because the statute does not define "use," the term must be understood in accordance with the "ordinary meaning at the time Congress enacted the statute." *New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 539 (2019) (citations and ellipses omitted). The major dictionaries from the time of the LIA's enactment broadly defined the verb "use" as "[t]o make use of, convert to one's service, [or] put to a purpose." *Webster's Practical Dictionary* 481 (1910) (*Webster's*); see, *e.g.*, *Webster's New International Dictionary of the English Language* 2258 (1917) ("[t]o make use of; to convert to one's service; * * * to employ"); 10 *The Century Dictionary and Cyclopedia* 6674 (rev. & enl. ed. 1911) ("[t]o employ for the attainment of some purpose or end; avail one's self of").

Indeed, this Court interpreted "use" to carry that ordinary meaning at least as far back as *Astor* v. *Merritt*, 111 U.S. 202 (1884). In *Astor*, this Court explained that "'[i]n use' is defined to be 'in employment,'" and the Court found that a statutory reference to clothing "in actual use" applied not just to clothing that is being worn "on the person at the time," but also to the clothing in the person's luggage that he both "intend[s]" to wear and that he is "keeping on hand for his and [his family's] reasonable wants." *Id.* at 212-213.

Applying that ordinary, contemporary meaning of "use" to the LIA, a locomotive is in "use" whenever it is in the "employment" of a railroad carrier, *Astor*, 111 U.S. at 213; that is, whenever it has been "convert[ed]" to a railroad's "service" or "put" to the railroad's "purpose[s]," whether that is hauling cars on a line or standing in a yard being inspected or prepared for hauling, *Webster's* 481. Conversely, a locomotive is out of "use"

when the railroad has withdrawn the locomotive from the carrier's employment or service; that is, when the carrier has relocated the engine to a shop for repairs, placed it in a storage facility, or otherwise removed or retired the locomotive from its regular service cycle. And under that definition, this case is straightforward. The locomotive on which petitioner fell was in "use" because it was being employed in the service of the railroad when the accident occurred. It is irrelevant that, at the time of petitioner's fall, the locomotive was serving the railroad's purposes by undergoing preparations for the next movement in its journey, rather than by pulling a train.

Respondent contends that being in "use" requires something more than simply being in the employment or service of a railroad—namely, that the locomotive be actively hauling cars up and down a line or that it will be doing so imminently. Of course, the primary purpose of a locomotive is to haul cars, and—in common parlance—people sometimes say that something is in "use" to convey that it is currently being put to its *primary* purpose. For example, a person may say that she is "using" her car to mean that she is currently driving it. But while that is a potential meaning of "use," it is certainly not the only one. A taxi company might, for instance, say that it is "using" 100 cars, meaning that it has 100 cars in its active fleet, not that its employees are currently driving all 100 of them. Or a team might say that it is using five starting pitchers, even though only one is currently on the field.

The question then is whether—in the context of the LIA—in "use" should be broadly understood to mean in the railroad's employment or service, or whether it should be read narrowly to refer only to locomotives

that are currently hauling cars. This Court's precedents interpreting identical language in the SAA establish that the broader meaning applies, and the text, history, and purpose of the LIA all run counter to the narrower definition respondent endorses.

A. This Court's SAA Precedents Demonstrate That A Locomotive That Has Not Been Withdrawn From Service Is In Use Whether Or Not It Is Currently Hauling Cars

While this Court has never squarely considered the meaning of the term "use" in the LIA, it has broadly interpreted the identical term in the SAA to apply to rail vehicles that are in a carrier's employment or service, regardless of whether the vehicles are currently moving up and down the line. Because both the SAA and LIA address the safety of rail vehicles, and because Congress borrowed from the text of the SAA when it enacted the LIA, basic principles of statutory interpretation counsel that the term should be given the same meaning across the two statutes. And this Court's LIA and FELA precedents confirm that understanding.

1. This Court has repeatedly held that a rail vehicle is in "use" under the SAA when it is in a carrier's employment or service, regardless of whether the vehicle is stopped in a yard, undergoing preparations for its next movement, or serving some other purpose. The Court's most authoritative statement of this position came in *Brady* v. *Terminal R.R. Ass'n,* 303 U.S. 10 (1938). In that case, a railroad worker was injured by a defective grab iron while inspecting a railcar to determine whether his employer should accept the car from another carrier and permit it to continue to its next destination. *Id.* at 11-12. The worker sued for damages under FELA based on a violation of Section 2 of the

1910 SAA, which made it "unlawful" for a common carrier "to haul, or permit to be hauled or used on its line," any car not equipped with "secure hand holds or grab irons." Act of 1910, § 2, 36 Stat. 298. The Missouri Supreme Court held that the worker could not recover, reasoning that the railcar "had temporarily been withdrawn from use" for the inspection and therefore was not "'in use' 'on [the] line' within the true purpose and scope of the act." *Brady* v. *Terminal R.R. Ass'n*, 102 S.W.2d 903, 905 (Mo. 1937) (en banc), rev'd, 303 U.S. 10 (1938).

This Court reversed. The Court held that the railcar "had not been withdrawn from use" merely because it had been "brought into the yard" "and placed on a receiving track temporarily pending the continuance of transportation." *Brady*, 303 U.S. at 13. The Court observed that if the inspection did not find the car "defective, it would proceed to [its] destination," demonstrating that it "was still in use, though motionless." *Ibid.* And the Court specifically contrasted the case to one in which "a defective car has reached a place of repair." *Ibid.*

Brady is one of several cases in which this Court has recognized that a railcar is in "use" when it is in a carrier's employment or service, even if it is not moving up and down the line. For example, in *Johnson* v. *Southern Pacific Co.*, 196 U.S. 1 (1904), this Court affirmed the application of the 1893 SAA to an accident involving a dining car that was waiting in a railyard "to be picked up by" the westbound train on which it would make its next journey. *Id.* at 21. The court of appeals had concluded that "at the time of the accident the dining car was not 'used in moving interstate traffic'" within the meaning of the relevant provision of the 1893 SAA. *Id.*

at 14. But this Court explained that "[c]onfessedly this dining car was under the control of Congress while in the act of making its interstate journey, and in our judgment it was equally so when waiting for the train to be made up for the next trip." *Id.* at 22.

The Court has similarly affirmed the application of the SAA in cases involving railcars that were stopped on a line or involved in switching movements in a yard. See, *e.g.*, *Texas & Pac. Ry. Co.* v. *Rigsby*, 241 U.S. 33, 36-37, 42-43 (1916) (employee was within the protection of the SAA when he fell from a defective car that was halted on the mainline in the course of being taken from a spur track to the repair shop); *Delk* v. *St. Louis & S.F. R.R.*, 220 U.S. 580, 583-586 (1911) (defective train car "was being used in interstate traffic" under the SAA where it was involved in switching movements while waiting for a new part). And the Court has more generally rejected the assertion that "only appliances designed to insure safety while the train is in movement are within" the SAA's coverage, explaining that there is no basis for "deny[ing] the humane benefits of the Act to those who perform dangerous work on train cars that are not moving." *Shields* v. *Atlantic Coast Line R.R.*, 350 U.S. 318, 324-325 (1956).

2. Under the canon of "*in pari materia*," which counsels that particular words and phrases should be given "a consistent meaning" across statutes that "pertain to the same subject," the term "use" should be given the same meaning in both the SAA and LIA. *Erlenbaugh* v. *United States*, 409 U.S. 239, 243 (1972). Both statutes refer to vehicles "used on" a carrier's "railroad line[]," 49 U.S.C. 20302(a), 49 U.S.C. 20701; see p. 4, *supra*, and both statutes undoubtedly "pertain

to the same subject." *Erlenbaugh*, 409 U.S. at 243. Indeed, this Court has recognized that the SAA and the LIA share "basically the same" purpose of "protect[ing] * * * railroad employees * * * from injury due to industrial accident," *Urie* v. *Thompson*, 337 U.S. 163, 190-191 (1949), and that the "same principles apply in an action under the [LIA] as in one under the [SAA]," *Tipton* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 298 U.S. 141, 151 (1936).

It is particularly appropriate to interpret the identical term in the two statutes in the same way because Congress clearly borrowed the LIA's "use" language directly from the SAA. See p. 3, *supra*. This Court has explained that when text "is obviously transplanted from * * * other legislation, it brings the old soil with it." *Sekhar* v. *United States*, 570 U.S. 729, 733 (2013) (citation omitted). When Congress first borrowed the "use" language from the SAA in 1911, see p. 3, *supra*, this Court had already given that text a broad interpretation in *Johnson*. And when Congress again borrowed language from the SAA for the 1924 LIA amendments to broaden the LIA's coverage to include carriers that "permit" unsafe locomotives "to be used," see p. 3, *supra*, this Court had reiterated its broad understanding of "use" in cases like *Delk* and *Rigsby*. The "old soil" of those SAA decisions was therefore "transplanted" to the LIA. *Sekhar*, 570 U.S. at 733 (citation omitted).

3. This Court's LIA cases reinforce that understanding because they repeatedly emphasize the broad reach of the Act. For example, in 1925, this Court recognized that the LIA imposes a "duty" on a carrier "to have and keep [its] boiler in proper condition," language that suggests a general responsibility on the part of a carrier to "keep" its engines safe. *Baltimore & Ohio*

R.R. Co. v. *Groeger*, 266 U.S. 521, 529-530. Similarly, in a 1936 case, the Court explained that under "accepted doctrine," "the Act imposes upon the carrier an absolute and continuing duty to maintain the locomotive, and all parts and appurtenances thereof, in proper condition, and safe to operate in active service without unnecessary peril to life or limb." *Southern Ry. Co.* v. *Lunsford*, 297 U.S. 398, 401. And the Court has more recently reiterated that, in enacting the LIA, Congress "manifest[ed] the intention to occupy the entire field of regulating locomotive equipment." *Kurns* v. *Railroad Friction Prods. Corp.*, 565 U.S. 625, 634 (2012) (quoting *Napier* v. *Atlantic Coast Line R.R.*, 272 U.S. 605, 611(1926)) (brackets in original).

Further, in at least one case, this Court has explicitly affirmed the application of the LIA where the locomotive was not hauling cars on a track, but was instead being prepared for its next journey. *Lilly* v. *Grand Trunk W. R.R.*, 317 U.S. 481 (1943). In *Lilly*, a railroad employee fell on some ice on "the top of the locomotive tender"—the vehicle that carries the locomotive's supply of fuel and water—while the employee "was pulling a water spout, which was at the side of the track, over the tender's manhole" so that he could fill the tender for its next movement. *Id.* at 483. This Court held that "the jury had a right to find a violation of the [LIA] by reason of the presence of ice on the top of the tender," *id.* at 489, and the Court cited approvingly to LIA regulations aimed at ensuring that the surfaces on which employees must stand are "kept free of foreign matter which would render footing insecure," *id.* at 487. Although *Lilly* did not expressly consider the significance of the term "use" in the LIA, it cited *Brady* in discussing the broad

scope of the LIA's coverage, *id.* at 485, and it emphasized that the LIA, "like the [SAA], is to be liberally construed in the light of its prime purpose, the protection of employees and others by requiring the use of safe equipment," *id.* at 486.

4. Additional support comes from this Court's precedents interpreting an earlier version of FELA, the statute that supplies petitioner's cause of action in this case. See p. 5, *supra.* As initially enacted, FELA applied only where both the carrier and the employee were engaged in interstate commerce. See Act of Apr. 22, 1908, ch. 149, 35 Stat. 65. In a pair of cases, this Court held that an employee injured while working on a locomotive could satisfy the interstate-commerce requirement only if "the locomotive in question was, at the time of the accident, in *use* in interstate transportation." *New York, New Haven & Hartford R.R.* v. *Bezue*, 284 U.S. 415, 420 (1932) (emphasis added); see *New York Cent. R.R.* v. *Marcone*, 281 U.S. 345, 350 (1930). Taken together, the two cases reinforce that the interpretation of "use" articulated in the Court's SAA cases should also apply to locomotives under the LIA.

First, in *Marcone*, this Court held that FELA applied in a case in which an employee was killed immediately after oiling a locomotive that was "standing on [a t]rack" in the roundhouse. 281 U.S. at 347. The Court explained that the engine was "used in hauling interstate trains" and had not been "withdrawn from service." *Id.* at 350. Then, in *Bezue*, the Court held that FELA did not apply where an employee was injured while removing the wheels of a locomotive that had been in the repair shop for over a month. 284 U.S. at 418. The Court explained that, unlike the locomotive in *Marcone*, the engine in *Bezue* was not "in use in interstate

commerce," given the length of time it had spent in the shop and the extent of the repair work. *Id.* at 420. That distinction closely tracks the one drawn in *Brady*, where this Court held that a stationary car undergoing an inspection was in use, even though "a defective car" that had reached "a place of repair" would not be. 303 U.S. at 13. *Bezue* and *Marcone* therefore suggest that the interpretation of "use" in the SAA cases applies fully to locomotives.

B. The Text, History, And Purpose Of The LIA Confirm That A Locomotive Is In Use Until It Is Withdrawn For Repairs Or Otherwise Put In Reserve From Service

The text, history, and purpose of the LIA confirm that "use" should be given its broad meaning, covering locomotives when they are in a carrier's employment, and excluding them only when they have been withdrawn from service for repair, reserve, or permanent retirement.

1. When Congress initially enacted the LIA in 1911, it treated in "use" and in "service" as synonyms, employing the terms interchangeably in mandating the treatment of locomotives that were deemed defective. Act of 1911, § 6, 36 Stat. 915. Specifically, the Act provided that a locomotive that an inspector had found unsafe "shall not be *used* until in serviceable condition," and then further provided that if a carrier successfully appealed the inspector's finding, "such boiler may be put *into service* without further delay." § 6, 36 Stat. 915-916 (emphasis added). That provision suggests that a locomotive should be viewed as in "use" so long as it has not been affirmatively taken out of service.

In a 1922 report to the Senate, the ICC confirmed its understanding that a boiler is in "use" whenever it is in the carrier's service, contrasting locomotives in "use"

with those that have been withdrawn from their service cycle because they are undergoing repairs or otherwise being held in reserve or surplus. ICC, *Inspection of Locomotive Boilers: Report of the Commission to the Senate of the United States in Response to Senate Resolution No. 327, August 3 (Calendar Day August 7), 1922*, 73 I.C.C. 761, 763 (Aug. 29, 1922) (*1922 ICC Report*). The ICC report first explained that it was difficult to provide the precise number of locomotives that were currently in violation of the LIA because "it is the 'use' of a locomotive not found to be in proper condition and safe to operate, and not the condition itself, which is a violation of the law." *Id.* at 763. The ICC went on to explain that "[t]he withdrawal of locomotives for repairs, the restoration of locomotives to service, and the use of reserved or surplus locomotives are factors contributing uncertainty when considering the condition of locomotives in service to which the act applies," strongly suggesting that the ICC viewed in "use" as a synonym of "in service" and an antonym of in "repair[]" or "reserve[]." *Ibid.*

Two years after receiving this ICC report, Congress made two amendments to the LIA that further reinforced that a locomotive is in use so long as it has not been affirmatively withdrawn from service for "repair[]," "reserve[]," or retirement. *1922 ICC Report* 763. First, the 1924 Act deleted the qualification providing that a locomotive had to be used "in moving interstate or foreign traffic," Act of 1911, § 2, 36 Stat. 914. By the time of this change, *Johnson* had already made clear that the 1893 SAA's reference to cars "used in moving interstate traffic" did not restrict the Act only to moving vehicles, 196 U.S. at 14; see *id.* at 21-22, and by deleting the "moving" language altogether from the

LIA (and the SAA, see Act of 1910, § 2, 36 Stat. 298), Congress confirmed that the statute broadly applies to any vehicle that is in service, not merely one that is "moving" up and down the line.

Second, Congress expanded the LIA by making it unlawful for a carrier "to use *or permit to be used*" any unsafe locomotive, Act of 1924, § 2, 43 Stat. 659 (emphasis added), a change that is reflected in the current LIA's requirement that a carrier "use *or allow to be used*" only those locomotives that are safe, 49 U.S.C. 20701 (emphasis added). At the time of the 1924 amendment, the ICC viewed the change as bringing "within the purview of the law many steam locomotives operated by industrial concerns and lumber companies," which had not previously been covered by the Act because such locomotives were not "use[d]" by the carriers themselves. ICC, *Fourteenth Annual Report of the Chief Inspector Bureau of Locomotive Inspection* 9 (1925).

The expanded language also means, however, that even if respondent were correct that "use" must be given a narrow construction, that would not restrain the scope of the Act. If in "use" means hauling cars, then a carrier "allow[s]" a locomotive "to be used" when it "allow[s]" the locomotive to start hauling cars—something a carrier obviously does when it puts a locomotive into service, 49 U.S.C. 20701. Therefore, a locomotive that has been put into service is within the coverage of the Act so long as the carrier has not done anything to indicate that the locomotive is no longer "allow[ed]" to haul cars; that is, so long as the locomotive has not been withdrawn from the carrier's service or employment.

2. The LIA's purpose lends further support to this understanding of the scope of the Act. Congress highlighted the statute's purpose in its original title: "An Act To promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto." Act of 1911, 36 Stat. 913. Because the Act was designed to ensure that locomotives are "equip[ped]" with safe parts, *ibid.*, it is best read to mandate that carriers maintain their locomotives in proper condition throughout the service cycle, not merely at the particular times when the locomotives are actively hauling trains.

Moreover, limiting the application of the Act only to locomotives actively hauling cars would weaken the Act's stated aim "[t]o promote the safety of employees and travelers upon railroads" because many boiler accidents occur when the locomotive is stationary on a track rather than pulling cars up and down a line. Act of 1911, 36 Stat. 913. For example, in 1946, the ICC's annual report on locomotive accidents described a number of incidents in which boilers had exploded after overheating due to low water levels. See ICC, *Thirty-fifth Annual Report of the Director Bureau of Locomotive Inspection* 9-12 (1946). Several of the accidents involved moving locomotives, but three explosions occurred while the locomotives were stationary, and two of those explosions killed the employees tasked as the "engine watchmen." *Id.* at 10. The report therefore emphasized "the necessity of constant vigilance on the part of all whose duties in any way concern the safety of locomotives, *whether moving or standing*, to maintain the water level at a known height" that will prevent overheating. *Id.* at 11 (emphasis added).

Nor was 1946 anomalous. The 1956 ICC annual report described two boiler explosions—and neither occurred while the locomotive was hauling cars up and down a line. See ICC, *Forty-fifth Annual Report of the Director of Locomotive Inspection* 6 (1956). One of the accidents involved a "switching locomotive" that had been "ordered for yard service" and was being readied for that service when the explosion occurred. *Ibid.* The other explosion happened on a "locomotive in freight-train service" that "was stationary at the time of the explosion." *Ibid.*; see *id.* at 33 (including a picture of the boiler part that failed, and explaining that the part was on a locomotive "attached to a freight train which was stationary").

Further, in the decades before the enactment of the LIA, this Court considered at least three cases addressing locomotive boilers that exploded while the engine was stopped or being prepared for another run. See *Texas & Pac. Ry. Co.* v. *Barrett*, 166 U.S. 617, 618 (1897) (rail employee injured by explosion of an engine that had been "placed * * * on a track in the yard, with steam up"); *Richmond & Danville R.R.* v. *Elliott*, 149 U.S. 266, 267 (1893) (switch engine exploded in a railyard, causing injury that required amputation of rail employee's leg); *Northern Pac. R.R.* v. *Herbert*, 116 U.S. 642, 650 (1886) (discussing *Ford* v. *Fitchburg R.R.*, 110 Mass. 240, 243 (1872), a case involving an engine that exploded just as it was about to start). And, as petitioner explains, even today a large number of railroad accidents continue to involve stopped locomotives, rather than locomotives that are moving. See Pet. Br. 40-41. Accordingly, if the LIA applied only to locomotives in the process of hauling cars, it would be greatly hin-

dered in its stated aim to "promote the safety of employees and travelers upon railroads." Act of 1911, 36 Stat. 913.

II. THE ARGUMENTS TO THE CONTRARY LACK MERIT

Because a locomotive is in "use" under the LIA so long as it is in the employment or service of a railroad, the court of appeals should have held that the locomotive in this case was within the scope of the LIA. Instead, the court ruled that the locomotive was *not* in "use" because it "was stationary, on a sidetrack, and part of a train needing to be assembled before its use in interstate commerce." Pet. App. 4. But none of those factors suggests that respondent had withdrawn the locomotive from its employment or service. And the court of appeals' reasoning is particularly flawed because, in *Brady* and *Johnson*, this Court recognized that a rail vehicle is still in "use" under the SAA even when it is stationary on a sidetrack or waiting to be joined to the train on which it will make its next trip. See pp. 13-15, *supra*. Neither the court of appeals nor respondent has offered any compelling reason for this Court to hold otherwise here.

A. Despite citing *Brady* for the general proposition that the LIA's applicability turns on whether a locomotive is in use, Pet. App. 3, the court of appeals did not attempt to reconcile its conclusion that the locomotive on which petitioner fell was out of use with *Brady*'s holding that a similarly situated railcar was "in use," 303 U.S. at 13. Instead, the court relied almost entirely on its own statement in a prior case that "to service an engine while it is out of use, to put it in readiness for use, is the antithesis of using it." Pet. App. 4 (quoting *Lyle* v. *Atchison, T. & S. F. Ry. Co.*, 177 F.2d 221, 222 (7th Cir. 1949), cert. denied, 339 U.S. 913 (1950)). While

it is of course true that a locomotive is not in "use" if it is being readied for "use," that principle would foreclose petitioner's claim only if in "use" is synonymous with in "motion," a proposition that has been repeatedly rejected by this Court's SAA precedents. See pp. 14-15, *supra*. As explained, "use" is most naturally understood to mean employment or service, and nothing in the record suggests that the locomotive in this case had been withdrawn from respondent's employment or service. To the contrary, respondent had just ordered petitioner to ready the locomotive for the next movement in its journey.[2]

The court of appeals also suggested that finding that the locomotive in this case was in use would lead to an "unduly narrow" understanding of when a locomotive is out of use. Pet. App. 4. But the court did not offer a definition of "use" that would support its view; indeed, it did not define "use" at all. See *ibid.* And the court's apparent desire to construe the LIA to limit its scope is in tension with this Court's instruction that the LIA should "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); see *Urie*, 337 U.S. at 191 (explaining that the LIA and SAA are broadly intended to

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[2] Nor is it significant that the locomotive was about to be turned off because its power supply was not needed for the next movement. See p. 6, *supra*. A carrier does not withdraw a locomotive from its employment merely by turning it off. To return to an earlier example, a cab company may be using 100 cabs, see p. 12, *supra*, even if some are currently parked. And in any event, petitioner alleges that the locomotive in this case was still on and idling when his accident occurred. See p. 6, *supra*.

"protect[] * * * railroad employees * * * from injury due to industrial accident").

Moreover, to the extent the court of appeals was concerned that siding with petitioner would deprive the Act of *any* limits, that concern is misplaced. Properly defining "use" to mean service or employment still excludes any locomotive that has been withdrawn from the service cycle for repair, storage, or retirement. And that understanding dovetails neatly with the Act's additional requirement that the locomotive be in "use" "*on*" a carrier's "*railroad line*," 49 U.S.C. 20701 (emphasis added), language that reinforces that a locomotive is not within the LIA's coverage where it is in a repair shop, storage facility, or other off-line location.

There is also no need to fear that interpreting the term "use" to mean employment or service will lead to draconian consequences for railroads. The LIA's implementing regulations already mandate daily inspections to ensure that locomotives remain in safe condition while "in use." 49 C.F.R. 229.21(a). If a railroad discovers a violation of the LIA and its implementing regulations during one of those inspections, it can (and in fact, must) immediately remedy the defect or withdraw the locomotive from use, thereby protecting itself against FELA liability.

B. Respondent's attempts to defend the result reached by the court of appeals are equally unavailing. For example, respondent errs in echoing the lower courts' conclusion that the locomotive on which petitioner fell was not in use because "the engineers had not yet assembled the cars on the train for its next use in interstate commerce." Br. in Opp. 15 (quoting Pet. App. 15). This Court's precedents make clear that a railcar

is in use even if it is "waiting for the train to be made up for the next trip." *Johnson*, 196 U.S. at 22.

In suggesting otherwise, respondent apparently repeats the error made by the Fourth Circuit in *Phillips* v. *CSX Transportation, Inc.*, 190 F.3d 285 (1999) (per curiam), cert. denied, 529 U.S. 1004 (2000), a case in which the court of appeals concluded that a railcar "becomes 'in use'" under the SAA (and therefore the LIA, see *id.* at 288 n.2) only when "switching operations end," *id.* at 289. The *Phillips* court based its erroneous conclusion on a separate line of this Court's precedents concerning what constitutes a "train" under certain SAA provisions governing power brakes. *Ibid.* In those cases, this Court has explained that "a *train* in the sense intended" by the power-brake provisions "consists of an engine and cars which have been assembled and coupled together for a run or trip along the road," and does not include cars involved in "the various [switching] movements in railroad yards whereby cars are assembled and coupled into outgoing trains." *United States* v. *Erie R.R.*, 237 U.S. 402, 407-408 (1915) (emphasis added); see *United States* v. *Seaboard Air Line R.R.*, 361 U.S. 78 (1959). But the meaning of the term "train" in the power-brake provisions has no bearing on when a car or locomotive is in "use." Indeed, *Erie R.R.* itself recognized that, while switching movements do not involve "train[s]" under the SAA's power-brake provisions, they do involve "a hauling or *using* of cars" within the meaning of the Act as a whole. 237 U.S. at 408 (emphasis added).[3]

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[3] In order to implement this Court's determination that the power-brake provisions apply only to "an engine and cars which have been assembled and coupled together for a run or trip along

Respondent is also unsuccessful in its attempts to distinguish this Court's relevant SAA precedents. Respondent suggests (Br. in Opp. 18) that the railcars in *Brady* and *Johnson* were still "actively *in use*" while the locomotive in this case "was being *readied for use*." But the railcar in *Brady* was plainly not yet "read[y] for" its next journey, *ibid.*, as it was in the process of being inspected to determine whether it was defective, *Brady*, 303 U.S. at 13. And in *Johnson*, while the Court assumed that the dining car was loaded and therefore ready for its next trip, the Court emphasized that even if the car was "empty"—and thus not yet prepared to serve customers—it would still be within the reach of the SAA. 196 U.S. at 21-22.

Respondent alternatively suggests (Br. in Opp. 19) that the SAA precedents do not apply because "rail cars and locomotives perform very different functions," such that a railcar can still be in use while motionless and

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the road," *Erie R.R.*, 237 U.S. at 407, an FRA regulation provides that "[f]or purposes of [the brake system regulations], a train, railroad car, or locomotive will be considered in use prior to departure but after it has received, or should have received, the inspection required for movement and is deemed ready for service." 49 C.F.R. 232.9(a). Because that regulation's application is expressly limited to the power-brake regulations, it does not address how "use" should generally be understood. *Ibid.* By contrast, the regulations regarding locomotive safety demonstrate the FRA's understanding that a locomotive is in use and covered by the LIA whenever it is in employment or service on a line, regardless of whether it is fully assembled or otherwise ready to pull cars. See, *e.g.*, 49 C.F.R. 229.21(a) ("each locomotive *in use* shall be inspected at least once during each calendar day") (emphasis added); 49 C.F.R. 229.9(c) (addressing when a locomotive may be moved "lite"—*i.e.*, without cars attached—or "dead"—*i.e.*, with its engine off—"within a yard"); 49 C.F.R. 229.101(b) (requiring a "distinctive warning notice" when an engine has been shut down due to a defect).

disconnected, but a locomotive cannot. Although respondent is obviously correct that locomotives and railcars serve different functions—locomotives generally pull trains, while the car in *Brady* transported freight and the car in *Johnson* provided refreshments to passengers—none of those functions is being served when a locomotive or car is motionless or uncoupled from a train. This Court's SAA precedents therefore make clear that whether a locomotive or car is currently serving its primary function does not define whether it is in "use." Cf. *Smith* v. *United States*, 508 U.S. 223, 230-231 (1993) (recognizing that a person "uses" a firearm even when the firearm is not serving its "intended purpose").

Finally, respondent briefly suggests (Br. in Opp. 19) that the SAA precedents are not relevant because that statute "expressly" "addresses the question" of when a railcar has been "taken out of service" through a provision that is absent from the LIA. But the provision respondent cites merely specifies that the SAA's administrative penalties do not apply in certain circumstances where a defective car is being moved "to the nearest available place at which the repairs can be made." 49 U.S.C. 20303(a). That provision does not define when a railcar has been withdrawn from use such that it is outside the Act's coverage; to the contrary, the provision explicitly states that, while it exempts a carrier from administrative fines, it "does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from [the relevant] movement." 49 U.S.C. 20303(c); see *Rigsby*, 241 U.S. at 42-43.

Indeed, the cited provision reinforces the broad understanding of the term "use," because its inclusion in

the statute suggests that—without the express exception—a railroad carrier would be subject to administrative penalties for violating the SAA any time it "move[d]" a non-compliant vehicle in order "to make repairs." 49 U.S.C. 20303(a) and (c). Because a railroad carrier violates the SAA only when it "use[s] or allow[s]" a non-compliant vehicle "to be used," 49 U.S.C. 20302(a), the logical implication is that a vehicle may be in "use" even when it is merely being taken to a repair shop.[4]

[4] While the LIA does not contain a parallel provision exempting carriers from administrative penalties for the movement of defective locomotives to a place of repair, the FRA has promulgated a regulation governing the safe "[m]ovement of non-complying locomotives" that specifies how carriers may move a defective locomotive without being subject to a civil penalty. 49 C.F.R. 229.9 (emphasis omitted). The regulations also provide that "[a] movement made in accordance with § 229.9 is not a use" only for the limited "purposes of determining" eligibility for "out-of-use credit," a form of administrative credit that allows a carrier to delay certain periodic inspections when a locomotive has been withdrawn from use for at least one 30-day block during the inspection cycle. 49 C.F.R. 229.33.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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FEBRUARY 2022