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 OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

KATHRYN D. KIRMAYER
DANIEL SAPHIRE
Counsel of Record
JOSEPH G. ST. PETER
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
(202) 639-2505
dsaphire@aar.org

Counsel for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

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

This case raises such an issue because it involves the application of an important railroad safety statute. The Locomotive Inspection Act (LIA) establishes standards that locomotives must meet before they may be used. If those standards are violated, railroads are subject to fines. In addition, if an employee injury arises out of a violation of the LIA the railroad may be liable in damages even if the employee cannot show that the railroad was negligent, a requirement that otherwise is a condition to recovery of damages for workplace injuries in the railroad industry.

The LIA applies only to locomotives that are "in use." Petitioner and the United States urge this Court to adopt an unwarranted, expansive interpretation of

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[1] Both parties have consented to AAR's filing of an *amicus* brief. Pursuant to Rule 37.6, AAR states that no person or entity other than AAR has made monetary contributions toward this brief, and no counsel for any party authored this brief in whole or in part.

the LIA's "in use" requirement, untethered to the statute's purpose and structure and which would result in locomotives continually being in violation of the LIA's requirements. Petitioner's position ignores the need for railroads to have an opportunity to inspect and otherwise prepare locomotives so they will be in compliance with the statute when they are put into service. AAR has a strong interest in having the LIA applied consistent with its purpose and in a way that does not disrupt railroads' operations.

SUMMARY OF THE ARGUMENT

At the end of the nineteenth century, in response to the hazards of railroad work, Congress enacted several statutes addressing railroad working conditions, notably including the Safety Appliance Act (SAA) and the LIA. These statutes impose requirements on the condition of rail cars and locomotives when they are in use. Congress also enacted the Federal Employers' Liability Act (FELA) which provides a fault-based compensation scheme for railroad workers who are hurt on the job. To recover under FELA, an injured employee must show that the railroad's negligence caused the injury. However, when the injury is caused by a violation of a safety statute, the employee can bring a claim under FELA without alleging and proving railroad negligence.

Petitioner's LIA claim was dismissed by the District Court which concluded that at the time petitioner slipped and was injured on a locomotive walkway, the locomotive was not "in use." Contrary to the position of petitioner and the United States that locomotives are in use whenever they are not being repaired or in storage, the District Court's holding that a locomotive is not in use when it is in the process of being prepared

to be put into service is consistent with the LIA's language, structure, and purpose.

Locomotives are used to haul and switch rail cars and typically will be removed from service temporarily after they have completed a task. As large machines composed of moving parts that operate in an outdoor environment for thirty years or more, locomotives will eventually and inevitably develop conditions that will put them out of compliance with the LIA. Therefore, the LIA and its implementing regulations require frequent monitoring of a locomotive's condition through a prescribed regime of inspections and testing, the purpose of which is to determine when maintenance, servicing, and repairs are needed. The LIA is structured to provide railroads with the opportunity to take steps to assure that their locomotives are in a safe operating condition, in compliance with all the statutory requirements, *before* they are put back into service. Extending LIA's *per se* negligence rule to cover a locomotive being *prepared* for use defeats the purpose of the statute.

It is important to note that railroads are always obligated to use reasonable care—the normal standard of conduct under FELA—with respect to the condition of their locomotives even when they are not "in use." Railroads face the prospect of tort damages if they do not exercise reasonable care. And railroads are always obligated to comply with LIA and SAA requirements, can be fined for violations, and face *per se* negligence claims if employee injuries result from violations of either statute. This case is not about closing a gap in the protection of railroad workers. It is about limiting LIA's *per se* rule to the harm it was intended to cover: the use of locomotives that do not comply with the statute.

ARGUMENT

I. CONGRESS HAS REGULATED RAILROAD SAFETY FOR WELL OVER A CENTURY.

A. Federal Law Directly Regulates the Condition of Railroad Rolling Stock.

This case presents the question of when a locomotive is in "use" for the purposes of the LIA, one of several important railroad safety laws Congress enacted over a century ago. By the end of the nineteenth century railroads were the dominant industry in the United States outside of agriculture, transporting people and freight throughout the nation and employing nearly two million workers. Not surprisingly, railroads were one of the first objects of Congress' efforts to exert its constitutional authority over interstate commerce. At the time, railroad work was hazardous and the casualty rate among workers was high, *see Johnson v. Southern Pac. Co.*, 196 U.S. 1, 19-20 (1904) (describing the hazards of certain aspects of railroad work), so much of Congress' effort was directed at improving railroad safety.

Congress addressed railroad safety through a combination of regulating specific aspects of the railroad workplace and providing a means for compensating railroad workers who were injured on the job. A great deal of the work performed by railroad employees takes place on or around railroad rolling stock—primarily cars and locomotives. Therefore, the early railroad safety legislation established conditions that had to be met before rolling stock could be used.[2] The

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[2] Another early railroad safety law regulated the amount of time an employee could remain on duty without taking a rest break. Hours of Service Act. Act of Mar. 4, 1907, ch. 2939, 34 Stat. 1415 (now codified at 49 U.S.C. §§ 21101-21109). Congress

first such law, enacted in 1893, was the SAA, Act of Mar. 2, 1893, ch. 196, 27 Stat. 531, which established safety standards for railroad vehicles, with the initial focus on couplers. *See Norfolk & W. Ry. Co. v. Hiles*, 516 U.S. 400, 403-406 (1996) (discussing the railroad industry's movement to the use of automatic couplers and the ensuing safety improvements). The SAA defines a "vehicle," to include a car, locomotive, and tender. 49 U.S.C. § 20301(a). The SAA was soon expanded to impose a number of requirements related to other specific components of railroad vehicles, such as couplers, brakes, ladders, and grab irons. 49 U.S.C. § 20302; *see* 49 C.F.R. Part 231.

Even though the SAA covers locomotives, two decades later Congress enacted the original version of the LIA, then known as the Boiler Inspection Act, Act. of Feb. 17, 1911, ch. 103, 36 Stat. 913. The LIA is directed exclusively at locomotive safety. The first subject of the LIA was boilers, an integral component of steam-era locomotives, that had the potential for creating safety hazards. *See* H.R. Rep. No. 61-1974 (1911). The LIA's scope was extended shortly thereafter to cover the entire locomotive. Act of Mar. 4, 1915, ch. 169, 38 Stat. 1192; Act of June 7, 1924, ch. 355, 43 Stat. 659; *Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605, 608 (1926). The LIA regulates only locomotives, but does so more broadly than the SAA, setting forth three basic conditions that locomotives used by railroads must meet: (1) that they be in proper condition and safe to operate; (2) that they have been inspected as required by the Act; and (3) that they can pass all tests prescribed by the Secretary of

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also addressed the economic aspects of the railroad industry with enactment of the Interstate Commerce Act of 1887, ch.104, 24 Stat. 379 (1887).

Transportation. 49 U.S.C. § 20701; *see* 49 C.F.R. Part 229. "Unless [the ICC's] rules and regulations are complied with, the engine is not 'in proper condition' for operation." *Napier*, 272 U.S. at 612.

Congress has amended the various railroad safety laws over the years, in part to streamline their language and expand their scope, *see* Resp. Br. 6-8, 19-20, and in part to keep pace with changes in railroad technology. *E.g.*, 49 U.S.C. § 20141 (addressing power brakes); 49 U.S.C. § 20157 (addressing positive train control systems). Congress sets the policy, which is implemented by the agency of jurisdiction through detailed regulatory prescription. At first, the Interstate Commerce Commission assumed that role, *United States v. Baltimore & Ohio R.R.*, 293 U.S. 454, 461 (1935); in 1966 that function was transferred to the Department of Transportation, acting through the Federal Railroad Administration (FRA). 49 C.F.R. § 1.89. In 1970, Congress granted the Secretary of Transportation authority to regulate "every area of railroad safety," supplementing authority granted under existing statutes. 49 U.S.C. § 20103.

B. Congress Provided a Tort Remedy to Railroad Workers Injured on the Job.

In addition to regulating railroad rolling stock, in 1908 Congress directly protected railroad employees by enacting the FELA. 45 U.S.C. §§ 51–60. FELA predated the state and federal workers' compensation systems that now cover virtually all U.S. workers and was enacted at a time when state common law remedies for workplace injuries typically were unfavorable to injured workers. *Nordgren v. Burlington N. R.R.*, 101 F.3d 1246, 1248 (8th Cir. 1996) ("Around the turn of the [twentieth] century, there was great concern that railroad employees who were injured in

the course of their employment had no adequate remedy for their injuries."). For example, when the negligence of a "fellow servant"—which typically was not attributable to the employer—caused the injury, the employer was absolved of liability. *Ryan v. Cumberland Valley R.R.*, 23 Pa. 384, 386 (Pa. 1854). Moreover, employees were deemed to have assumed the risk when they took a hazardous job and "could not call upon the defendant to make alterations to secure greater safety." *Gibson v. Erie Ry. Co.*, 63 N.Y. 449, 452 (N.Y. App. 1875). Further restricting recovery, in the majority of states any contributory negligence by the plaintiff barred recovery even if the defendant also was at fault. *See Louisville, Nashville & Great S. R.R. v. Fleming*, 82 Tenn. 128, 135 (Tenn. 1884).

FELA addressed this situation by "supplant[ing] the numerous State statutes on the subject" and "creat[ing] uniformity throughout the Union." H.R. Rep. No. 60-1386, at 3 (1908). From the standpoint of railroad employees, FELA was a significant improvement over the prevailing common law. The fellow servant and assumption of the risk doctrines were eliminated. 45 U.S.C. §§ 51, 54; *Chesapeake & Ohio Ry. Co. v. De Atley*, 241 U.S. 310, 313 (1916); S. Rep. No. 60-460, at 2 (1908) (FELA set aside the "rule of law which presumes that a workman have notice [sic] of and assume the risks incident to all dangers of his employment and defects in the machinery.").

FELA also altered the law of contributory negligence. Rather than barring any recovery if the employee's negligence contributed to the injury, FELA established a comparative negligence scheme under which damages are to be reduced only in proportion to the employee's negligence. 45 U.S.C. § 53; H.R. Rep. No. 60-1386, at 1 (under FELA, "a recovery [is not]

barred even though the injured one contributed by his own negligence to the injury"). When Congress enacted FELA, it concluded that a system that based compensation on comparative fault created the proper incentives for a safe workplace. The House of Representatives explained that fairness required "that each party shall suffer the consequences of his own carelessness" and that "[b]y the responsibility imposed, both parties will be induced to the exercise of greater diligence, and as a result the public will travel and property will be transported in greater safety." *Id.* at 5-6.

Liability under FELA is based on employer fault, with ordinary negligence serving as the standard of care. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 703 (2011). In order to recover damages under FELA, the plaintiff must prove all elements of a negligence case. *Fulk v. Ill. Cent. R.R.*, 22 F.3d 120, 124 (7th Cir. 1994). Thus, in contrast to workers' compensation laws, injured railroad employees are not guaranteed compensation simply because their injury is work-related. *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 543 (1994) ("FELA does not make the employer the insurer of the safety of his employees while they are on duty." (internal quotation marks omitted)); *O'Hara v. Long Island R.R.*, 665 F.2d 8, 9 (2nd Cir. 1981) ("FELA is not an insurance program. Claimants must at least offer some evidence that would support a finding of negligence."). On the other hand, FELA awards, which may be made for economic and noneconomic losses, are not subject to the caps and limits that are features of workers' compensation laws. Juries typically are given wide discretion to make determinations of fact, including questions about the extent of damages suffered, and awards will be deemed excessive only if they "shock [the] judicial conscience."

Schneider v. Nat'l R.R. Passenger Corp., 987 F.2d 132, 137 (2d. Cir 1993).

Although primarily meant to protect railroad employees, the safety statutes do not provide an independent cause of action. *Crane v. Cedar Rapids & Iowa City Ry. Co.*, 395 U.S. 164, 166 (1969). However, a cause of action based on a violation of a safety statute may be brought under FELA. *Id*. In such cases, Congress altered the comparative negligence rule by eliminating the consequence of an employee's negligence, 45 U.S.C. § 53, and also eliminated the assumption of risk defense. 45 U.S.C. § 54; *Baltimore & Ohio R.R. v. Groeger*, 266 U.S. 521, 528 (1925).[3] In addition, based on the structure of FELA and the safety statutes, rather than their specific language, this Court has held that a violation of the LIA (and SAA) is tantamount to a showing of railroad negligence, *i.e.*, negligence *per se*, relieving the plaintiff of the requirement of showing a lack of due care on the railroad's part. *Urie v. Thompson*, 337 U.S. 163, 188 (1949) (the conclusion that a violation of a safety statute constitutes negligence "stems, not from any express statutory language, but by implication from §§ 3 and 4 of the" FELA).

Thus, Congress has chosen to promote railroad safety in two ways. FELA provides a means for railroad workers to obtain compensation if they are injured while engaged in any work-related activities, provided they can show their employer's negligence caused the injury in whole or in part. 45 U.S.C. § 51.

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[3] FELA was later amended to eliminate the assumption of risk defense in all cases. Act of Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404. Under FELA, violation of a railroad safety regulation issued by the Secretary of Transportation has the same effect as a violation of a safety statute. 45 U.S.C. § 54a.

This is intended to incentivize railroads to use care in conducting their operations. The safety statutes (LIA and SAA) protect railroad workers during a subset of work-related activities: when the injury is caused by use of a car or locomotive that is not in compliance with a requirement of the statute. In those cases, the worker must show the injury was caused by the safety statute violation but need not show negligent conduct by the railroad. In addition, railroads are subject to fines for failing to comply with the safety statutes and their implementing regulations.

II. THE COURT BELOW CORRECTLY RULED THAT A LOCOMOTIVE IS NOT IN USE WHEN IT IS BEING PREPARED TO BE PUT INTO ACTIVE SERVICE AS A LOCOMOTIVE.

Looking to Seventh Circuit precedent, *Lyle v. Atchison, Topeka & Santa Fe Ry. Co.*, 177 F.2d 221 (7th Cir. 1949), *cert. denied*, 339 U.S. 913 (1950), the District Court below held that the locomotive on which petitioner LeDure was injured was not in use because "[t]here was still a considerable amount of work to be done before this locomotive was ready for its next trip," including inspection and assembly of the cars that would constitute the train in which the locomotive was to be used. Pet. App. 15. The Seventh Circuit affirmed, finding the District Court properly followed Circuit precedent. Pet. App. 4.

Petitioner and the United States argue that the word "use" in the LIA should be broadly defined to include all locomotives not being repaired or in storage.[4] They rely primarily on turn-of-the-

[4] While petitioner protests that he is not advocating such a broad definition of use, Pet. Br. 32, that is the logical conclusion

[twentieth] century dictionaries, opinions of this Court interpreting the SAA (not at issue here), and two other statutes that have nothing whatsoever to do with railroad operations, let alone locomotives. Under this view, locomotives would virtually always be "in use," and would frequently and inevitably be in violation of the LIA throughout their lifetime.

Petitioner and the United States make their argument by defining "use" in the abstract. But "use" is a word that is employed in myriad contexts, and to rely on general dictionary definitions and unrelated statutes, ignores the critical manner and context in which the word is actually used in this instance. This is underscored by the reliance of both petitioner and the United States on *Astor v. Merritt*, 111 U.S. 202 (1884), a case dealing with the application of customs duties to articles of clothing brought to the United States from overseas by ship. Pet. Br. 21; U.S. Br. 11. The meaning of the word "use" in the context of the application of duties on clothes, says next to nothing about when a locomotive is in use in the context of the LIA. The word "use" in the LIA must be interpreted in light of the manner in which locomotives typically are operated.

Locomotives are, and have always been, essential to the core function of railroads, which is the movement of freight and passengers in rail cars between two points along a right-of-way consisting of a roadbed and

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of his argument, which asserts that "this Court's precedents *require* a narrow understanding … that vehicles are not in use only when they have *reached* … the 'place of repair.'" (emphasis in the original) Pet. Br. 32. In any case, the United States unequivocally and repeatedly argues that a locomotive is not in use only when it is being repaired, in storage, or retired. U.S. Br. 12, 19, 26; *see also* Pet. Am. Br. 3, 13.

tracks. Locomotives supply the power to move other railroad equipment, primarily rail cars. *See* 49 C.F.R. § 229.5 (defining a locomotive). In the early days of railroading, power was supplied by steam, but since the middle of the twentieth century power has been supplied primarily by diesel engines, sometimes supplemented with electrical power. Because rail cars do not have their own power supply, locomotives also are used to switch cars from one train to another and to remove cars from a train after it has reached its destination or at an intermediate point between its origin and destination. The seven largest freight railroads employ about 23,500 locomotives in service. Association of Amer. R.R., *Railroad Facts* 50 (2021 ed.).

Locomotives are large heavy machines with many moving parts, in need of fuel and other fluids to keep them running. They operate outdoors where they are subject to the elements and a wide range of temperatures and environmental conditions. Inevitably, locomotives will be subject to accumulation of oil, grease, water, and dirt. And like all machines composed of moving parts, over time a locomotive's components will be subject to wear and degradation which will require maintenance and repair to enable the locomotive to continue to be operated for its intended purpose. This is a fact of life for locomotives which typically are in operation for several decades; the median age of a locomotive in service today is just under twenty-five years.

When a locomotive's task of moving cars is completed, the locomotive may be set aside for varying lengths of time until it is needed to perform its next task. During that interim, before being used again, the locomotive is inspected and serviced as needed and as required by statute and regulation. *See* 49

U.S.C. § 20702 (inspections, repairs, and inspection and repair reports); 49 C.F.R. § 229.21 (daily inspections); § 229.23 (periodic inspections); § 229.27 (annual tests); § 229.29 (air brake system calibration, maintenance, and testing); and § 229.31 (main reservoir tests). Inspections and servicing may occur at a facility dedicated to those functions, or if the locomotive is at a location where there is no such dedicated facility, or simply for logistical reasons, inspections and servicing may occur on tracks in the yard that are used for those functions. Typically, a locomotive will sit idle—perhaps for hours or days (or longer)—until it is needed again, and those preparatory functions have been completed.[5] If an inspection reveals the need for repairs, the repairs will be made either at a dedicated repair facility or in the yard, depending on the locomotive's location and the nature of the repairs required. To make the most efficient use of their fleet, railroads may have less extensive repairs undertaken on tracks in the yard rather than unnecessarily sending the locomotive to a distant repair facility.

Given the nature of a locomotive's use, it will inevitably develop defects or conditions that will potentially be dangerous during the course of its useful life. Accordingly, the LIA's purpose is to mandate that railroads make efforts to detect and remedy those

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[5] Petitioner's *amici* argue that affirming the decision below would mean that locomotives are in use, and subject to the LIA's requirements, only when they are actually moving. Pet. Am. Br. 8. But neither the District Court nor the Court of Appeals made that distinction nor limited use to moving locomotives. The fact the locomotive on which LeDure was injured was not moving was one of several factors considered by the lower courts. The key distinction between use and nonuse is not motion or lack of motion but whether or not the process of preparing the locomotive to be used has been completed.

defects and conditions before the locomotive is used. The whole point of inspections and other activities undertaken to prepare a locomotive to perform its function of pulling (and sometimes pushing) a train, or switching cars, is to assess and determine whether any remediation or repair is necessary to put the locomotive in full compliance with the LIA and its regulations. Inspections are intended to assure that before locomotives are used, they will be "in proper condition and safe to operate." 49 U.S.C. § 20701(1). The statute is clear: locomotives may not be used unless they "have been inspected as required"—the inspection of a locomotive being a precondition of its use. *Id*. at § 20701(2); *see also* 49 U.S.C. 20702(a)(3) (the Secretary is to "ensure" that railroads inspect their locomotives and repair defects before the locomotive "is used again.").

If a locomotive is put into service without having been inspected as required, or when in violation of another requirement of the LIA, the railroad is subject to fines. 49 C.F.R. § 229.7(b). Moreover, if the violation is causally connected to an employee injury, the railroad will be liable under FELA without regard to either party's negligence. But the LIA contemplates that there will, indeed must, be an opportunity to detect and remedy problems before a locomotive is used. It undercuts the LIA's purpose to conclude that regardless of how carefully and reasonably a railroad acts in trying to identify defective conditions before putting a locomotive into service, the LIA and FELA together mean railroads are strictly liable if an employee is injured when a locomotive is being inspected or serviced to ensure it is fit for use.

The concept that a railroad vehicle is not "in use" for the purposes of a safety statute while it is being

prepared to be put into service has been recognized by a number of lower courts. *E.g., Phillips v. CSX Transp. Inc.*, 190 F.3d 285, 288 (4th Cir. 1999) ("the purpose of the 'in use' limitation is to give [railroads] the opportunity to inspect for and correct safety [ ] defects before" being exposed to strict liability) (SAA); *Trinidad v. Southern Pac. Transp. Co.*, 949 F.2d 187, 189 (5th Cir. 1991) (train not in use because it had not been released following inspection because inspection had not been completed) (SAA); *Angell v. Chesapeake & Ohio Ry. Co.*, 618 F.2d 260, 262 (4th Cir. 1980) (The LIA excludes injuries resulting from the inspection, repair and servicing of a locomotive because "the intent of the statute is to exclude from its coverage only such functions as are necessary to detect and correct those defective conditions for which absolute liability will be imposed."); *Tisneros v. Chicago & N.W. Ry. Co.*, 197 F.2d 466, 468 (7th Cir. 1952) ("To apply the mandatory liability in favor of one who puts an engine in readiness for use is to enlarge and extend the intent of Congress in enacting the" LIA.). The Seventh Circuit's reasoning in *Lyle*, that "to service an engine ... to put it in readiness for use, is the antithesis of using it" is consistent with that concept. 177 F.2d at 223.

Indeed, the FRA—charged with enforcing the LIA—has adopted this common-sense approach to enforcement, an approach with which the United States' position before this Court is out of step. The United States asserts that limiting "use" to the period "after" a locomotive has been, or should have been, inspected "does not address how 'use' should generally be understood." U.S. Br. 28, n. 3. But that *is* exactly how FRA has long understood and applied the "use" requirement. After pointing out that use of a vehicle is necessary to support a violation of the SAA, FRA takes

the position that it "will consider a vehicle in use or allowed to be used *as long as the railroad has or should have completed its required inspections and the vehicle is deemed ready for service*" (emphasis supplied). Fed. R.R. Admin., *Motive Power and Equipment Compliance Manual* 10-2 (2012) (available at https://railroads.dot.gov/elibrary/motive-power-and-equipment-compliance-manual).

Thus, in the public facing guidance document which instructs both the railroad industry and FRA's safety inspectors regarding the agency's interpretation of applicable safety statutes and regulations, FRA recognizes that vehicles are not in use until affirmative steps have been taken (notably, inspection) to determine whether remedial action is needed to put the vehicle in compliance. If this position is abandoned, as petitioner and the United States urge this Court to do, a locomotive that has been set aside by a railroad switching crew over the weekend with no intent that it be used would be considered to remain "in use" because it is neither being repaired nor in storage. As a consequence, even though there was no intent to put that idle, parked locomotive into service, it would be in violation of FRA's daily inspection regulations every day that no inspection was conducted. 49 C.F.R. § 229.21. This would hold true for any locomotive parked anywhere in a railyard that is not intended to be used, just because it is not under active repair in a shop facility, affecting potentially hundreds, or even thousands, of locomotives each day.

Such an interpretation would turn decades of consistent safety regulation under the LIA on its head and call for counterproductive and inefficient operating practices. Triggering the requirements of the LIA when there is no practical need to—such as

by calling for daily inspections of idle locomotives—would be a wasteful use of resources. FRA estimates that each daily inspections takes about 30 minutes of a railroad employee's time. 83 Fed. Reg. 37,606, 37, 607 (Aug. 1, 2018). Not only would this be a costly endeavor, sending employees out to undertake unnecessary tasks is also introducing those employees to unnecessary safety risk exposure. Inspecting and prepping locomotives only once a decision has been made to put that locomotive back into active service is the safer and more sensible approach, and the one FRA has endorsed.

Alternatively, railroads will be forced to move idle locomotives to a dedicated repair facility to take them out of use to avoid LIA fines. Proper placement of equipment is essential for an efficiently run railroad network; among other things, that means locomotives need to be in the right place at the right time. Inefficient and unnecessary moves should be avoided or minimized. Inspecting, servicing and repairing locomotives should be done where it makes most sense, whether on a sidetrack, in a yard, or, if necessary, in a dedicated facility. Not only would moving equipment unnecessarily be burdensome and wasteful, it also will inevitably increase accident and injury exposure, an outcome that is antithetical to the statute's purpose.

III. A COMMON-SENSE APPROACH TO THE "IN USE" DOCTRINE WILL NEITHER COMPROMISE RAILROAD SAFETY NOR CREATE AN INCENTIVE TO FOREGO REQUIRED INSPECTIONS.

Petitioner and his *amici* fall back on the assertion that a broad definition of use is required because the railroad safety statutes are remedial in nature and

should be liberally construed (Pet. Br. 26, 39; U.S. Br. 25; Pet. Am. Br. 6). However, that general admonition does not obviate the need to interpret a statutory word or phrase in a logical manner, consistent with the context in which it is employed. In *Hiles*, this Court "decline[d] to adopt an expansive interpretation of § 2 [of the SAA] that would prohibit railroad employees from going between cars to realign slued drawbars" because even though it would have given the employee a negligence *per se* claim and made recovery easier, to do so would not have been consistent with the purpose of the statute. 516 U.S. at 411; *cf. Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 171 (2007) ("It does not follow, however, that [FELA's] remedial purpose requires us to interpret every uncertainty in the Act in favor of employees.")

Petitioner and his *amici* assert that failing to give the LIA a very broad scope will leave a large regulatory gap and that employee safety will suffer greatly. Pet. Br. 40-42; U.S. Br. 23-24. To promote their broad view of use, they urge this Court to take note that more employee injuries occur on stationary equipment than on moving equipment. Pet. Br. 40-41; Pet. Am. Br. 20. This simply shows that employees often work on locomotives that, for the purpose of the LIA, are not in use. But that is not a reason to interpret the LIA more broadly than is appropriate.

Hyperbole aside, if this Court gives the word "use" a proper interpretation in the context of the LIA it will not mean that railroad safety laws "would be gutted," (Pet. Am. Br. 7) or that the ability of railroad employees injured while working on stationary locomotives to be compensated will "be severely restricted, if not impossible." (Pet. Br. 42). It is understood that employees tasked with inspecting and prepping loco-

motives may encounter defects or unsafe conditions. The reason they are engaged in those activities in the first place is to detect such conditions. But those employees are not without protection or the ability to be compensated if they are injured in the course of performing those jobs. To begin, a motionless locomotive that is being prepared for use, and therefore not in use for purposes of the LIA, may be in use for the purpose of the SAA. *See* Resp. Br. 33-35 (explaining that use of a vehicle under the SAA may be more inclusive than use of a locomotive under the LIA). Thus, depending on how an injury occurred, a FELA action based on a locomotive being in violation of the SAA may be viable. For example, if an employee's injury was caused in whole or in part by a noncompliant coupler or an insecure ladder or grab iron on a standing locomotive, the locomotive would have been in violation of the SAA and the negligence *per se* rule would apply.

Additionally, even where the strict liability regime of the SAA and LIA does not apply, injured workers may still seek damages from their employing railroad on a negligence theory under FELA. With respect to the condition of their locomotives, railroads at all times will be held to *at least* a standard of ordinary care, obligating them to take the precautions that a reasonable and prudent person would take under the circumstances and subjecting them to tort damages if they fail to do so. *McBride*, 564 U.S. at 703 (negligence under FELA asks whether "the carrier fail[ed] to observe that degree of care which people of ordinary prudence and sagacity would use under the ... circumstances") (internal quotation marks omitted). In those cases, consistent with the basic premise of FELA, to recover damages employees will need to

show that some negligence by their employer caused the injury in whole or in part. 45 U.S.C. § 51.

Along with his claim of an LIA violation, LeDure also pursued a negligence theory against Union Pacific. Had he been able to prove the necessary elements of his claim, *i.e.*, shown that the condition that caused him to slip and be injured was caused by Union Pacific's negligence, he would have been entitled to recover full compensatory damages regardless of whether the locomotive was in use at the time. He could not make that showing, and therefore he was unable to recover. That outcome flows from Congress' decision to enact and maintain a fault-based system to address workplace injuries in the railroad industry. There simply is no absolute guarantee of a recovery for all work-related injuries to railroad employees. *See supra* p. 8.[6] As this Court has explained, basing employer liability for workplace injuries on fault may be "crude, archaic, and expensive as compared with more modern systems of workmen's compensation, [b]ut … it is the system which Congress has provided." *Bailey v. Cent. Vermont Ry.*, 319 U.S. 350, 354 (1943); *see also Stone v. New York, Chicago & St. L. R.R.*, 344 U.S. 407, 410 (1953) (Frankfurter, J. dissenting); *Delevie v. Reading Co.*, 176 F.2d 496 (3rd Cir. 1949) (explaining that while it would be preferable if injured

[6] On a number of occasions, railroads have advocated for legislation that would substitute a no-fault system for FELA. Those efforts have been strongly resisted by representatives of railroad employees who have consistently expressed support for FELA's fault-based approach. *See e.g., Hearing to Receive Testimony on the Federal Employers' Liability Act (FELA) in Relation to Amtrak, Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science and Transportation*, 100th Cong. 98 (1988) (statement of Fred A. Hardin, President, United Transportation Union).

railroad employees were entitled to insurance-like workers' compensation benefits, and that their right to recovery "ought not be dependent upon proof of fault," courts "must continue to apply" the fault-based system Congress provided). Twisting LIA beyond its intended scope to provide a workers' compensation-type right to railroad workers injured on out of service locomotives does not just do violence to LIA, it also undercuts FELA.

Finally, petitioner asserts that maintaining the defined scope of LIA's *per se* rule gives railroads an incentive to ignore their obligations to inspect locomotives in accordance with the FRA's regulations. Pet. Br. 23, fn. 7, 35. Any railroad that would blatantly ignore its regulatory obligations would do so at great peril. Putting uninspected locomotives, or any non-compliant rail vehicle, into service would violate the LIA and would subject the offending railroad to fines from FRA. *See Motive Power and Equipment Compliance Manual* 10-2 (a violation would occur if the railroad "should have completed [a] required inspection" but did not, and nonetheless "deemed" the locomotive "ready for service"); Fed. R.R. Admin., *Fiscal 2020 Enforcement Report* at 5 (FRA issued over 2,500 citations for violations related to cars and locomotives in fiscal 2020). In addition, a railroad that failed to undertake required locomotive inspections and put uninspected locomotives into service could be subject to FELA liability for a statutory violation, assuming the requisite causation existed between the failure to inspect and an injury. There simply is no need to give an expansive, unwarranted reading to the LIA for the railroad safety regulatory regime to remain effective.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

KATHRYN D. KIRMAYER
DANIEL SAPHIRE
Counsel of Record
JOSEPH G. ST. PETER
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
(202) 639-2505
dsaphire@aar.org

Counsel for Amicus Curiae

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