
In the Supreme Court of the United States

Seven County Infrastructure Coalition and
Uinta Basin Railway, LLC,
Petitioners,

v.

Eagle County, Colorado, et al.,
Respondents,

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

**Amicus Brief of the State of Utah
in Support of Petitioners**

Sean D. Reyes
Utah Attorney General
Stanford E. Purser
Utah Solicitor General
Counsel of Record
Office of the Utah
Attorney General
160 E. 300 S., 5th floor
P.O. Box 140858
Salt Lake City, UT 84114-0858
(385) 382-4334
spurser@agutah.gov

*Counsel for Amicus Curiae
State of Utah*

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Interest of Amicus Curiae

Amicus Curiae is the State of Utah.¹ The State has significant interest in economic development opportunities for its more rural counties. The Uinta Basin Railway project from which this case arises offers just such an opportunity. Utah state and federal officials, as noted herein, have stated their strong support in seeing this railway project come to fruition for a variety of reasons, from economic to environmental to safety.

Petitioners have shown the legal reasons—including a circuit split over the meaning of this Court’s precedent—why the Court should grant review in this case. The State agrees. But in Utah, the petition for writ of certiorari and this case affects far more than clarifying precedent and resolving circuit splits. The Uinta Basin Railway project (Railway or Project) will help thousands of Utah residents, various local governments, and the State itself. So Utah submits this amicus brief to highlight how important the Railway is to, and the positive impacts it would have on, the relevant counties, the State, and its residents.

Introduction and Summary of Argument

Despite its wealth of natural resources, Utah’s Uintah Basin has been a relatively underdeveloped region in Utah for decades. *See* JA1304-05. That’s because, at least in part, the only access points to the Uintah Basin are two-lane roads that present freight transportation challenges. So for years, the Seven-County Infrastructure Coalition (Seven County) has

¹The parties’ counsel of record received timely notice of Utah’s intent to file this brief under Supreme Court Rule 37.2.

championed the Uinta Basin Railway: an over 80-mile rail line that would connect the Basin with the national rail network and unlock the region's economic potential. *See, e.g.*, JA798. Utah's leaders at the state and federal level have voiced their support for the Project. *See, e.g.*, JA245, JA540-41, JA796-97.

In December 2021, after a long regulatory process, the Surface Transportation Board issued its final approval of the Railway. The Board's final approval came after it had considered the Project's transportation merits, conducted a thorough and reasoned review of the Project's reasonably foreseeable environmental effects falling within the Board's jurisdiction per *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), received voluminous public comments, and imposed extensive mitigation measures to reduce the Project's environmental impact. *See generally* Pet. App. 83a-123a; *see also id.* at 108a (discussing *Public Citizen*). The Board found that the Project advanced important transportation benefits that outweighed mitigated environmental impacts. Pet. App. 122a. So the Board exercised its discretion under the Interstate Commerce Commission Termination Act—which promotes railway development for the public good—and approved the Project. *Id.*; *see* 49 U.S.C. § 10101 (stating federal policy in regulating railroad industry).

Adhering to a different view of *Public Citizen*, the panel below determined, in part, that the Board's analysis was inadequate because it did not weigh speculative environmental impacts the Railway might cause upstream or downline in other parts of the country and over which the Board had no regulatory authority. *See, e.g.*, Pet. App. 36a-37a, 66a-68a, 70a. In the panel's words, the Board's position "that it need not consider [environmental] effects it cannot prevent

is simply inapplicable” because the Board can weigh whether a “railway’s anticipated environmental and other costs outweigh its expected benefits.” *Id.* at 37a.

The panel’s take on *Public Citizen’s* meaning is wrong and conflicts with several other circuit courts. Pet. at 14-23. The Court should grant certiorari review for that reason alone. But even beyond the panel’s legal error, the decision overlooks the many benefits the Railway will bring to Utah, the Uintah Basin, and its residents. Utah files this amicus to explain why this Project matters to the State and its residents.

Argument

The State of Utah has championed the Uinta Basin Railway from the beginning because the Project will promote the development of local and statewide economies and improve the lives of Utahns. *See, e.g.*, JA245. The Railway will be critical infrastructure facilitating the flow of commodities to and from the Uintah Basin. It has the potential to open the region to entirely new markets that rely on freight shipping and to create jobs. And it will do so while protecting the environment and Utah’s transportation workers. Blocking the Project stifles economic, environmental, and safety improvements in the region and hurts area residents. The State of Utah urges this Court to view the Railway as a vital investment in critical infrastructure that will benefit the Uintah Basin, the State of Utah, its residents, and the Ute Tribe. Projects like the Uinta Basin Railway realize the policies that promote the importance and development of the rural American economy.

I. The Railway promotes the development of strong and diverse economies in some of Utah’s most economically fragile counties.

The Board concluded that the Project would provide an alternative, more cost-effective method of transportation for shippers that are currently limited to shipping by truck. Pet. App. 119a. This, in turn, would eliminate longstanding transportation constraints, allow entry into new markets, help diversify Uintah Basin economies, and create more jobs—all of which advance Rail Transportation Policy factors that the Board must consider. *See* 49 U.S.C. § 10101(2), (4), (5) & (7). And the Board was right.

Carbon, Uintah, and Duchesne counties—in which the Railway would be located—all rank in the bottom half of Utah counties in terms of per capita income. Utah Econ. Council, *Econ. Rep. to the Governor* at 47 (2021).² They’re also some of the least economically diverse counties in Utah, despite Utah’s high marks for statewide economic diversity. *See* DJ Benway, *Measuring Econ. Diversity: The Hachman Index, 2018* (Kem C. Gardner Policy Institute Apr. 2020)³; *see also* JA1304-05. To build a new rural economy in the region, significant investment will be needed, including investments in strategic infrastructure. As the Board recognized, the Railway has the potential to advance many rail policy objectives by addressing these

²<https://gardner.utah.edu/wp-content/uploads/ERG2021.pdf?x71849>.

³<https://gardner.utah.edu/wp-content/uploads/Hachman-Brief-Apr2020.pdf#:~:text=Salt%20Lake%2C%20Weber%2C%20Davis%2C%20and%20Washington%20counties%20are,level%2C%20shows%20the%20economic%20disparity%20of%20Utah%E2%80%99s%20counties>.

problems. *See* Pet. App. 119a-121a. The Railway likely “will boost economic opportunity and local job creation by allowing energy, agricultural, mining products, and manufactured goods, to reach global markets more easily.” JA796. Businesses that rely on shipping by freight will be able to open locations in the previously inaccessible region, which has the potential to open new markets and create jobs. *See* 49 U.S.C. § 10101(2), (4), (5) & (7).

These developments will also provide significant economic benefits to the Ute Indian Tribe of the Uintah and Ouray Reservation, which similarly supported the project. JA1315-16 (Ute Tribe noting that “[o]il and gas production on the reservation is the most significant source of revenue for the Ute Indian Tribe” and urging the Board to “move swiftly with final approval and issuance of license”). This Railway promises to bring tremendous economic opportunities to the people of Carbon, Uintah, and Duchesne counties. Unsurprisingly, all three counties have been vocal advocates for the Railway. JA582 (“Carbon County believes that the Uinta Basin Railway project will fill a gap in major infrastructure that will help develop and diversify the regional economy.”); JA579 (“The Duchesne County Commission believes that the Uinta Basin Railway project will fulfill a critical infrastructure need. The railway is anticipated to help diversify the regional economy as businesses needing rail access would then be able to consider locations in the basin.”); JA593 (noting Uintah County has sought a “standard-gauge freight-only railway into the Uinta Basin” that would connect the community “to the national railway network” since the county released its 2017 General Plan (internal quotation marks omitted)).

The Project and its supporters are trying to do more than pay lip service to the importance of building rural economies. The Board’s analysis and final approval recognized the importance of these benefits and properly weighed them in favor of approval. Pet. App. 119a-121a.

II. The Railway will unlock the Uintah Basin’s economic potential while protecting the environment and promoting safety.

The Uintah Basin “is rich in natural resources including hydrocarbons, phosphates, and other minerals critical to America’s economy—but the development of these resources has long been impaired by the lack of quality freight transportation infrastructure.” JA1304. Currently, the region’s industry depends on trucks to transport products in and out of the area. JA579. By investing in freight rail infrastructure, this Railway offers to break that dependence, which has “hampered the economic vitality of the area and presents a considerable obstacle to diversifying future growth, increasing transportation safety, and reducing congestion.” JA796. Businesses that rely on rail access will be able, for the first time, to consider locations in the Uintah Basin. JA579.

Importantly, the Project will advance these economic objectives while promoting safety in transportation and reducing overall emissions related to transporting goods in and out of the Uintah Basin. 49 U.S.C. § 10101(3), (5), (8), (14). Transporting freight by rail instead of by truck would have a significant impact in decreasing greenhouse gas emissions from the Uintah Basin’s industry. Ass’n of Am. R.R., *The Positive Env’t Effects of Increased Freight by Rail Movements in America* at 3 (June 2020) (“If 25% of the truck

traffic moving at least 750 miles went by rail instead, annual fuel savings would be some 1.2 billion gallons and annual greenhouse gas emissions would fall by approximately 13.1 million tons,” and “[i]f 50% of the truck traffic moving at least 750 miles went by rail instead, annual fuel savings would be approximately 2.3 billion gallons and greenhouse gas emissions would fall by approximately 26.2 million tons.”⁴ Freight rail’s fuel efficiency in the United States has been increasing for nearly four decades straight. *Id.* at 4 (“U.S. freight rail volume is higher than it used to be, but railroad fuel consumption is much lower. In 2019 alone, U.S. freight railroads consumed 656 million fewer gallons of fuel and emitted 7.3 million fewer tons of carbon dioxide than they would have if their fuel efficiency had remained constant since 2000.”). Today, freight rail is the most fuel-efficient way to move freight over land. Ass’n of Am. R.R., *Freight Rail & Climate Change* (updated Feb. 2024).⁵ As a result, “moving freight by rail instead of truck lowers greenhouse gas emissions by up to 75%, on average[.]” *Positive Env’t Effects*, *supra*, at 1.

Moving freight by rail instead of by truck is not only better for the environment—it’s safer for industry employees and Utah drivers. Because a single train carries the freight of hundreds of trucks, moving freight by rail instead of by truck takes trucks off the

⁴<https://www.aar.org/wp-content/uploads/2020/06/AAR-Positive-Environmental-Effects-of-Freight-Rail-White-Paper-62020.pdf#:~:text=Railroads%20have%20made%20significant%20operational%20and%20technological%20improvements,and%20positive%20effect%20in%20reducing%20greenhouse%20gas%20emissions.>

⁵<https://www.aar.org/wp-content/uploads/2021/02/AAR-Freight-Rail-Climate-Change-Fact-Sheet.pdf>.

roads, easing congestion for individual drivers. *Positive Env't Effects*, supra, at 3. Also, railways are safer for employees—the employee injury rate in trucking and many other industries is higher than that in rail. Ass'n of Am. R.R., *Freight Rail Emp. Safety* at 1 (updated Mar. 2024).⁶ And the employee injury rate in rail has been trending downward to an all-time low in 2023. *Id.*

Conclusion

The Court should grant the petition for writ of certiorari. The D.C. Circuit's panel decision highlights circuit court disagreement about *Public Citizen's* meaning. The decision below also overlooks the Uinta Basin Railway's manifold benefits to the Uintah Basin's economy, the environment, and public and employee safety.

DATED this 5th day of April 2024.

⁶<chrome-extension://efaidnbmnnnibpcajpcgclefind-mkaj/https://www.aar.org/wp-content/uploads/2023/11/AAR-Railroad-Workplace-Safety-Fact-Sheet.pdf>.

Respectfully submitted,

/s/ Stanford E. Purser

Stanford E. Purser

Utah Solicitor General

Counsel of Record

Office of the Utah

Attorney General

160 E. 300 S., 5th floor

P.O. Box 140858

Salt Lake City, UT 84114-0858

(385) 382-4334

spurser@agutah.gov

Counsel for Amicus Curiae

State of Utah