

**In the
Supreme Court of the United States**

BREAYONNA AARON, INDIVIDUALLY AND ON BEHALF OF
RICHIE TERRELL AARON, JR., DECEASED AND ON
BEHALF OF HER MINOR CHILDREN M.A., R.A. AND L.A.;
M.A., BY AND THROUGH NEXT FRIEND, BREAYONNA
AARON; R.A., BY AND THROUGH NEXT FRIEND
BREAYONNA AARON; L.A., BY AND THROUGH NEXT
FRIEND BREAYONNA AARON,
Petitioners,

V.

NATIONAL RAILROAD PASSENGER CORPORATION,
DOING BUSINESS AS AMTRAK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Amtrak's response underscores that it is time for this Court, finally, to resolve whether state or federal law governs the legal sufficiency of evidence for state-law claims tried in federal court. Amtrak concedes that the circuits have been intractably split on this question for decades. BIO18. Amtrak concedes that this Court has twice found this question certworthy. BIO25. And Amtrak does not deny this issue is important and recurring. It is remarkable that this fundamental question has divided the courts for so long, yet evaded this Court's review. This case presents an ideal opportunity to resolve the split.

Faced with those irrefutable grounds for certiorari, Amtrak throws up a grab-bag of vehicle objections. Amtrak's primary response is that Mrs. Aaron never asserted below that a federal court reviewing a jury verdict on state law claims must apply the State's legal sufficiency standard. BIO12-17. But that claim is squarely refuted by the record. Indeed, Mrs. Aaron explicitly argued that "state law governs" legal sufficiency "when a plaintiff's cause of action is under state law," and invoked Missouri law in defending the sufficiency of the evidence, CA8 Appellee Br. 22—a fact Amtrak omits from its brief.

Amtrak also is wrong in arguing that this case suffers from the defects that prevented the Court from resolving this issue in *Dick v. New York Life Insurance Co.*, 359 U.S. 437 (1959) and *Mercer v. Theriot*, 377 U.S. 152 (1964). Unlike in those cases, here the question *will* be "briefed and argued" before this Court. *Dick*, 359 U.S. at 445. Missouri's "complete absence" standard is also fundamentally different than the federal standard applied by the

Eighth Circuit and would produce a different result on this record. *Cf. Mercer*, 377 U.S. at 156. In other words, this case is an ideal vehicle to decide the issue the Court has twice granted certiorari to resolve.

All that remains is Amtrak’s objection on the merits. But Amtrak’s response is again unpersuasive. Its sole argument is that this case is resolved by *Berk v. Choy*, 607 U.S. 187 (2026). BIO19-24. In *Berk*, this Court held that, “when a Federal Rule of Civil Procedure is on point, a federal court bypasses *Erie*’s inquiry altogether.” 607 U.S. at 192. But here, unlike in *Berk*, the federal rule does not “answer[] the question in dispute,” *id.* (citation omitted)—what is legally sufficient evidence. Rule 50 is silent on that issue, thus triggering the *Erie* rule under *Berk*.

The standard for reviewing the legal sufficiency of jury verdicts is critical to protecting the role of the jury in our legal system—one of the rights that Americans fought a Revolution to protect. *Declaration of Independence* para. 20 (U.S. 1776). In this case, the Eighth Circuit invaded the role of the jury by reweighing the evidence on its own, an inquiry forbidden by Missouri law. Pet.24. That result not only wrongly displaces the jury’s own weighing of the evidence after hearing it firsthand, but also compounds the tragedy stemming from Mr. Aaron’s wrongful death. The petition should be granted.

ARGUMENT

I. The First Question Presented Warrants Review

A. Amtrak Concedes The Circuit Split

At the outset, Amtrak concedes that the circuits are split on whether state or federal law governs the legal sufficiency of evidence for state-law claims tried

in federal court. BIO17-19. The Sixth Circuit “applies the standard of review used by the courts of the state whose substantive law governs the action.” *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 379 (6th Cir. 2022) (citation omitted); Pet.12-13. Amtrak admits that. BIO18 (acknowledging that the Sixth Circuit “still applies the state ‘sufficiency of the evidence’ standard”). Other circuits apply federal law in determining the legal sufficiency of the evidence. Pet.13-15; BIO17. Courts and commentators have acknowledged the conflict. Pet.12. It is, in short, a textbook split.

Weirdly, Amtrak nevertheless says the split is “hardly . . . genuine.” BIO18-19. But an acknowledged disagreement between circuits is the definition of a conflict. The *degree* of the split does not make it any less genuine. The answer to the question presented should not vary based on whether a suit is filed in Memphis (Sixth Circuit), a few miles west in Arkansas (Eighth Circuit), or south in Mississippi (Fifth Circuit). Likewise, if the Sixth Circuit is right, the other circuits are wrong. That is exactly why this Court grants review to resolve circuit splits.

Nor does the fact that a few judges in the Sixth Circuit have questioned its approach over the decades negate the conflict. BIO18 (citing footnotes in 2011 and 1997 decisions). Over the same period, scores of Sixth Circuit judges have applied the state standard *without* questioning it. If anything, those isolated questions underscore that the Sixth Circuit has steadfastly *declined* to reconsider its position, and that only this Court can resolve the conflict.

B. The Issue Is Squarely Presented

No doubt because there is an acknowledged circuit split, Amtrak’s lead response is to cry waiver. BIO12-17. That argument fails. Mrs. Aaron’s consistent position has been that, while Rule 50 provides the procedure for Amtrak’s JMOL, “[t]he point” of a Rule 50 motion “is to determine whether the plaintiff made a submissible case, *which state law governs when a plaintiff’s cause of action is under state law.*” CA8 Appellee Br. 22 (emphasis added); BIO.App.34a. Notably, while nitpicking other parts of the briefing, Amtrak just ignores this clear statement preserving Mrs. Aaron’s position on the question presented.¹

Before the district court, Mrs. Aaron specifically advanced Missouri’s “complete absence” test. *See* Dkt. 292 at 16 (quoting *Keveney v. Missouri Mil. Acad.*, 304 S.W.3d 98, 104 (Mo. banc 2010)); *see id.* at 6 (quoting *Foster v. Time Warner Ent. Co.*, 250 F.3d 1189, 1194 (8th Cir. 2001)).² To define legal sufficiency, Mrs. Aaron repeatedly and primarily invoked Missouri law. *See id.* at 6-7, 15-17. And the district court applied the “complete absence” standard applicable in Missouri. Pet.App.19a-20a.

Because the district court applied the “complete absence” test and affirmed the verdict, there was no

¹ Mrs. Aaron also pointed to Missouri law requiring “substantial evidence” to submit a case to a jury. CA8 Appellee Br. 22 (citing *Love v. Hardee’s Food Systems, Inc.*, 16 S.W.3d 739, 742 (Mo. Ct. App. 2000)). As the very passage of *Love* Mrs. Aaron cited makes clear, that requirement—where, in Missouri, “substantial” is defined as “probative”—works hand-in-glove with the “complete absence” test. 16 S.W.3d at 742; *see also, e.g., Sanders v. Gould*, 685 S.W.3d 589, 598 (Mo. Ct. App. 2024).

² “Dkt.” refers to *Aaron v. National Railroad Passenger Corp.*, No. 4:22-CV-00189 (W.D. Mo.).

need for Mrs. Aaron to comprehensively brief this issue before the Eighth Circuit. Nevertheless, Mrs. Aaron clearly articulated her position that “state law governs” legal sufficiency “when a plaintiff’s cause of action is under state law.” CA8 Appellee Br. 22; BIO.App.34a. And she again cited Missouri law when applying the standard. *See id.* at 49-50 (citing *Yaeger v. Olympic Marine Co.*, 983 S.W.2d 173, 185 (Mo. Ct. App. 1998)). The Eighth Circuit rejected her position, declining to apply Missouri’s “complete absence” standard and overturning the verdict.

Amtrak’s waiver argument thus fails. Because this question was “pressed or passed upon below,” it is fully preserved for this Court’s review. *United States v. Williams*, 504 U.S. 36, 41 (1992) (citation omitted). A litigant need not *re-raise* every argument in a rehearing petition. *Contra* BIO16. And, in seeking certiorari, Mrs. Aaron can “make any argument in support of [her consistent] claim” that state law governs the sufficiency inquiry in this case. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992).

C. This Case Is An Excellent Vehicle

Amtrak’s attempts to evade review by manufacturing other vehicle problems fare no better.

1. Amtrak claims this case shares the features that prevented resolution of the question in *Dick* and *Mercer*. BIO25. But the opposite is true, making this case the vehicle the Court has been looking for.

Amtrak misleadingly quotes *Dick* for the proposition that the issue “should be ‘left to another case where the question is briefed and argued.’” BIO25 (quoting 359 U.S. at 445). But the problem in *Dick* was that the issue had not been “briefed and argued” *in this Court*. *See* 359 U.S. at 445 (referring

to “the briefs and arguments in this Court”). Here, Amtrak and Mrs. Aaron obviously disagree about whether a federal or state standard applies. If certiorari is granted, the issue will be thoroughly “briefed and argued” before the Court. *Id.*

2. As to *Mercer*, Amtrak claims that the result would be the same regardless of the “applicable standard.” BIO25; *see* BIO27-32. But, as numerous courts have recognized, the “complete absence” test is materially different than other sufficiency standards. *See infra* at 8; Pet.20-21. Here, applying Missouri’s “complete absence” test would have required the court to sustain the jury’s inferences that (1) violent crime on the River Runner train was foreseeable and (2) Mr. Aaron would have survived but for Amtrak’s failure to timely investigate and seek medical assistance. Pet.24. Either inference would have independently supported the verdict. *See* Pet.App.6a.

To begin, there was ample, probative evidence that violent crimes like this one were foreseeable. Pet.28. Amtrak dismisses that evidence on the view that violent crimes are only foreseeable if the very same “premises have been the site of other prior violent crimes.” BIO28 (quoting Pet.App.8a). But in the next sentence, Amtrak acknowledges evidence of at least one prior violent crime on the River Runner. BIO28. And the evidence showed other violent crimes at or near the stations where the River Runner stopped as well. Pet.28. In other words, there was probative, same-premises evidence of foreseeability. Had the Eighth Circuit applied the “complete absence” test, it therefore could not have substituted its view of foreseeability for the jury’s.

The same goes for the jury’s inference that Mr. Aaron’s wounds were survivable. Amtrak focuses on

Dr. Brokish's trial testimony about the generic 4-14% survival rate of similar gunshot wounds, objecting he did not say the words "Mr. Aaron 'would not have died.'" BIO31 (quoting Pet.App.12a-13a). But Dr. Brokish testified that Amtrak's timely intervention would have "dramatically increased" Mr. Aaron's likelihood of survival, and that "things would have been drastically different." Trial Tr. 783-84, 762. From those statements and other evidence, a jury could have reasonably inferred that Mr. Aaron's wounds were survivable with timely care. Pet.26-27. There was not, therefore, a "complete absence" of evidence that Mr. Aaron would have survived. So under Missouri law, the verdict must stand.

None of this is easy. But the jury was created to make such judgments. Where, as here, there is at least *some* probative evidence supporting a verdict, Missouri law bars a court from substituting its own weighing of the evidence for the jury's.

3. Finally, Amtrak's attempt to paper over the obvious differences between the Eighth Circuit's sufficiency inquiry and Missouri's fails. BIO25-26. Amtrak relies on dicta in two, decades-old cases where the Eighth Circuit suggested, without analysis, that its approach was not different from Missouri's. BIO25. But neither case addressed Missouri's "complete absence" standard. In *McKnight ex rel. Ludwig v. Johnson Controls, Inc.*, the court simply noted that evidence must be viewed "in the light most favorable" to the non-movant. 36 F.3d 1396, 1400 & n.2 (8th Cir. 1994) (citation omitted). And in *Crues v. KFC Corp.*, the only "similar principles" the court actually identified between its approach and Missouri's were the granting of reasonable inferences to the non-movant. 729 F.2d 1145, 1148 (8th Cir.

1984). Neither case supports Amtrak’s attempt to negate the “complete absence” standard.

Moreover, this case highlights the material differences between Missouri’s “complete absence” test and the Eighth Circuit’s federal sufficiency inquiry. Pet.24-29 (discussing the fundamental differences). That is not surprising. In the Federal Employers’ Liability Act and Jones Act contexts—where the federal test is the “complete absence” standard—courts have recognized that this standard is “appreciably more deferential to jury verdicts” than other standards. *Rivera v. Union Pac. R.R. Co.*, 378 F.3d 502, 506 (5th Cir. 2004); see *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 682 (10th Cir. 1981) (similar); *Lambert v. Diamond M Drilling Co.*, 683 F.2d 935, 937 (5th Cir. 1982) (holding that, on same evidence and record, a different result was required under “complete absence” standard). Amtrak’s suggestion that a “complete absence” standard would make no difference here is simply wishful thinking.

D. The Eighth Circuit’s Position Is Wrong

All that is left is Amtrak’s objection on the merits. But once again, Amtrak’s argument fails.

1. Amtrak says that *Berk v. Choy*, 607 U.S. 187 (2026), compels the application of federal law here. That is incorrect. Federal courts deciding state-law claims must apply state substantive law and federal procedural law. See 28 U.S.C. § 1652; *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). *Berk* simply reiterates that a valid Federal Rule of Civil Procedure “displaces contrary state law even if the state law would qualify as substantive under *Erie*’s test.” *Berk*, 607 U.S. at 192. But *Berk* also makes clear state law

is displaced only where “the Federal Rule ‘answers the question in dispute.’” *Id.* (citation omitted).

In *Berk*, “the disputed question [was] whether Berk’s lawsuit [could] be dismissed because his complaint was not accompanied by an expert affidavit.” *Id.* at 192-93. Delaware law said yes, requiring medical malpractice suits to include an “affidavit of merit.” *Id.* at 194. But Rule 8 said no. “By requiring no more than a statement of the claim, Rule 8 establishes ‘implicitly, but with unmistakable clarity,’ that evidence of the claim is *not* required.” *Id.* at 193 (citation omitted). Delaware’s law was “at odds with Rule 8 because it demand[ed] more.” *Id.* at 194. Rule 8 thus displaced it. *Id.* at 198-99.

Here, the disputed question is what constitutes legally sufficient evidence to support a jury verdict—a legal question. Rule 50 does not answer that question; it specifies no legal standard for what evidence suffices, “leaving . . . room for the operation” of substantive state law. *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 4-5 (1987). And legal sufficiency is clearly substantive state law. Pet.20-21. Amtrak makes no effort to suggest otherwise. *See* BIO19-24.

Amtrak nonetheless contends that Rule 50 displaces Missouri’s sufficiency standard, just as Rule 8 displaced Delaware’s affidavit requirement in *Berk*. BIO20-21. That analogy fails. Missouri’s standard is not “contrary” to or “at odds with” Rule 50. *Berk*, 607 U.S. at 192, 194. It does not “demand[] more” than Rule 50, nor contradict Rule 50’s express or implicit terms. *Id.* at 193-94. Instead, it *fills a gap* left by Rule 50: how to assess the sufficiency of evidence for state-law claims. In contrast to *Berk*, Missouri’s legal

sufficiency standard and Rule 50 are therefore complementary, not conflicting.³

2. Amtrak also has no answer for *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996). *Gasperini* involved Rule 59, which all agreed requires a new trial for excessive verdicts. *Id.* at 432-33; *see id.* at 437 n.22. But “[w]hether damages are excessive for the claim-in-suit must be governed by *some law*. And there is no candidate for that governance other than the law that gives rise to the claim for relief—here, the law of New York.” *Id.* at 437 n.22. The Court therefore held that state law governed the Rule 59 determination of excessiveness.

Contrary to Amtrak’s suggestion (BIO21), the conclusion in *Gasperini* did not follow from Rule 59’s failure to specifically mention excessive verdicts. It was undisputed that Rule 59 applies to excessive verdicts. *Gasperini*, 518 U.S. at 432-33. And even if Rule 59 expressly mentioned excessiveness as grounds for new trial, that would still leave open the question of the legal standard for excessiveness—which Rule 59 does not supply. Either way, excessiveness “must be governed by *some law*.” *Id.* at 437 n.22. In state-law cases, the Court held, state law supplies the excessiveness standard. *Id.*

The analogous precedent here is therefore *Gasperini*, not *Berk*. What constitutes legally sufficient evidence, like what constitutes an excessive verdict, is not answered by the Federal Rules. There is no conflict between federal procedure and state

³ Nor is there any need for “percolation’ in the lower courts.” BIO23 (citation omitted). As Amtrak itself observes, *Berk* merely “followed [existing] precedents.” *Id.* And, as explained, *Berk* is readily distinguishable here.

substantive law, and no basis for Rule 50 to displace Missouri’s “complete absence” standard. The Eighth Circuit thus erred in declining to apply state law.

II. The Second Question Presented Warrants Review

As explained, if federal law supplies the legal sufficiency standard, the circuits are still in disarray on what that standard is. Pet.15-17. Amtrak claims this is just a matter of “verbiage.” BIO2. Yet words matter, which is why courts “want to be sure to get the standard right.” *Mayer v. Gary Partners & Co.*, 29 F.3d 330, 333 (7th Cir. 1994). Different “verbiage” begets different standards. *See Wratchford v. S.J. Groves & Sons Co.*, 405 F.2d 1061, 1066 (4th Cir. 1969) (recognizing divergence); *supra* at 8 (discussing the “complete absence” standard’s material differences from others). Here, the Eighth Circuit improperly substituted its own weighing of the evidence for the jury’s. Pet.26-29. The lower courts need guidance on the proper—and properly limited—role of a federal court in reviewing jury verdicts.⁴

* * *

Certiorari is warranted to finally resolve the conflict that this Court has already granted certiorari to address—twice—on whether the legal sufficiency inquiry is governed by state or federal law when a federal court is reviewing a state-law claim. This case presents an ideal vehicle to resolve the conflict. And

⁴ Amtrak’s suggestion of waiver is no more persuasive on the second question. Mrs. Aaron has consistently maintained that a legal sufficiency inquiry must not qualitatively reweigh the evidence. CA8 Appellee Br. 49-50; Dkt. 292 at 3-5, 6-7.

doing so would ensure that the federal courts do not invade the role of the jury under state law.

CONCLUSION

The petition should be granted.

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September 29, 2026