No. 26-

IN THE

Supreme Court of the United States

NORFOLK SOUTHERN RAILWAY COMPANY,

Petitioner,

v.

SCOTT SPORNER,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Indiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Federal Employers' Liability Act, passed in 1908, creates a federal cause of action for railroad workers injured through employer negligence. 45 U.S.C. § 51. FELA's negligence standard, drawn from the common law, requires "ordinary prudence." *Norfolk S. Ry.* v. *Sorrell*, 549 U.S. 158, 169 (2007). What constitutes FELA negligence thus varies from case to case and jury to jury.

In 1970, Congress—unsatisfied with the patchwork of existing laws related to railroad safety—passed the Federal Railroad Safety Act. The FRSA directs the Secretary of Transportation to issue regulations for "every area of railroad safety." 49 U.S.C. § 20103(a). These regulations establish a uniform "Federal standard of care" for any "subject matter" they "cover[]," and state law is preempted from imposing "an additional or more stringent" standard. *Id.* § 20106(a)(2), (b)(1)(A). Thus, a railroad cannot be held negligent under state law for conduct that complied with on-point FRSA regulations. *CSX Transp.* v. *Easterwood*, 507 U.S. 658, 664–65, 675 (1993).

The FRSA also mandates that *all* "[l]aws, regulations, and orders related to railroad safety . . . shall be nationally uniform to the extent practicable." 49 U.S.C. § 20106(a)(1). The question presented, which has openly divided the lower courts, is:

Whether FRSA regulations supply the standard of care for a FELA claim on the same subject, such that a FELA negligence claim is precluded to the same extent that a state negligence claim would be preempted.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Norfolk Southern Railway Company. Norfolk Southern Railway Company's parent corporation is Norfolk Southern Corporation (NSC), a publicly held corporation. No other entity owns 10% or more of Norfolk Southern Railway Company's stock.

Respondent is Scott Sporner, an individual.

RELATED CASES

This case arises from the following proceedings in the Elkhart County Superior Court, the Court of Appeals of Indiana, and the Indiana Supreme Court:

Sporner v. *Norfolk S. Ry.*,
No. 20D05-2104-CT-63 (Ind. Super., Elkhart Cnty.);

Norfolk S. Ry. v. *Sporner*,
No. 25A-CT-1138 (Ind. App.);

Norfolk S. Ry. v. *Sporner*,
No. 25A-CT-1138 (Ind.).

No other proceedings in state or federal trial or appellate courts relate directly to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Norfolk Southern Railway Company respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Indiana.

OPINIONS AND ORDERS BELOW

The Court of Appeals' published opinion is reported at 278 N.E.3d 1200 and reproduced at App. 1a–23a. The Indiana Supreme Court's order denying transfer is reproduced at App. 24a.

STATEMENT OF JURISDICTION

The Court of Appeals issued its judgment affirming a final jury verdict on March 16, 2026, and the Indiana Supreme Court denied discretionary review on August 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

45 U.S.C. § 51, section 1 of FELA, provides as relevant:

> Every common carrier by railroad … shall be liable in damages to any person suffering injury while he is employed by such carrier … for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier ….

49 U.S.C. § 20101, the FRSA's statement of purpose, provides:

> The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

49 U.S.C. § 20103(a), the FRSA's general grant of rulemaking authority, provides as relevant:

> The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.

49 U.S.C. § 20106, the FRSA's national-uniformity provision, provides as relevant:

> (a) National Uniformity of Regulation.—
>
> > (1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.
> >
> > (2) A State may adopt or continue in force a law, regulation, or order related to railroad safety … until the Secretary of Transportation … prescribes a regulation or issues an order covering the subject matter of the State requirement. …
>
> (b) Clarification Regarding State Law Causes of Action.—
>
> > (1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—
> >
> > > (A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation … covering the subject matter as provided in subsection (a) of this section;
> > >
> > > (B) has failed to comply with its own plan, rule, or standard that it created pursuant to

> a regulation or order issued by [the Secretary]; or
>
> (C) has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

INTRODUCTION

The lower courts are openly split over an important, recurring question: When does compliance with federal safety rules foreclose a negligence claim demanding additional precautions on the same subject? The question arises from the intersection of two federal railroad laws. The Federal Employers' Liability Act (FELA) allows railroad employees to recover for injuries caused by employer negligence. The later-enacted Federal Railroad Safety Act (FRSA) directs expert federal regulators to prescribe national safety standards. Complying with such standards precludes liability under *state* negligence law—but courts are divided on whether the same is true under FELA.

The Fifth, Sixth, and Seventh Circuits and two state high courts hold that federal regulations covering the subject of a FELA claim supply the controlling standard of care: A railroad that complies with such rules cannot be held negligent because a jury thinks ordinary prudence required more. The supreme courts of Alabama, Georgia, Louisiana, and New Mexico have rejected that rule. Below, Indiana joined them.

The courts rejecting preclusion generally rely on *POM Wonderful LLC* v. *Coca-Cola Co.*, 573 U.S. 102 (2014). But other courts correctly recognize that *POM Wonderful*—which addressed unfair competition in juice labeling, not railroad safety—does not resolve the question presented. Thus, over a decade later, courts

remain split on whether FRSA compliance can preclude FELA liability—and on whether *POM Wonderful* says anything about that question. Courts in each camp have rejected the other view. And further percolation is especially unlikely to resolve the split because FELA cases are not removable from state to federal court; thus, plaintiffs can simply avoid the circuits recognizing preclusion.

This split is especially intolerable because Congress expressly mandated "National Uniformity" in railroad safety. 49 U.S.C. § 20106(a)(1). Yet under the decisions below, a railroad's compliance with a national safety standard can conclusively establish due care in one courthouse, while leaving it exposed to a jury's contrary judgment in another—even within the same state, on the same facts. That is precisely the kind of fragmentation Congress sought to eliminate.

And the practical consequences go well beyond whether railroads must pay damages. By design, FELA's negligence standard regulates primary conduct. To avoid liability, railroads must conform their conduct to the demands of lay jurors. But juries can disagree with the expert regulators—and with each other—about what constitutes ordinary prudence in any given situation. In this way, rejecting FRSA preclusion deprives railroads and workers of clear, uniform safety standards as they operate across the nation.

This case illustrates the problem—and provides an ideal chance to resolve it. Mr. Sporner was injured while working alone as a remote-control operator (moving a train in a yard using radio control). Federal regulations allowed exactly this. Indeed, the whole point of remote-control operations is to dispense with the need for other crew members. Yet the court below affirmed a multimillion-dollar verdict by allowing Mr.

Sporner to argue that, "regardless of whether federal authority allowed a one-man [remote-control] crew," Norfolk Southern "was negligent in its use of a one-man [remote-control] crew under the circumstances." App. 18a.

This departure from federal standards is bad enough, but it's not even clear *how many* additional crew members Norfolk Southern was supposed to provide, or what roles they should play. And under the decision below, another jury could conclude tomorrow that specific yard operations require a different or larger crew arrangement—or that remote-control operations are not safe to begin with. The same variability exists on countless topics, from speed limits to radio use to railcar equipment. This disuniformity and unpredictability are intolerable to an inherently interstate industry that requires clear safety rules.

The petition should be granted. At a minimum, the Court should call for the views of the Solicitor General. The federal safety regulator has previously endorsed the reasoning behind FRSA–FELA preclusion, warning against letting juries second-guess expert safety standards. The Court would benefit from the government's considered views on the interaction of these two federal statutes.

STATEMENT

A. Legal background.

1. Congress enacted FELA in 1908 to provide railroad employees a federal remedy for injuries caused by employer negligence. *Consol. Rail Corp.* v. *Gottshall*, 512 U.S. 532, 542 (1994). FELA makes a railroad liable in damages to an employee who suffers an injury "resulting in whole or in part from the negligence of" the railroad. 45 U.S.C. § 51. To recover, an employee

must establish the traditional elements of negligence, including duty, breach, foreseeability, and causation. See *Norfolk S. Ry.* v. *Sorrell*, 549 U.S. 158, 169 (2007).

FELA imposes on railroads a general duty to exercise ordinary care in providing a safe workplace. *Atchison, Topeka & Santa Fe Ry.* v. *Buell*, 480 U.S. 557, 558 (1987). It does not prescribe any specific standards for railroad operations. Absent express language to the contrary, the elements of a FELA negligence claim flow from federal common-law principles. *Sorrell*, 549 U.S. at 165–66.

2. Concluding that "safety in the Nation's railroads would [not] be advanced sufficiently by subjecting the national rail system to a variety of enforcement" in different jurisdictions, Congress passed the FRSA in 1970. See H.R. Rep. No. 91-1194, at 5 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4109–10. The Act serves "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101.

To that end, Congress authorized the Secretary of Transportation to "prescribe regulations and issue orders for every area of railroad safety," supplementing federal railroad-safety laws already in effect at the time. *Id.* § 20103(a). The Secretary has delegated this power to the Federal Railroad Administration, which issues and regularly updates detailed regulations governing railroad operations, equipment, infrastructure, and personnel. See 49 C.F.R. pts. 200–299.

To ensure that these regulations operate consistently across the nation's rail network, Congress mandated "National Uniformity of Regulation": "Laws, regulations, and orders related to railroad safety … shall be nationally uniform to the extent practicable." 49 U.S.C. § 20106(a)(1). For the same reason, a state may

enforce a law related to railroad safety only until the federal regulator issues a regulation "covering the subject matter"; once federal rules cover a subject, state law generally cannot impose "an additional or more stringent" standard on the same topic. *Id.* § 20106(a)(2). Thus, a railroad cannot be held negligent under state tort law for conduct that complied with FRSA regulations covering the subject of the plaintiff's claim. *CSX Transp.* v. *Easterwood*, 507 U.S. 658, 664–65, 675 (1993). However, as Congress clarified in a set of 2007 amendments, the FRSA does not preempt a tort claim alleging that a railroad *violated* "the Federal standard of care" set by such a regulation. *Id.* § 20106(b)(1).

3. The Railroad Administration's comprehensive regulations include a number of rules governing the use of remote-control locomotives. These rules allow the use of locomotives controlled "through use of a radio link" instead of the traditional controls in the cab. 49 C.F.R. § 229.5; see *How Do Remote-Control Locomotives Work?*, Ass'n of Am. R.R., https://shorturl.at/udg7j. The rules cover remote-control locomotives' design and operation, see 49 C.F.R. § 229.15—including when and how remote-control operators must determine which direction their trains are moving and whether the track is clear, *id.* §§ 218.99(c), (d). These rules further cover the training and certification required for a railroad employee to operate a remotely controlled locomotive. *Id.* § 240.308(c). Such an employee is known as a remote-control operator, or RCO.

The RCO regulations' purpose is to allow one person to do the work of a traditional two-person crew. "By using [RCO] technology, the operator (engineer) on board the locomotive may be eliminated because the locomotive can be remotely controlled" by the conduc-

tor. Fed. R.R. Admin., *Safety of Remote Control Locomotive (RCL) Operations* 10 (Mar. 2006), http://bit.ly/41Z35WW. In other words, remote-control technology "has eliminated the engineer's position"; the basic "benefit of this technology is the elimination of one crewmember." *Id.* at 3–4.

B. Factual background.

On the evening of his injury, Mr. Sporner was working in Norfolk Southern's Elkhart Yard. He was operating a train made up of three locomotives coupled together. He was aboard the train, in the westernmost locomotive cab, furthest from his intended direction of travel. Mr. Sporner was serving as an RCO, operating the train using a remote-control device on his person. He was working as a one-person crew, so no one else was aboard the train. App. 2a. Such one-person RCO operations—authorized by the regulations just discussed—are common. Hundreds of railroaders operate this way across the country each day.

The yardmaster directed Mr. Sporner to move his train eastward, not realizing another train was sitting farther east on the same track. App. 2a. Before moving a locomotive, Norfolk Southern's operating rules require RCOs to have a clear view of the track ahead and be able to stop short of any obstructions. See C.A. App'x Vol. VI at 5. Yet Mr. Sporner remained in the westernmost cab, on the train's tail end, as he began moving east. Unable to view the track ahead, and traveling too fast to stop, he collided with the other train, injuring himself and the other train crew. App. 2a.

C. Proceedings below.

1. Mr. Sporner sued Norfolk Southern under FELA in Indiana state court. One of his theories was that Norfolk Southern was negligent in having him

work alone, as a one-person RCO crew. His counsel told the jury that, "years ago," railroads would have "a locomotive engineer running the train and then the conductor sitting next to him," so there were "two guys who are in charge." App. 3a. But because Norfolk Southern "eliminated" positions, the railroad "now operated at the Elkhart Yard with one-man RCO crews." *Id.*

Norfolk Southern objected to this theory, arguing "that a negligence claim based on a one-man crew 'would be precluded by federal law.'" App. 3a. Mr. Sporner's counsel agreed that Norfolk Southern was "permitted by federal law to have a single RCO doing all this work," but he argued that "[w]hether they're permitted to or not by law is not the issue" because a jury could find that using a one-person RCO crew at a busy railyard is "not what a reasonably safe railroad would do." *Id.* at 3a–4a.

The trial court overruled the objection, concluding that, even if federal law says "you need only have one RCO … I don't think that [it] prohibits [Mr. Sporner] from arguing in addition to the one RCO, there should [also] be a conductor, an engineer, or a [utility]-man." App. 4a. The court likewise denied Norfolk Southern's motion for judgment on the evidence (akin to a federal Rule 50 motion) on the same grounds. *Id.* at 8a.

The jury found Norfolk Southern negligent, apportioning 60% of the fault to the railroad and 40% of the fault to Mr. Sporner. It determined that he sustained damages totaling $8.2 million. The trial court thus awarded him $4.92 million in damages. App. 9a–10a.

2. The Court of Appeals affirmed, holding that "FRSA does not preclude [Mr. Sporner's] FELA claim, which is that, regardless of whether federal authority

allowed a one-man RCO crew, [the railroad] was negligent in its use of a one-man RCO crew under the circumstances." App. 18a. The court offered no analysis of the FRSA's or FELA's text. Instead, it emphasized that "the majority of state and federal courts that have applied" *POM Wonderful* in this context rejected preclusion. *Id.* at 17a. The court then noted that "regulations adopted under FRSA established *minimum* safety requirements," meaning "a baseline standard of care." *Id.* The court also said that FRSA and FELA "have co-existed for decades without the legislature intervening to address the preclusion of federal law involving railroad safety." *Id.* at 17a–18a. And the court asserted that the FRSA and FELA are "complementary in purpose and effect" because "[b]oth statutes further railroad safety in meaningfully distinct ways." *Id.* at 18a. In so holding, the court rejected Mr. Sporner's arguments that the preclusion issue was not preserved or presented. See *id.* at 12a n.5, 15a n.7.

3. Norfolk Southern petitioned for transfer to the Indiana Supreme Court, which "is a matter of judicial discretion." Ind. R. App. P. 57(H). The state high court denied transfer. App. 24a.

REASONS FOR GRANTING THE PETITION

I. Courts are openly split on whether the FRSA can preclude FELA claims.

The Fifth, Sixth, and Seventh Circuits have held that the FRSA precludes FELA claims seeking to impose duties that go beyond governing federal safety standards, and at least two state supreme courts have said the same. The high courts of Louisiana, Georgia, Alabama, and New Mexico have relied on *POM Wonderful* to reject that approach. Under the former rule, complying with on-point federal regulations can preclude a FELA negligence claim by establishing that

the railroad was not negligent. Under the latter rule, a jury can hold a railroad negligent even if it did everything the regulatory standard of care required. This acknowledged conflict has persisted for over a decade since *POM Wonderful* and will not abate without this Court's intervention.

A. Multiple circuits and state high courts hold that FRSA compliance can preclude FELA claims.

The Seventh Circuit first recognized preclusion in *Waymire* v. *Norfolk & Western Railway*. A railroad employee injured in a train-truck collision alleged that the railroad negligently operated its train at an unsafe speed and failed to install warning devices. The train, however, was traveling below the federal speed limit, and the warning devices were federally approved and functioning. 218 F.3d 773, 774–75, 777 (7th Cir. 2000), *cert. denied*, 531 U.S. 1112 (2001). The key question was thus "whether a railroad company can be liable in a FELA negligence action … when the complained of conduct complies with the conduct mandated by FRSA and its regulations." *Id.* at 775. The court's answer was no. Though the claim arose under federal rather than state law (so it could not be "preempted"), allowing it to proceed would undermine the national uniformity Congress expressly mandated: "To treat cases brought under federal law differently from cases brought under state law would defeat FRSA's goal of uniformity." *Id.* at 777. Indeed, any other rule would be "absurd." *Id.* at 776.

The Fifth Circuit agreed in *Lane* v. *R.A. Sims, Jr., Inc.* There, too, a railroad employee alleged that a train was traveling at an unsafe speed even though it complied with the federal speed limit. The court rejected that theory, emphasizing the FRSA's mandate that "[l]aws, regulations, and orders *related to railroad*

safety shall be *nationally uniform* to the extent practicable." 241 F.3d 439, 442 (5th Cir. 2001) (quoting 49 U.S.C. § 20106). "Such uniformity can be achieved only if the regulations … are applied similarly to a FELA plaintiff's negligence claim and a non-railroad-employee plaintiff's state law negligence claim." *Id.* at 443. Rejecting preclusion "would have the untenable result of making the railroad safety regulations established under the FRSA virtually meaningless," the court explained: "The railroad could at one time be in compliance with federal railroad safety standards with respect to certain classes of plaintiffs yet be found negligent under the FELA with respect to other classes of plaintiffs for the very same conduct." *Id.* (citation omitted). "Moreover," rejecting preclusion would "undermine uniformity" by producing, through jury verdicts, "varying, uncertain" standards throughout the country. *Id.* at 443–44. In so holding, the Fifth Circuit rejected the argument that FRA regulations are mere "*minimum* safety requirements, compliance with which is evidence of due care" only. *Id.* at 442.

The Sixth Circuit concurred in *Nickels* v. *Grand Trunk Western Railroad.* The employees there alleged that the railroads should have used smaller ballast (stones that support railroad tracks) in areas requiring substantial walking. Following *Waymire* and *Lane*, the court held that "a FELA claim is precluded if the same claim would be preempted by the FRSA if brought as a state-law negligence action." 560 F.3d 426, 429–30 (6th Cir. 2009). The court warned that "any exposure to conflicting standards undermines uniformity" in violation of the FRSA. *Id.* at 430. It did not matter that the railroads could have met the plaintiffs' preferred ballast standard without *violating* the federal rules: "Preclusion and preemption under the FRSA are not limited to situations where the federal

or state standard is incompatible with a regulation." *Id.* at 432. What matters is whether federal regulations cover the subject of the plaintiff's negligence theory, and whether the railroad complied with them.

At least two state high courts have likewise recognized that a "FELA negligence claim is expressly precluded if an FRA regulation 'cover[s] the subject matter' of the claim." See *Illinois Cent. R.R.* v. *Brent*, 133 So. 3d 760, 771 (Miss. 2013) (en banc). These courts agree with *Waymire*, *Lane*, and *Nickels* that "the uniformity demanded by the FRSA can be achieved only by applying preclusion principles to federal laws, similar to the preemption principles applied to state laws." *Id.*; see also *Herndon* v. *Nat'l R.R. Passenger Corp.*, 814 A.2d 934, 937 (D.C. 2003) ("Congress intended that the effect of the FRSA be nationally uniform and this uniformity requires that non-railroad employees and railroad employees be treated similarly."). Thus, as of 2013, there was a "general consensus" favoring FRSA–FELA preclusion. *MD Mall Assocs., LLC* v. *CSX Transp.*, 715 F.3d 479, 491 n.10 (3d Cir. 2013) (collecting cases).

B. Several state high courts read *POM Wonderful* to foreclose preclusion.

The Louisiana Supreme Court confronted the same ballast regulation as *Nickels* in *Van Buren* v. *Kansas City Southern Railway*. The railroad relied heavily on *Nickels*, and the lower courts dismissed the employee's FELA claim as precluded. 421 So. 3d 910, 911–14 (La. 2025). The state high court acknowledged that other courts have "continued to follow *Nickels* and *Waymire*" because those courts either were "bound by *Nickels* or still found it persuasive." *Id.* at 916 n.6. But the Louisiana court disagreed, holding that "the FRSA does not preclude FELA actions." *Id.* at 915. It reasoned

that *POM Wonderful* "changed the analysis" of preclusion and required treating FRSA and FELA as complementary. *Id.* at 917. In its view, FRSA establishes minimum safety requirements, while FELA independently promotes employee safety through negligence liability. *Id.* The court also emphasized that FRSA expressly preempts state law but not FELA claims. *Id.*

The Georgia Supreme Court adopted the same rule in *Norfolk Southern Railway* v. *Hartry*, which dealt with malfunctioning crossing equipment. The court acknowledged that "many courts across the nation [had] held that FRSA regulations preclude a FELA claim," but it believed *POM Wonderful* had changed the analysis. 837 S.E.2d 303, 308 (Ga. 2019). It concluded that, like the laws in *POM Wonderful*, FRSA and FELA "complement each other in major respects, for each has its own scope and purpose." *Id.* at 309 (citation omitted). And, the court held, a railroad may comply with FRSA regulations yet fall below the level of ordinary care required by FELA. *Id.* at 309–10. *Hartry* thus overruled two Georgia appellate decisions applying preclusion, including a case *Nickels* had relied on. *Id.* at 309 n.2; *Nickels*, 560 F.3d at 430.

The Alabama Supreme Court likewise rejected *Waymire*'s approach in *Cottles* v. *Norfolk Southern Railway*, 224 So. 3d 572 (Ala. 2016). The railroad argued that its FELA duty could not exceed the requirements of federal switch-inspection regulations. The court acknowledged the "several federal cases" that recognize preclusion, but it believed the "better reasoned" cases were to the contrary. *Id.* at 587–88. Looking to *POM Wonderful*, the Alabama court treated the federal regulations as "non-dispositive evidence of due care," not a bar to liability. *Id.* at 592. The court reaffirmed that position on rehearing, expressly rejecting

the argument that *POM Wonderful* was inapposite because it concerned different federal statutes. *Id.* at 594–97.

Likewise, the New Mexico Supreme Court expressly repudiated the federal appellate rule in *Noice* v. *BNSF Railway*, 383 P.3d 761 (N.M. 2016), *cert. denied*, 580 U.S. 1155 (2017). Addressing an excessive-speed claim involving a train that never exceeded the federal limit, the court "decline[d] to follow *Waymire* and its progeny." *Id.* at 767. It faulted those decisions for conflating preemption with preclusion, emphasizing FRSA's uniformity objective at FELA's expense, and failing to account for the possibility that Congress intended different protections for employees and nonemployees. *Id.* at 769–70. The court instead held that FRSA and FELA are "complementary in purpose and effect," and that compliance with the federal regulations does not exhaust the railroad's duty of care to its employees. *Id.* at 771.

Below, the Indiana Court of Appeals joined this group. Without even mentioning *Waymire*—which still controls federal courts in Indiana—the court rejected preclusion "[f]or the reasons articulated in *Van Buren* and supporting cases cited therein." App. 18a. The Indiana Supreme Court then denied review, leaving the published decision below to set the rule "governing all of Indiana." See *Diesel Constr. Co.* v. *Cotten*, 634 N.E.2d 1351, 1354 (Ind. App. 1994); Ind. R. App. P. 65(D)(1).

C. This entrenched split warrants review.

This split is often outcome determinative. In the pro-preclusion courts, for example, a railroad cannot be negligent under FELA for excessive speed if it complied with the federal speed limit; in the anti-preclusion courts, it can be. Compare *Waymire*, 218 F.3d at

776–77, with *Noice*, 383 P.3d at 767. Similarly, in the former courts, a railroad cannot be negligent under FELA for using ballast that complied with FRSA ballast regulations; in the latter courts, it can be. Compare *Nickels*, 560 F.3d at 430–32, with *Van Buren*, 421 So. 3d at 915–17. Likewise, if preclusion applied here, Norfolk Southern could not be held negligent because the jury thought a remote-control crew should not have just one member, since federal regulations contemplate exactly that. See *supra* p. 7.

The split is acknowledged and entrenched, with courts on each side explicitly declining to follow cases on the other side. *E.g.*, *Van Buren*, 421 So. 3d at 916 n.6; *Bahus* v. *Union Pac. R.R.*, 131 N.E.3d 1227, 1243 (Ill. App. 2019). The disagreement has only grown since the last petition on this topic, now a decade ago (which was also a questionable vehicle because of finality concerns). See *infra* § IV; Petition for Writ of Certiorari, *BNSF Ry.* v. *Noice*, 580 U.S. 1155 (2017) (No. 16-686), 2016 WL 6916231.

Nor is the split likely to resolve itself. Though some courts read *POM Wonderful* to answer the question presented, other courts disagree. Indeed, there is "not … a single federal circuit court decision holding that *POM Wonderful* ha[s] changed—or impacted—the FELA/FRSA analysis." *Kopplin* v. *Wis. Cent., Ltd.*, No. 2016-cv-588, 2017 WL 7048811, at *2 (E.D. Wis. Oct. 17, 2017), *aff'd on other grounds*, 914 F.3d 1099 (7th Cir. 2019). Thus, "even after *POM Wonderful*, several courts have continued to hold that FRSA and its regulations preclude FELA claims." *Van Buren* v. *Kan. City S. Ry.*, 401 So. 3d 894, 898 (La. App. 2024) (citing cases), *rev'd*, 421 So. 3d 910. These courts recognize that *POM Wonderful* "simply applied preclusion analysis principles to the … particular provisions and purposes of the statutes" at issue; it thus "has no bearing"

on rail-safety preclusion, "which involves entirely different federal acts." *Bahus*, 131 N.E.3d at 1243 (declining to follow cases holding that "*POM Wonderful* had displaced *Waymire*"). In short, *POM Wonderful* has simply generated a second-order disagreement about its own relevance to the question presented.

Further percolation is especially unlikely to resolve this split because of an unusual FELA feature: When a FELA plaintiff chooses to sue in state court, the case is not removable even though it arises under federal law. 45 U.S.C. § 56; 28 U.S.C. § 1445(a). For example, a FELA plaintiff injured in Indiana, like Mr. Sporner, can simply avoid the Seventh Circuit's *Waymire* precedent by suing in state court instead of federal court. As a result, courts like the Seventh Circuit have fewer chances to revisit their pre-*POM Wonderful* circuit precedents. Yet when this issue does arise in federal court, the pro-preclusion, pre-*POM Wonderful* precedents still control. *E.g.*, *Kopplin*, 2017 WL 7048811, at *2 (applying *Waymire* as binding circuit precedent); *Norfolk S. Ry.* v. *Tobergte*, No. 18-207, 2021 WL 400476, at *7–9 (E.D. Ky. Feb. 4, 2021) (same, as to *Nickels*); *Wheeler* v. *CSX Transp.*, No. 14-cv-2689, 2017 WL 3116701, at *10 (N.D. Ohio July 21, 2017) (similar, in considering preclusion under another rail-safety statute); but see *Berry* v. *Wis. Cent. Ltd.*, No. 21-cv-220, 2022 WL 1451635, at *3 (W.D. Wis. May 9, 2022) (acknowledging that "the Seventh Circuit has not revisited its decision in *Waymire*" but declining to follow it). The split thus continues to produce different outcomes—sometimes in different courthouses within the same jurisdiction.

II. The decision below is wrong.

1. The interaction of "multiple federal statutes" depends on "[a]nalysis of the statutory text, aided by

established principles of interpretation." *POM Wonderful*, 573 U.S. at 112. Those principles dictate that, when separate laws overlap, a court should determine "how best to harmonize the[ir] impact." *United States* v. *Est. of Romani*, 523 U.S. 517, 530 (1998).

FELA's text is straightforward. A railroad "shall be liable in damages to" an employee "for such injury or death resulting in whole or in part from [its] negligence." 45 U.S.C. § 51. FELA "does not define negligence, leaving that question to be determined … by the common law principles as established and applied in the federal courts." *Urie* v. *Thompson*, 337 U.S. 163, 174 (1949) (cleaned up). Thus, nothing in FELA directs that railroads can—let alone must—be held liable even when they comply with applicable, later-enacted federal safety regulations.

The FRSA's text contains three relevant commands. First, it bars states from enforcing any law "related to railroad safety" after the federal government has issued safety rules "covering the subject matter." 49 U.S.C. § 20106(a)(2). The FRSA thus preempts state negligence claims on subjects covered by federal safety rules, as this Court has recognized. *Easterwood*, 507 U.S. at 664–65. Second, the FRSA states that such safety rules establish "the Federal standard of care" on covered subjects, so a plaintiff can pursue a tort claim if the railroad *violated* the on-point federal rules. 49 U.S.C. § 20106(b)(1). Third, in a separate subsection, the FRSA mandates uniformity: "Laws, regulations, and orders related to railroad safety … shall be nationally uniform to the extent practicable." *Id.* § 20106(a)(1).

The FRSA's uniformity mandate encompasses other federal laws. The ordinary meaning of "[l]aws, regulations, and orders," *id.*, includes both state and federal laws. See *Norfolk & W. Ry.* v. *Am. Train Dispatchers*

Ass'n, 499 U.S. 117, 129 (1991) ("the phrase 'all other law'" "includes federal law"). Indeed, the court below appeared to recognize as much. App. 14a n.6 (declining to "interpret subsection (a) as strictly limited to matters of state law"). Rightly so: Reading the national-uniformity provision to reach only state law would make it redundant with the next subsection, which separately preempts "[s]tate" law. Compare 49 U.S.C. § 20106(a)(1), with *id.* § 20106(a)(2).

On its face, then, the FRSA mandates that federal laws "related to railroad safety … shall be nationally uniform." *Id.* § 20106(a)(1). FELA, a federal law, undisputedly relates to railroad safety. App. 18a. FELA is thus subject to FRSA's national-uniformity mandate. And to comply with that congressional mandate, on-point federal safety rules must supply the standard of care for common-law negligence claims under FELA, just as they do for common-law negligence claims under state law. That is so for two reasons.

First, "allowing juries in FELA cases to find negligence based on" conduct that satisfies federal safety rules "would result in the establishment, through such verdicts, of varying, uncertain" standards across the country. *Lane*, 241 F.3d at 443–44. Different juries will disagree with the federal regulator, and with each other, about whether and when specific conduct is reasonable. Since a railroad could be liable whether or not it complied with federal safety rules, rejecting preclusion "would have the untenable result of making the railroad safety regulations established under the FRSA virtually meaningless." *Id.* at 443.

Second, if the FRSA preempted state-law negligence claims but did not preclude FELA negligence claims, a railroad could be non-negligent under state law but negligent under FELA "for the very same conduct." *Lane*, 241 F.3d at 443. Imagine that a train traveling

30 mph on a track with a 40-mph federal speed limit collided with a car at a crossing. The FRSA would bar the motorist from alleging excessive speed under state law. *Easterwood*, 507 U.S. at 674. Yet under the decision below, a railroad employee injured in the collision could allege excessive speed under FELA. That would be "absurd." *Waymire*, 218 F.3d at 776.

None of this is to say the FRSA creates immunity from FELA claims. If no federal regulation covers the subject matter of a FELA claim, then FELA's general standard of care governs. See *id.* at 775. And if a railroad *violates* the standard of care set forth in a federal safety regulation, it can be liable under FELA on that basis. Cf. 49 U.S.C. § 20106(b)(1)(A). But if the railroad complied with on-point federal rules, a FELA jury cannot insist that ordinary care required more. Cf. *United States* v. *Fausto*, 484 U.S. 439, 443–45, 448–49 (1988) (holding that a comprehensive, unified scheme governing federal personnel action precluded relief under earlier-enacted laws, even absent express preclusion language), *superseded in part by statute*, Pub. L. No. 101–376, 104 Stat. 461 (1990).

2. Preclusion also furthers Congress's determination in enacting the FRSA that uniformity is essential to safety. Congress recognized that "safety in the Nation's railroads would [not] be advanced sufficiently by subjecting the national rail system to a variety of enforcement" in different jurisdictions, H.R. Rep. No. 91-1194, at 5 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4109–10—let alone in different jury boxes. That is why Congress mandated federal rules "for every area of railroad safety," 49 U.S.C. § 20103(a), and directed that all safety-related laws be "nationally uniform," *id.* § 20106(a)(1). In this way, FRSA establishes a clear set of standards for railroads and rail workers to follow.

For that reason, the Federal Railroad Administration, which administers the FRSA, has endorsed the precedents and reasoning supporting preclusion. In a 2010 rulemaking, the agency pointed to federal appellate precedent "applying preclusion analyses" under the FRSA and FELA, suggesting that courts should have "little difficulty reconciling FELA and the current text of [FRSA]" in this way. *Passenger Equipment Safety Standards*, 75 Fed. Reg. 1180, 1215–16 (2010). And in response to comments urging the agency to preserve negligence claims against railroads, the agency made clear that "safety standards are better set" "by experts in railroad safety to whom Congress has assigned the task" than by jurors who "probably do not know anything about railroad safety." *Id.* at 1210. The idea "that a railroad that complies with the Federal standard of care set by Federal law should nevertheless be held to be negligent," the Administration explained, "would make a nullity of Federal railroad safety laws," and "national uniformity of safety regulation would no longer exist." *Id.*

3. Preclusion also tracks this Court's historic approach to rail-safety issues—which Congress presumptively had in mind when it enacted FRSA. For example, in *Atchison, Topeka & Santa Fe Railway* v. *Scarlett*, the Court considered whether a worker could sue the railroad under the Safety Appliance Act (which mandated certain safety equipment on railcars) after he slipped off a box-car ladder. 300 U.S. 471, 472 (1937). The key issue was whether the ladder complied with safety regulations issued by the Interstate Commerce Commission. The ladder did comply, so the claim failed: "[T]he railway company having strictly complied with the regulation has discharged its full duty so far as the ladder requirement of the Safety Appliance Act is concerned. The judgment of the trial

court and jury cannot be substituted for that of the commission." *Id.* at 474.

Scarlett cited with approval a series of cases similarly holding that "when the carrier complies with the requirements of the [regulation], … and therefore the act of Congress, it cannot be found guilty of actionable negligence because the plaintiff or a jury might think ordinary care required something additional." *Mahutga* v. *Minneapolis, St. Paul & Sault Ste. Marie Ry.*, 234 N.W. 474 (Minn. 1931) (cited at 300 U.S. at 474). Finally, *Scarlett* noted that the plaintiff could have pursued (but had abandoned) a negligence claim based on the proximity of the ladder to a brace rod on the side of the railcar—an issue not addressed in the federal regulations. 300 U.S. at 475. In other words, absent a violation of applicable federal safety rules, the only "right of recovery, if any, must therefore rest" on a matter *not* covered by those rules. See *id.* Norfolk Southern discussed *Scarlett* below, but the Indiana court did not address it.

4. Nothing in *POM Wonderful* undermines preclusion. That case involved allegedly misleading food labeling. The Court held that the Federal Food, Drug, and Cosmetic Act (FDCA) did not preclude a Lanham Act unfair-competition claim alleging that Coca-Cola misled consumers into believing that its product contained a juice blend like POM Wonderful's product. 573 U.S. at 106. *POM Wonderful* did nothing novel; it merely applied "traditional rules of statutory interpretation," *id.* at 112, to hold that the two laws at issue "complement[ed] each other in major respects" and both could be fully implemented at the same time, *id.* at 115. Contra the decision below, that reasoning does not apply here.

First, the court below wrongly assumed that the FRSA and FELA complement each other in the same

way as the laws in *POM Wonderful*. App. 18a. But the FDCA and the Lanham Act have *separate* scopes and purposes—"public health and safety" and "unfair competition," respectively. 573 U.S. at 115. By contrast, the FRSA and FELA do not have "separate enforcement goals." *Wheeler*, 2017 WL 3116701, at *10–11 (citation omitted). Both laws deal with the *same* topic—railroad safety—but in very different ways. *Id.* FELA, which predates virtually all federal rail-safety regulation, tries to enhance safety through case-by-case tort verdicts. The FRSA is a modern scheme that centralizes safety regulation under an expert agency. Applying these disparate schemes on the same facts can undermine their shared goal of enhancing safety. See *id.* No such risk existed in *POM Wonderful* because uniformity is essential to rail safety in a way that it is not to juice labeling. *Supra* p. 21.

Concerns about relative expertise also cut differently. While the Food and Drug Administration is expert in "public health and safety," it lacks the "perspective or expertise in assessing market dynamics that day-to-day competitors possess," which are relevant to unfair-competition issues. *POM Wonderful*, 573 U.S. at 115. In that sense, Lanham Act plaintiffs are actually *more* expert than the federal regulator on the relevant issues. See *id.* Here, the opposite is true—the Federal Railroad Administration is far better suited to set safety standards, with input from railroad labor and industry, than lay jurors are. See *Passenger Equipment Safety Standards*, 75 Fed. Reg. at 1210.

Second, courts rejecting FRSA–FELA preclusion have gotten *POM Wonderful*'s discussion of national uniformity exactly backwards. Those courts have emphasized that *POM Wonderful* rejected Coca-Cola's reliance on national uniformity as grounds for preclusion. *E.g.*, *Van Buren*, 421 So. 3d at 915. True—but

the Court did so *because the statute did not mandate uniformity*.

Coca-Cola argued that allowing Lanham Act claims would undermine the FDCA's "goal of ensuring that food and beverage manufacturers can market nationally without" facing "patchwork" regulation. 573 U.S. at 117. But to support Congress's alleged "intent to achieve national uniformity," Coca-Cola pointed only to "the FDCA's delegation of enforcement authority" to the Food and Drug Administration. *Id.* at 116–17. The Court responded that the FDCA's text addressed only state law, not federal law, but in any event, "it is far from clear that Coca-Cola's assertions about national uniformity *in fact reflect the congressional design*" behind the FDCA. *Id.* (emphasis added).

The opposite is true here. As explained, the FRSA expressly mandates that all rail-safety-related laws, including federal laws, "shall be nationally uniform," 49 U.S.C. § 20106(a)(1)—precisely the language that was missing in *POM Wonderful*. Given these differences, the anti-preclusion position boils down to the notion that courts should reject FRSA–FELA preclusion despite an *express* national-uniformity command because *POM Wonderful* rejected preclusion in the *absence* of one. That is wrong.

Third, the court below noted that the FRSA and FELA have coexisted for decades, as was true in *POM Wonderful*. *E.g.*, App. 17a–18a. But the statutes' long coexistence in *POM Wonderful* was "powerful evidence" against preclusion because Congress never added a "textual provision" addressing their interaction. 573 U.S. at 113–14 (citation omitted). Again, FRSA's national-uniformity mandate is such a provision. And as noted, Congress enacted FRSA in 1970 against the backdrop of cases like *Scarlett*, which recognized that, if a railroad has "strictly complied with

[a governing] regulation," a jury's judgment "cannot be substituted" for the expert regulator's. 300 U.S. at 474.

If anything, Congress's inaction supports preclusion because it reflects Congress's satisfaction with the "consensus" upholding preclusion. See *MD Mall*, 715 F.3d at 491 n.10. Starting in 2000, three federal courts of appeals and many state appellate courts recognized FRSA–FELA preclusion. See *id.* In 2007—after most of these decisions—Congress amended the FRSA "to rectify" a pair of district court cases holding that a railroad was not liable even if it *violated* on-point federal safety rules. H.R. Rep. No. 110-259, at 351 (2007) (Conf. Rep.), *reprinted in* 2007 U.S.C.C.A.N. 119, 183. At the same time, Congress reenacted the national-uniformity provision without changing its text.

"Congress is presumed to be aware of [a] … judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978). This presumption is especially strong here, since Congress quickly corrected certain *district court* rulings that had misconstrued the same statutory provision. It beggars belief to suggest that, in doing so, Congress overlooked the substantial body of appellate precedent construing the same statute. See, *e.g.*, *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 590 (2010) (Congress's "verbatim" reuse of statutory language presumptively adopted the "interpretations of three Federal Courts of Appeals" over the prior nine years).

5. Finally, *POM Wonderful* aside, the court below emphasized that federal regulations establish "*minimum* safety requirements," presumably meaning a railroad remains free to take greater precautions to

avoid FELA liability. See App. 17a. But this argument—which would defeat state-law preemption too—was rejected in *Easterwood*. See 507 U.S. at 674 (FRA's speed limits are not just a "ceiling," but "preclud[e] additional state regulation"). "Preclusion and preemption under the FRSA are not limited to situations where the federal or state standard is incompatible with a [FRSA] regulation." *Nickels*, 560 F.3d at 432; *accord Lane*, 241 F.3d at 443.

III. This issue is important and recurring.

Railroad safety is a nationally important issue. The U.S. rail network is the largest in the world, with 140,000 miles of track and 150,000 workers. See *How Big is Freight Rail's Impact on the U.S. Economy?*, Ass'n of Am. R.R., https://shorturl.at/iSAVI. It is Congress's policy to "promote safety in every area of railroad operations" across this vast network. 49 U.S.C. § 20101. And as the FRSA itself reflects, *uniformity* is critical to that goal. *Id.* § 20106(a)(1). Having "varying, uncertain" safety standards undermines Congress's policy. *Lane*, 241 F.3d at 443–44.

Having disuniformity *about* uniformity just exacerbates the problem. In some jurisdictions, federal regulations supply the standard of care for FELA claims on the same subject; in others, juries are free to make up their own standards; and in still others, it is unclear which rule the courts will adopt. This persistent uncertainty undermines the FRSA's goals and deprives railroads and rail workers of clear standards. In similar situations, this Court has granted review of decisions that "impair[ed]" the government's ability "to establish uniform national rules." See Petition for Writ of Certiorari 14, *United States* v. *Locke*, 529 U.S. 89 (No. 98-1701), 1999 WL 33609307, at *14, *cert. granted*, 527 U.S. 1063 (1999).

Indeed, when the *Waymire* plaintiff unsuccessfully sought this Court's review (before the split developed), a union representing "employees on every major railroad in the United States" supported the petition, arguing that the "interaction of the FELA and the FRSA is of vital import" and the question presented here has "exceptional importance." Brief of Amicus Curiae United Transp. Union Supporting Petition 1, 5, *Waymire* v. *Norfolk & W. Ry.*, 531 U.S. 1112 (No. 00-594), 2000 WL 34000891, at *1, *5. Just so.

This uncertainty affects not just litigation outcomes, but primary conduct. "By imposing liability, FELA … was meant to encourage employers to improve safety measures in order to avoid those claims." *Gottshall*, 512 U.S. at 555; see *Kurns* v. *R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012). The prospect of FELA damages—which can be substantial—incentivizes railroads to conform their conduct to the expectations of FELA juries. But again, juries will disagree with the Railroad Administration, and with each other, about what reasonable care demands in each situation—to say nothing of the countless variations in fact patterns that can arise across the massive national rail network.

This case illustrates the problem. If FELA plaintiffs are free to argue that using a one-person RCO crew is "not what a reasonably safe railroad would do," App. 3a–4a, nothing stops them from arguing that yard operations—in general or in specific yards—require RCO crews to have *more than* two members. Or they could argue that RCO operations are not safe at night, or when other trains are nearby, or in any other circumstance. Each day, hundreds of railroaders operate as one-person RCO crews, just as Mr. Sporner did. Under the decision below, however, all those operations—expressly contemplated by on-point federal rules—are

potentially negligent. Railroads and workers thus lose clear, consistent standards that govern from place to place and situation to situation.

Or consider the excessive-speed example from *Waymire* and *Lane*. As the Railroad Administration has explained, "[e]very time a train must slow down and then speed up, safety hazards … are introduced," which "can enhance the chance of derailment with its attendant risk of injury to employees" and others. *Track Safety Standards*, 63 Fed. Reg. 33,992, 33,999 (June 22, 1998). The federal speed limits thus reflect that the "safest train maintains a steady speed." *Id.* Yet the decision below allows FELA juries to hold railroads liable for *not* "slow[ing] down and then speed[ing] up" in specific situations, despite the risks involved. See *id.* That would not improve safety.

In short, railroads must make operational decisions—about crew sizes, train speeds, equipment, training, and countless other safety matters—before an accident occurs and without knowing where a resulting lawsuit might be filed, let alone what arguments a lay jury might find persuasive. And because trains and crews operate across state lines as part of an integrated national network, railroads cannot sensibly tailor those decisions to the rules governing particular courthouses—much less to particular jury verdicts that do not yet exist.

This issue also arises often. The number of FELA suits filed each year, combined with the breadth of the safety regulations issued under the FRSA, ensures that the question comes up regularly. In recent years, federal courts have seen around 340 FELA cases filed annually—and state courts are estimated to hear around nine times as many. See Admin. Office of U.S. Courts, Table C-2A, at 2 (Sep. 30, 2025), https://shorturl.at/eYaBQ; Hon. Jon O. Newman, *The Current*

Challenge of Federal Court Reform, 108 Cal. L. Rev. 905, 914 (2020). And because the FRSA mandates "regulations … for every area of railroad safety," 49 U.S.C. § 20103(a), most FELA cases involve at least some claims whose subject matters overlap with federal regulations.

IV. This case is an ideal vehicle.

This case is an ideal vehicle to resolve the question presented. While Mr. Sporner urged multiple reasons not to reach this question, the court below accepted none of them. First, he said Norfolk Southern "failed to preserve this challenge," but the court flatly "disagree[d]." App. 12a n.5. Second, he contended that no federal regulation actually governed crew size, so preclusion would not apply anyway. *Id.* at 15a. But he "did not present this argument at trial, instead agreeing with [Norfolk Southern] that it was 'permitted by federal law to have a single RCO doing all this work.'" *Id.* at 15a n.7; see also *supra* p. 7 (detailing the rules allowing one-person RCO operations). And third, he claimed he never actually raised a crew-size theory, instead asserting negligence on other grounds. Yet the court analyzed whether the FRSA precluded his "FELA claim, which is that, regardless of whether federal authority allowed a one-man RCO crew, [the railroad] was negligent in its use of a one-man RCO crew under the circumstances." App. 18a. Thus, the judgment below rests on the question presented.

Finally, unlike in the last petition on this question (a decade ago), the judgment is plainly final. The court below affirmed a jury verdict, and no further proceedings are pending. App. 22a. By contrast, *Noice* involved a remand for further state-court proceedings, so the judgment was arguably non-final under § 1257. 383 P.3d at 771–72; see Br. in Opp., *Noice*, 580 U.S.

1155 (No. 16-686), 2017 WL 345539, at *8–9. No such obstacle exists here.

V. At a minimum, the Court should call for the views of the Solicitor General.

If the Court does not grant the petition outright, it should call for the views of the Solicitor General on the interaction of these two federal statutes. As explained, the Federal Railroad Administration has previously endorsed the reasoning behind FRSA–FELA preclusion and warned against allowing lay jurors to second-guess expert safety regulators. *Supra* p. 21. The Court would benefit from the United States's considered views on these questions.

CONCLUSION

For these reasons, the petition should be granted. Alternatively, the Court should call for the views of the Solicitor General.

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