26A-

IN THE

Supreme Court of the United States

UNION PACIFIC RAILROAD COMPANY,

Applicant,

v.

SURFACE TRANSPORTATION BOARD, UNITED STATES OF AMERICA, COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, doing business as METRA,

*Respondent*s.

Application for Extension of Time Within Which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

APPLICATION TO THE HONORABLE JUSTICE BRETT M. KAVANAUGH, AS CIRCUIT JUSTICE

TOBIAS S. LOSS-EATON
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com

Counsel for Applicant

November 17, 2026

APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Union Pacific Railroad Company respectfully request a 30-day extension of time to file a petition for a writ of certiorari, to and including December 29, 2026.[1]

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Union Pacific Railroad* v. *Surface Transportation Board,* 191 F.4th 585 (8th Cir. 2026) (attached as Exhibit 1).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Eighth Circuit issued its judgment on August 31, 2026. In accordance with Rule 13.5, this application is being filed more than 10 days before the current due date of November 29, 2026.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case presents an important question about the operation of the national railroad network. Nearly all U.S. rail lines are owned by private common-carrier railroads. For decades, these railroads had a duty to carry both freight and passengers. But Congress decided to deregulate passenger service, leaving such arrangements to the marketplace in the first instance. Thus, the railroads now focus on freight alone, almost never providing passenger service.

---

[1] Applicant is Union Pacific Railroad Company, a wholly owned subsidiary of Union Pacific Corporation. Union Pacific Corporation is publicly traded on the New York Stock Exchange (NYSE: UNP). No other entity owns 10% or more of Union Pacific Railroad Company's stock

Below, the Eighth Circuit held that this arrangement—private freight railroads providing only freight service on their own property—justifies a federal "condemnation" remedy under 49 U.S.C. § 11102(a). The court thus affirmed a Surface Transportation Board ruling giving Metra (the Chicago-area commuter railroad) an indefinite federal statutory right to use Union Pacific's rail lines in Illinois and Wisconsin for Metra's own business. The Board and the court reasoned that Union Pacific's decision not to operate passenger trains on these lines renders its service "inadequate," satisfying the threshold requirement for regulatory intervention under § 11102(a). That is so, they said, even though Metra trains have operated on Union Pacific's lines for decades under a voluntary contractual arrangement, which Union Pacific is willing to continue.

This logic turns the congressional scheme upside down. If a freight railroad has accepted Congress's invitation to stop providing passenger service—if it simply operates *as a freight railroad*—the Eighth Circuit sees sufficient grounds to take the railroad's property so passenger service can be reimposed on government-dictated terms. And because freight railroads almost never provide passenger service themselves, the Eighth Circuit's reasoning applies equally across the national rail network. The decision below thus transforms § 11102(a) from a longstanding remedy of last resort into a novel open-access scheme that applies all over the country, overriding voluntary commercial arrangements.

This reasoning also creates a conflict with the Seventh Circuit. Just last year, that court invalidated a Board regulation issued under § 11102 because, while

the rule purported to address freight service problems, it allowed government-compelled access without a threshold showing of *existing* service inadequacy. *Grand Trunk Corp.* v. *STB*, 143 F.4th 741, 751–55 (7th Cir. 2025). The decision below has the same problem: Neither the Board nor the Eighth Circuit identified any problem with the passenger service that Metra's commuters actually receive (or have received). Nor did they find any violation of Union Pacific's legal obligations; quite the opposite. By allowing forced access without such a finding, they made the same mistake that the Seventh Circuit identified in *Grand Trunk*.

2. An extension is warranted to allow counsel time to coordinate and prepare a petition that will aid the Court's review of these issues. In this Court, undersigned counsel was responsible for assisting with merits briefing and oral argument in *Guerrero* v. *Johnson*, No. 25-1003 (argued November 4), and for the petition in *Norfolk Southern Railway* v. *Sporner*, No. 26- (filed November 13), and is now responsible for a forthcoming petition in *Darby* v. *United States*, No. 24-3091 (3d Cir.) (due December 1); a merits-stage amicus brief supporting respondents in *DHS* v. *DVD*, No. 26-426 (due November 23); and an certiorari-stage reply brief in *Singh* v. *Second Judicial District Court*, No. 26-157 (brief in opposition currently due November 23). Counsel is also responsible for ongoing preliminary-injunction briefing in *Uber Technologies et al.* v. *City of New York*, No. 26-cv-9455 (S.D.N.Y.) (reply due December 4).

CONCLUSION

For these reasons, Applicant requests a 30-day extension of time to file a petition in this case, to and including December 29, 2026.

Respectfully submitted,

TOBIAS S. LOSS-EATON
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com