No. 10-879

IN THE

Supreme Court of the United States

GLORIA GAIL KURNS, EXECUTRIX OF THE ESTATE OF GEORGE M. CORSON, DECEASED, ET AL.,
Petitioners,

v.

RAILROAD FRICTION PRODUCTS CORPORATION AND VIAD CORP,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENTS

DANIEL MARKEWICH
ELLEN G. MARGOLIS
AMY KALLAL
MOUND COTTON WOLLAN & GREENGRASS
One Battery Park Plaza
New York, New York 10004
(212) 804-4200

Attorneys for Viad Corp

WALTER DELLINGER
JONATHAN D. HACKER
(*Counsel of Record*)
jhacker@omm.com
ANTON METLITSKY
JOANNA NAIRN*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
**Admitted in Massachusetts only*

Attorneys for Viad Corp

(Additional counsel listed on inside cover)

JAMES C. MARTIN
JOHN L. VITSAS
COURTNEY C.T. HORRIGAN
DAVID J. BIRD
ROBERT H. OWEN
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
(412) 288-3131

Attorneys for Railroad Friction Products Corp.

QUESTION PRESENTED

Whether the Locomotive Inspection Act, 49 U.S.C. § 20701 *et seq.*, preempts state-law tort claims concerning the design, construction, or material of locomotives or their parts and appurtenances, as this Court held in *Napier v. Atl. Coast Line R.R. Co.*, 272 U.S. 605 (1926).

PARTIES TO THE PROCEEDING

Petitioners are Gloria Gail Kurns and Freida E. Jung Corson, named plaintiffs below.

Respondents are Railroad Friction Products Corporation and Viad Corp,* named defendants below.

RULE 29.6 DISCLOSURE

Respondent Railroad Friction Products Corporation is wholly owned by RFPC Holding Corporation, which is wholly owned by Westinghouse Air Brake Technologies, d.b.a. Wabtec Corporation. There is no parent or publicly held corporation owning 10% or more of Westinghouse Air Brake Technologies.

Respondent Viad Corp does not have a parent corporation, and there is no publicly held company that owns 10% or more of its stock.

* Although sued as "Viad Corporation," respondent's correct name is "Viad Corp".

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Regulations

Other Authorities

INTRODUCTION

The Locomotive Inspection Act (LIA)—first enacted in 1911 and now codified at 49 U.S.C. § 20701 *et seq.*—delegated to the Interstate Commerce Commission (now to the Secretary of Transportation) responsibility to assure the safety of "the locomotive or tender and its parts and appurtenances." *Id.* § 20701; *see id.* §§ 20701-20703.

In 1926, this Court considered the question whether a state may regulate any aspect of "the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances," even absent any "conflict" between "the devices required by the State and those specifically prescribed by Congress or the Interstate Commerce Commission." *Napier v. Atl. Coast Line R.R. Co.*, 272 U.S. 605, 610-11 (1926). The Court's answer was unanimous and unequivocal: "We hold that state legislation is precluded, because the [Locomotive] Inspection Act, as we construe it, was intended to occupy the field." *Id.* at 613.

Napier squarely resolves this case. The decedent George Corson was allegedly injured by locomotive equipment concededly designed and manufactured in compliance with federal regulatory standards. Petitioners allege that the equipment should have been designed and manufactured according to *different* standards prescribed by state tort law, and that respondents should be liable in damages for failing to comply with those standards. The LIA as construed in *Napier* unambiguously precludes that result, as virtually every court to have addressed the issue has held.

Petitioners' principal argument to the contrary relies on the mistaken proposition that the "field" governed by LIA regulation extends only to locomotive equipment *while it is being actively used on the tracks*. They contend that because Corson was injured by federally-compliant locomotive equipment while working in a repair station off-line, the state is free to enforce different or additional requirements, through imposition of tort liability, on the design and manufacture of the locomotive equipment. States may do so, petitioners assert, because the LIA does not generally regulate the health and safety of employees working in repair stations off-line.

Petitioners' argument is a category mistake. *Napier* did not hold, and nobody here contends, that the LIA delegated to the Department of Transportation (DOT) general authority over *employee health and safety in the roundhouse*. What *Napier* holds is that the LIA delegated to DOT pervasive—indeed exclusive—authority over *the design and manufacture of locomotive equipment*. And the design and manufacture of a locomotive does not change depending on its physical location or the purpose of government regulation. Thus, any state rule that would—for whatever reason—mandate or sanction a particular locomotive design falls squarely within the field occupied by the LIA, no matter where the locomotive is when the state's regulatory requirements are applied. Because petitioners' state-law claims necessarily assert that the locomotive equipment Corson worked on should have been designed or manufactured differently, their claims are preempted by the LIA.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

1. *Early Federal Regulation Of Railroad Economics And Safety*

Beginning in the late nineteenth century, Congress concluded "that a uniform regulatory scheme [was] necessary to the operation of the national rail system." *United Transp. Union v. Long Island R.R. Co.*, 455 U.S. 678, 688 (1982), *overruled on other grounds*, *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985). Accordingly, Congress began to regulate the Nation's rail carriers. The first major federal economic regulation was the Interstate Commerce Act, enacted in 1887. That Act required that railroads could charge only "reasonable and just" rates in interstate commerce. Interstate Commerce Act, ch. 104, § 1, 24 Stat. 379. The Act also established the Interstate Commerce Commission (ICC or Commission) to administer the Act. *Id.* § 11.

Several years later, Congress entered the field of railroad safety regulation. Beginning in 1893, Congress enacted several statutes that collectively would be known as the Safety Appliance Acts (SAA). The SAA set forth specific requirements concerning the equipment of locomotives and rail cars in interstate commerce, and was enforced by the ICC. *See* Act of Mar. 2, 1893, ch. 196, 27 Stat. 531, amended by Act of Mar. 2, 1903, ch. 976, 32 Stat. 943, amended by Act of May 30, 1908, ch. 225, 35 Stat. 476, amended by Act of Apr. 14, 1910, ch. 160, 36 Stat. 298 (codified as amended at 49 U.S.C. §§ 20301-20306).

Congress extended federal regulation of railroad safety with the Federal Employers' Liability Act

(FELA), 45 U.S.C. § 51 *et seq.*, enacted in 1908. FELA was enacted "[i]n response to mounting concern about the number and severity of railroad employees' injuries," and sought "to provide a compensation scheme for railroad workplace injuries, preempting state tort remedies." *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 165 (2007). Although railroad employee safety "was being measurably attained through the remedial legislation of the several States" before FELA's enactment, Congress determined that this state "legislation ha[d] been far from uniform," and that a "national law, operating uniformly in all the States," was required. *Second Employers' Liability Cases*, 223 U.S. 1, 51 (1912). FELA provides railroad employees with a federal damages action for injuries caused by their railroad-employers' negligence. *See CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630, 2636 (2011).

2. *Enactment And Early Interpretation Of The Locomotive Inspection Act*

a. Congress's "mounting concern" about railroad safety also led to the enactment, in 1911, of the Boiler Inspection Act (BIA), later known (and referred to herein) as the Locomotive Inspection Act. Unlike the SAA, in which Congress itself imposed specific equipment requirements on railroads, the LIA for the first time gave the Commission broad authority over railroad safety regulation. *Napier*, 272 U.S. at 608. First reaching only locomotive boilers, Act of Feb. 17, 1911, ch. 103, 36 Stat. 913, the LIA was amended in 1915 to authorize the ICC to assure, through both regulation and inspection, the safety of "the entire locomotive and tender and all parts and

appurtenances thereof." Act of Mar. 4, ch. 169, § 1, 38 Stat. 1192; *see Napier*, 272 U.S. at 608-09.

The LIA served two principal purposes. The first was, as its preamble stated, "[t]o promote the safety of employees and travelers upon railroads." 36 Stat. 913; *see Lilly v. Grand Trunk W. R.R. Co.*, 317 U.S. 481, 486 (1943). The second was to achieve federal uniformity in locomotive safety regulation, thereby avoiding "the paralyzing effect on railroads from prescription by each state of the safety devices obligatory on locomotives that would pass through many of them." *Swift & Co. v. Wickham*, 230 F. Supp. 398, 407-08 (S.D.N.Y. 1964) (three-judge court) (Friendly, J.); *see also* U.S. Br. 23.

The Act accomplished its dual safety and uniformity objectives in two principal ways. One was to impose a federal duty of care directly on rail carriers. Section 2 of the Act, as amended in 1924, made it "unlawful for any carrier to use or permit to be used on its line any locomotive" unless the locomotive and its parts "are in proper condition and safe to operate in the service to which the same are put." Act of June 7, ch. 355, § 2, 43 Stat. 659.

The other was to delegate to the Commission regulatory authority of a "broad scope." *Napier*, 272 U.S. at 613. The ICC was given authority over all rail carriers operating in interstate commerce, LIA § 1, as well as "general" authority over "the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances." *Napier*, 272 U.S. at 611, 613; *see* LIA § 6.

Other provisions of the Act facilitated the exercise of the Commission's regulatory authority over

the design and manufacture of locomotive equipment. The LIA thus provided for appointment of a "chief inspector and two assistant chief inspectors," who would "see that the requirements of this Act and the rules, regulations, and instructions made or given hereunder are observed by common carriers subject hereto." LIA § 3. (The Act required the chief inspector to divide the Nation into 50 districts, and the ICC would appoint one inspector per district. LIA § 4.) Section 7 then required the chief inspector to make an annual report to the ICC, while § 8 required the chief inspector to investigate accidents and, upon the request of the ICC, create a written report.

The Act also delegated specific functions to the chief inspector and ICC concerning inspection and repair of locomotives. Section 5, for example, required carriers to propose specific rules and regulations that would govern inspection of their locomotives, subject to ICC approval. And § 6 further required district inspectors to conduct inspections of every locomotive and its equipment, and precluded rail carriers that fail inspections or that are otherwise non-compliant with ICC regulations from using their locomotives until proper repairs are made.

Finally, § 9 gave the government an additional enforcement mechanism. It empowered the United States to bring suit against carriers that violated any provision of the LIA, and to recover a civil penalty for those violations.

b. Against this regulatory backdrop, this Court addressed the LIA's preemptive scope in 1926 in *Napier*. Georgia and Wisconsin had attempted to

impose their own particular requirements on the design of locomotives and their parts. 272 U.S. at 607. "The main question" presented was "one of statutory construction"—"whether the [Locomotive] Inspection Act has occupied the field of regulating locomotive equipment used on a highway of interstate commerce." *Id.*

In answering that question, this Court "assumed" each state requirement "to be a proper exercise of its police power," and further "assumed … there is no physical conflict between the devices required by the State and those specifically prescribed by Congress or the Interstate Commerce Commission; and that the interference with commerce resulting from the state legislation would be incidental only." *Id.* at 610-11 (footnote omitted).

The Court nevertheless found Congress's intention to preempt the state legislation "clearly manifested" (*id.* at 611) in the text, structure, and purpose of the LIA. The "power delegated to the Commission by the [LIA] as amended is a general one. It extends to the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances." *Id.* State laws regulating the design and manufacture of locomotives were preempted by the LIA's delegation of that regulatory field to the ICC, the Court emphasized, even though those state laws were *not* "inconsistent" with any actual regulation thus far promulgated by the ICC: the "fact that the Commission has not seen fit to exercise its authority to the full extent conferred has no bearing upon the construction of the Act delegating the power." *Id.* at 613.

The LIA, in short, "was intended to occupy the field." *Id.* at 613. "The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose." *Id.* All state laws "directed to the same subject" and that "operate upon the same object"—i.e., "the equipment of locomotives"—were held preempted. *Id.* at 612.

c. This Court has repeatedly reaffirmed *Napier*'s field-preemption holding. *See*, *e.g.*, *Maryland v. Louisiana*, 451 U.S. 725, 747 (1981); *Urie v. Thompson*, 337 U.S. 163, 192 (1949); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Moreover, every federal court of appeals and state court of last resort to have considered the question—save Pennsylvania's—has held that the LIA preempts state statutes and common-law claims regulating locomotive design and manufacture. *See Forrester v. Am. Diesel-electric, Inc.*, 255 F.3d 1205 (9th Cir. 2001) (non-employee product liability action against manufacturer of locomotive cranes); *United Transp. Union v. Foster*, 205 F.3d 851 (5th Cir. 2000) (statute requiring signal devices on engine); *Oglesby v. Del. & Hudson Ry. Co.*, 180 F.3d 458 (2d Cir. 1999) (common-law failure to warn claim against seat manufacturer); *Springston v. Consol. Rail Corp.*, 130 F.3d 241 (6th Cir. 1997) (common-law negligence claim for lack of visual devices); *Mickelson v. Mont. Rail Link, Inc.*, 999 P.2d 985 (Mont. 2000) (common-law claims against railroad concerning locomotive equipment). Claims held preempted by the LIA include "state-law tort claims against the manufactur-

ers of railroad locomotives asserting injury caused by exposure to asbestos contained in railroad locomotives." *Darby v. A-Best Prods. Co.*, 811 N.E.2d 1117, 1125-26 (Ohio 2004); *see In re W. Va. Asbestos Litig.*, 592 S.E.2d 818 (W. Va. 2003); *Gen. Motors Corp. v. Kilgore*, 853 So. 2d 171 (Ala. 2002); *Scheiding v. Gen. Motors Corp.*, 993 P.2d 996 (Cal. 2000).

d. Petitioners erroneously cite several of this Court's post-*Napier* cases for the proposition that "injured persons who lacked claims under FELA were permitted to pursue state-created causes of action based on violations of the LIA or the SAA." Pet. Br. 5. Not one of the cited cases involved a claim based on a violation of the LIA. Rather, each concerned a claim based on a violation of the SAA. *See Crane v. Cedar Rapids & I.C. Ry. Co.*, 395 U.S. 164, 165 (1969); *Tipton v. Atchison, T. & S.F. Ry. Co.*, 298 U.S. 141, 145 (1936); *Fairport, Painesville & E. R.R. Co. v. Meredith*, 292 U.S. 589, 593-94 (1934); *Gilvary v. Cuyahoga Valley Ry. Co.*, 292 U.S. 57, 59 (1934). No precedent of this Court since *Napier* has allowed a state-law action premised on a violation of the LIA.

Petitioners also assert that other cases from this Court and state courts indicate that, even after enactment of the LIA, "state laws continued to provide remedies for injured railroad workers (where FELA did not apply) and other persons, including those harmed by unsafe locomotive parts." Pet. Br. 4. Petitioners are wrong again. Only two of the many cited cases actually involved the design or manufac-

ture of a locomotive or its materials—the field occupied by the LIA.[1] And neither of those two cases—one of which predates *Napier*—even mentions the LIA, let alone analyzes its preemptive scope. *See Indus. Accident Comm'n v. Davis*, 259 U.S. 182 (1922); *Ala. Great S. Ry. Co. v. Hamby*, 192 S.E. 467, 468 (Ga. Ct. App. 1937). Certainly after it was definitively construed by this Court in *Napier*, the LIA did *not* permit state laws to provide remedies for railroad workers injured because of design or manufacturing defects in locomotive equipment.

3. *Subsequent LIA Amendments And Current Codification*

Petitioners further err in suggesting (Pet. Br. 5-8) that subsequent amendments to the LIA have rendered the statute less important, or have narrowed its delegation of regulatory authority over the design, construction, and material of every locomotive.

a. As petitioners correctly state (Pet. Br. 6), the first major post-*Napier* change to the LIA's regulatory regime occurred in 1965, when President John-

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[1] *See Gilvary*, 292 U.S. at 59 (SAA claim based on equipment of rail car, not locomotive); *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188 (1917) (no indication that case involved a locomotive); *Shanks v. Delaware, L. & W. R.R. Co.*, 239 U.S. 556, 558 (1916) (injured by a shop fixture, not a locomotive part); *Day v. Chi. & N.W. Ry. Co.*, 188 N.E. 540, 541-42 (Ill. 1933) (injury caused by actions of another employee); *New Orleans & N.E. R.R. Co. v. Beard*, 90 So. 727, 727-28 (Miss. 1922) (negligence claim was based on faulty welding equipment and work conditions); *Malone v. St. Louis-S.F. Ry. Co.*, 213 S.W. 864, 866 (Mo. Ct. App. 1919) (injury caused by a train passing at high speed, which sent debris through the window of the stationary train on which plaintiff sat).

son announced that, under authority of the Reorganization Act of 1949, he would eliminate the position of "chief inspector" created by § 3 of the LIA. Special Message to the Congress Transmitting Reorganization Plan 3 of 1965: Locomotive Inspection (May 27, 1965), *reprinted in* 45 U.S.C. § 22 note (1988). The President explained that "anachronistic provisions of the locomotive inspection statutes"—i.e., provisions creating the chief inspector and his subordinates, and separating his functions from those of the ICC—limited the "Commission's ability to organize and carry out most effectively its responsibilities for railroad safety." *Id.* To remedy this situation, the President transferred all the functions of the chief inspector and his subordinates to the ICC. *Id.*

President Johnson's actions accordingly recognized that while the sections of the LIA creating and setting forth the functions of the chief inspector—§§ 3, 4, and 7—had no continuing significance, the substantive safety regulatory regime created by the LIA remained critical. Indeed, far from lessening the importance of the LIA or of its regulatory regime, the President explained that "[p]rogress in railroad technology has not eliminated the need for locomotive inspection. Locomotive inspection is still essential for the safety of employees, passengers, and cargo." *Id.*

b. The next year, Congress abolished the ICC and delegated its regulatory authority (including its authority under the LIA) to the Secretary of Transportation. Department of Transportation Act of 1966, Pub. L. No. 89-670, § 6, 80 Stat. 931, 939-40.

That statute, however, did not amend the LIA's substance in any way.

c. Shortly thereafter, in 1970, Congress enacted the Federal Railroad Safety Act (FRSA), Pub. L. No. 91-458, 84 Stat. 971 (1970). The FRSA was enacted "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. Importantly, Congress determined that the then-existing laws concerning railroad safety—including the LIA—"have served well" and should be "continue[d] … without change." The problem was that existing laws *did not go far enough*, meeting "only certain and special types of railroad safety hazards." H.R. Rep. No. 91-1194, at 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4105. Congress therefore expanded federal authority to areas of rail safety not already covered by existing laws, delegating to the Secretary of Transportation authority to "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. § 20103(a).

Congress also included a specific preemption provision in the FRSA, which was designed to assure that "[e]xisting state rail safety statutes and regulations remain in force until and unless preempted by federal regulation." H.R. Rep. No. 91-1194, at 24, *reprinted in* 1970 U.S.C.C.A.N. at 4130. The provision states in part that a "State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation … prescribes a regulation or issues an order covering the subject matter of the State requirement." 49 U.S.C. § 20106(a)(2). The same sec-

tion provides that "[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable." *Id.* § 20106(a)(1).

As the foregoing discussion shows, nothing in the FRSA—including its preemption provision—was intended to "subsume, replace, or recodify any acts," including the LIA. *Marshall v. Burlington N., Inc.*, 720 F.2d 1149, 1153 (9th Cir. 1983) (Kennedy, J.).

d. In 1994, Congress repealed and recodified all of the federal railroad safety statutes, including the LIA, in Title 49. Act of July 5, 1994, Pub. L. No. 103-272, 108 Stat. 745. Petitioners suggest that the LIA was only partially reenacted (Pet. Br. 8); in fact, Congress expressly stated in the 1994 act that the recodification was intended to be "without substantive change." *Id.* § 1(a); *see Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 223 n.1 (1995).

Specifically, the 1994 act recodified LIA § 2—the duty-of-care provision, which also refers to the Secretary's regulatory authority—at 49 U.S.C. § 20701. That provision states:

> A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—
>
> (1) are in proper condition and safe to operate without unnecessary danger of personal injury;
>
> (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.

Congress also recodified the Secretary's inspection authority previously set forth in LIA §§ 5 and 6, including authority concerning locomotive repair. These recodified sections specifically require the Secretary to "(1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances; (2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter … and (3) ensure that every railroad carrier makes inspections of locomotives … and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again." 49 U.S.C. § 20702(a). And a locomotive that is not in compliance with the Act or DOT regulations may be used "only after it is … (A) repaired to comply with this chapter and regulations prescribed under this chapter; or (B) found on reinspection or appeal to be in compliance." *Id.* § 20702(b)(3). Congress similarly recodified LIA § 8, which concerns reports and investigations of injuries occurring as a result of locomotive part failures. *Id.* § 20703.

Petitioners state that Congress did not recodify the remainder of the LIA—§§ 1, 3, 4, 7, and 9—"as free-standing provisions." Pet. Br. 8. But those provisions all are embodied fully in current law. As explained, §§ 3, 4, and 7 all concerned the chief inspector of locomotives, whose inspection authorities were fully transferred by President Johnson to the ICC in 1965, and are now exercised by the Secretary of Transportation. *See* 49 U.S.C. §§ 20701-20703. Section 1—which in part defined the scope of the term

"railroad"—is now part of 49 U.S.C. § 20102, which defines that term and others for several different statutes, including the LIA. Finally, § 9—the LIA's penalty provision—was recodified and consolidated with other railroad-safety penalty provisions at 49 U.S.C. §§ 21302 and 21304.

Accordingly, the Secretary today retains the same regulatory authority under the LIA that Congress originally delegated to the ICC and the chief inspector. That authority thus still applies to "[w]hatever in fact is an integral or essential part of a completed locomotive," as well as "all parts or attachments definitely prescribed by lawful order" of the Secretary. *S. Ry. Co. v. Lunsford*, 297 U.S. 398, 402 (1936). It "extends to the design, the construction, and the material of every part of the locomotive and tender and of all appurtenances." *Napier*, 272 U.S. at 611. And it is not "confined to safeguarding against accidental injury," but also extends to "protection of employee health," insofar as it may be harmed by defective design or manufacture of locomotive equipment. *Urie*, 337 U.S. at 191, 193-94.

4. *Relevant Regulatory History*

In 1978, the Federal Railroad Administration (FRA)—the agency within DOT responsible for regulating railroad safety—promulgated regulations intending to clarify the division of authority between the two federal agencies with responsibility for railroad worker safety issues: the FRA and the Occupational Safety and Health Administration (OSHA), which has general authority over workplace safety pursuant to the Occupational Health and Safety Act of 1970. *See* Railroad Operational Safety & Health

Standards; Termination, 43 Fed. Reg. 10,583 (Mar. 14, 1978). The FRA made clear that it would retain primary worker-safety jurisdiction over—and OSHA would have no jurisdiction over—"the design of locomotives and other rolling equipment used on a railroad, since working conditions related to such surfaces are regulated by FRA as major aspects of railroad operations." *Id.* at 10,587.

In 1996, FRA reported the results of an investigation and rulemaking proceeding mandated by Congress as to the particular question of asbestos in locomotives and their parts. That report, which Congress had required in the event FRA determined not to prescribe regulations, found that "further action with respect to the presence of asbestos in locomotive cabs" was not "warranted at this time." U.S. Dep't of Transp., Report to Congress, Locomotive Crashworthiness & Cab Working Conditions 10-12 (Sept. 1996).[2]

B. Factual Background And Procedural History

1. Between 1947 and 1974, George Corson was employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad, and worked at various locomotive repair facilities in South Dakota and Montana. JA42; Pet. App. 3a. His duties included "removing insulation from locomotive boilers and putting brake shoes on locomotives." Pet. App. 3a. Corson allegedly contracted mesothelioma from his exposure to asbestos

[2] *Available at* http://www.regulations.gov/#!document Detail;D=FRA-2004-17645-0009.

from the insulation and brake shoes. JA52.[3] Respondent Viad is alleged to be the successor in interest of the company that allegedly manufactured the locomotives and boilers, JA51, while respondent Railroad Friction Products Corporation (RFPC) allegedly distributed the brake shoes (i.e., "parts and appurtenances" of the locomotive), JA49.

2. On June 13, 2007, Corson and his wife filed a complaint against numerous defendants, including Viad, RFPC, and Corson's railroad-employer, in Pennsylvania state court, alleging state-law tort claims. JA41-53. In particular, the complaint alleged that the equipment Corson repaired was defective in its design because it contained asbestos. JA20-27 (¶¶ 7-10, 12). The complaint also alleged that the defendants failed to warn Corson of the dangers of asbestos exposure. JA21-26 (¶ 10). Corson passed away during the pendency of the litigation, and the personal representatives of his Estate, Gloria Kurns and Freida Corson, were substituted as party plaintiffs, Pet. App. 3, and are the petitioners here.

Many of the defendants, including respondents Viad and RFPC, moved for summary judgment on various grounds. Both Viad's and RFPC's motions argued that petitioners' state-law claims were pre-

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[3] Petitioners say that railroads knew of the risks of asbestos exposure by the 1930s. Pet. Br. 9. That contention is, of course, irrelevant for purposes of deciding whether the LIA preempts petitioners' claims. Moreover, the state trial court in this case expressly found that plaintiffs had failed to produce any evidence that Corson's railroad employer was aware of the harms of asbestos at the time of his alleged exposure. JA117-18.

empted by the LIA. JA104-05, JA120-21. The trial court denied Viad's and RFPC's summary judgment motions in a one-sentence order, JA100-01, although it granted summary judgment as to several other defendants on other grounds, *see*, *e.g.*, JA99, JA118.

3. On May 13, 2008, following the grants of summary judgment to some defendants and the voluntary dismissal of others—including a Pennsylvania corporation whose presence in the case had precluded removal to federal court on the basis of diversity of citizenship, *see* 28 U.S.C. § 1441(b)—Viad and RFPC timely removed the remainder of the case to federal district court. Viad and RFPC again moved for summary judgment on preemption grounds. Pet. App. 4a, 23a-24a.

4. The district court granted the motion for summary judgment, citing *Napier*, *see* Pet. App. 25a-34a, and the Third Circuit affirmed. The court of appeals began with *Napier*, and its "hold[ing] that state legislation is precluded, because the [Locomotive] Inspection Act … was intended to occupy the field." Pet. App. 10a (quotation and emphasis omitted).

The "goal of the LIA," the court further explained, "is to 'prevent the paralyzing effect on railroads from prescription by each state of the safety devices obligatory on locomotives that would pass through many of them.'" Pet. App. 12a (quoting *Oglesby*, 180 F.3d at 461). "In order to accomplish this goal, suits against manufacturers of locomotive parts for product liability claims should be included in the scope of the LIA's field preemption, particularly because the LIA governs both the design and the construction of a locomotive's parts." Pet. App. 13a. "If each state

had its own standards for liability for railroad manufacturers," the court emphasized, "equipment would have to be designed so that it could be changed to fit these standards as the trains crossed state lines, or adhere to the standard of the most restrictive states." Pet. App. 13a-14a. "Congress's goal of uniform railroad equipment regulation would clearly be impeded by state product liability suits against manufacturers, the purpose of which is, in part, to persuade defendants to comply with a standard of care established by the state." Pet. App. 14a.

The court of appeals also rejected the argument that LIA preemption applies only to state-law claims based on injuries sustained when a locomotive is "in use," and not when it is being repaired. The court explained that while "*liability* under the LIA only exists if the locomotive was in use at the time of the accident," "plaintiffs are not asserting or contesting liability under the LIA." Pet. App. 10a n.5 (emphasis in original).

Finally, the court of appeals rejected petitioners' argument that their claims involving "a failure to place a warning label on some of the products in question" are not preempted because they do "not directly involve the parts and appurtenances [of the locomotive] themselves." Pet. App. 13a n.8. "This is merely an attempt at artful pleading," the court of appeals concluded, because the "gravamen of the plaintiffs' claim is still that the decedent suffered harmful consequences as a result of his exposure to asbestos contained in locomotive parts and appurtenances." *Id.* "The plaintiffs," the court explained, "may not merely rebrand a claim in order to avoid preemption." *Id.* (citing *Oglesby*, 180 F.3d at 461;

Law v. Gen. Motors Corp., 114 F.3d 908, 910-13 (9th Cir. 1997)).

The court of appeals therefore "agree[d] with the vast majority of courts that have been called upon to decide the issue of the scope of LIA preemption," Pet. App. 16a, holding that the LIA "preempts a broad field relating to the health and safety of railroad workers, including requirements governing the design and construction of locomotives, as well as equipment selection and installation." Pet. App. 11a (citing *Napier*, 272 U.S. at 611-12; *Urie*, 337 U.S. at 191-93).

SUMMARY OF ARGUMENT

I. A. This Court held in *Napier* that DOT's broad regulatory authority over locomotive equipment design and manufacture occupies the field, and that any state attempt to regulate the same subject matter is void. That holding squarely decides this case. Because petitioners' state-law tort claims challenge the design and manufacture of locomotive equipment, they are preempted by the LIA, as interpreted in *Napier*.

Contrary to petitioners' submission, *Napier* is fully consistent with modern field-preemption doctrine, which requires a clear finding of congressional intent to occupy the field. *Napier*'s holding rests on its explicit conclusion that Congress "clearly manifested" its intent to preclude state regulation of the design, construction, and materials of locomotive equipment. 272 U.S. at 611. And nothing in the intervening period has undermined *Napier*'s tacit recognition that a uniform national standard governing locomotive equipment is necessary for the efficient

movement of locomotives in interstate commerce. If there were some policy reason to amend the LIA and effectively overrule *Napier*, Congress could have done so, but it has not.

B. There likewise is no merit to petitioners' argument that LIA field preemption applies only to regulation of locomotive design while the locomotives are "in use" on the tracks, not while they are in repair stations, where their design injured Corson. That argument relies entirely on the LIA's duty-of-care provision, which requires railroads to assure the safety of on-line locomotives. But that provision does not mark the boundary of the LIA's regulatory—and hence preemptive—scope. In addition to imposing a duty of care on railroads, the Act *also* confers on DOT *categorical* authority to regulate the design and manufacture of locomotive equipment. A locomotive's design and manufacture is the same whether it is on the tracks or in the roundhouse. Accordingly, DOT's broad authority to regulate locomotive design necessarily preempts state laws that purport to regulate locomotive design only in the roundhouse.

Petitioners observe that the LIA does not grant DOT general authority to regulate the health and safety of railroad repair workers. That is true but irrelevant. What matters is that the LIA *does* grant DOT authority to regulate locomotive design and manufacture, and that authority necessarily applies wherever the locomotive happens to be at the time the plaintiff's injury is incurred.

C. Petitioners' remaining arguments against field preemption are similarly misplaced. Petition-

ers note that the LIA's civil penalty provision was amended to reach manufacturers only after Corson alleged he was exposed to asbestos. But as the government explains in rejecting that argument, LIA preemption is based on DOT's exclusive regulatory authority over locomotive design and manufacture, not on the parties designated as defendants by the statute.

Petitioners also err in contending that LIA preemption encompasses only positive state regulation, not tort law. No court has ever adopted that position. Sanctions under state tort law have the same effect on the regulation of locomotive equipment design and manufacture as sanctions under state statutes or regulations. And allowing individual juries to regulate locomotive design or manufacture through liability awards would undermine the LIA's national-uniformity objective as much as, if not more than, state positive regulation.

Petitioners additionally contend that the LIA's significance—and, thus, its preemptive force—has been diminished since *Napier* in light of the FRSA. The government correctly rejects that argument as well. The FRSA was expressly enacted to *supplement*, not alter or replace, then-existing railroad safety statutes, including the LIA. Congress made the conscious decision to continue the LIA in force without amendment, thus retaining its preemptive effect over locomotive-equipment design and manufacture.

Finally, petitioners contend that their construction of LIA preemption is necessary to avoid leaving certain potential plaintiffs without a remedy for in-

juries caused by alleged locomotive equipment design and manufacturing defects. But the only claims foreclosed would be claims by *independent contractors* asserting *off-line* injuries, and most of those would be foreclosed anyway under the conflict preemption theory espoused by the government. Petitioners point to nothing suggesting that preserving such a small category of claims was among Congress's objectives in enacting the LIA. And while they profess concern that railroads held liable under FELA could not sue manufacturers for contribution, nothing would preclude railroads and manufacturers from privately contracting *ex ante* for indemnification. In any event, that some claimants could be left without a remedy is a necessary consequence of field preemption, and it is no reason to depart from *Napier*'s construction of the regulatory scheme or to undermine the LIA's requirement of national uniformity.

II. The government contends that while field preemption under the LIA is limited to regulation of on-line locomotives, any state tort claim implicating locomotive design would nevertheless be *conflict* preempted because such a claim would interfere with Congress's purpose and objective of national uniformity in locomotive-equipment regulation. The government's conflict-preemption argument is just a semantic recharacterization of the longstanding LIA field preemption rule: a state-law claim for an off-line injury interferes with the LIA's national uniformity objective precisely because the LIA grants DOT *categorical* authority to establish a single, uniform standard for all aspects of locomotive design

and manufacture, whether the locomotive is on- or off-line.

A. If the Court holds that petitioners' claims are not field preempted, however, it should hold they are conflict preempted. As the government acknowledges, petitioners' design-defect claims seek directly to challenge the design of respondents' locomotive equipment, which squarely interferes with the LIA's purpose of uniformity in locomotive-equipment regulation.

B. The government errs, however, in contending that failure-to-warn claims do not similarly interfere with the LIA's uniformity purpose. Courts have consistently held that there is no relevant distinction for LIA purposes between a state's judgment that a locomotive design is unsafe, on the one hand, and a state's judgment that a locomotive is unsafe absent a warning, on the other. DOT's own warning regulations recognize that authority to regulate design and manufacture necessarily encompasses authority to regulate warnings. And the specter of 50 different, and potentially conflicting, state warning requirements is as much of a threat to the LIA's overriding purpose of uniform regulation of locomotive equipment as direct state regulation of locomotive design would be.

C. The question of conflict preemption is ripe and should be resolved, but only if the Court rejects the longstanding and nearly uniform precedents of the federal and state appellate courts and holds that LIA field preemption applies only to the design and manufacture of locomotives when they are actively in use on-line.

ARGUMENT

Petitioners treat this Court's decision in *Napier* as little more than an afterthought—it is not even mentioned in the Argument section of their brief until page 36. But *Napier*'s construction of the LIA, applied consistently by federal courts and the overwhelming majority of state courts for more than 80 years, squarely controls the outcome in this case. The court of appeals correctly adhered to *Napier* and concluded that petitioners' tort claims are preempted by the LIA because they seek to regulate the design, construction, or material of locomotive equipment. Petitioners' attempts to place this case outside the scope of the LIA—despite *Napier*'s longstanding, controlling construction of the Act—are without merit. The judgment of the court of appeals should be affirmed.

I. PETITIONERS' CLAIMS ARE PREEMPTED BECAUSE THE LIA OCCUPIES THE FIELD OF LOCOMOTIVE EQUIPMENT REGULATION

In the absence of an express preemption provision, Congress nevertheless "may indicate an intent to occupy a given field to the exclusion of state law." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988). Congress's intent to exclude state law from a particular subject of regulation "properly may be inferred where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where 'the object sought to be obtained by the federal law and the character of obligations imposed by it ... reveal the same purpose.'" *Id.* (quoting

Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947), in turn citing *Napier*).

This Court held in *Napier* that the LIA "clearly manifested" Congress's intent to "occupy the entire field of regulating locomotive equipment." 272 U.S. at 611. Petitioners' tort claims indisputably seek to regulate the design and manufacture of locomotive equipment. They therefore fall squarely within the field regulated by the LIA, and are preempted for that reason.

A. *Napier*'s Field-Preemptive Construction Of The LIA Remains Controlling

1. The question presented in *Napier* was the same one petitioners present here: "[W]hether the [LIA] has occupied the field of regulating locomotive equipment used on a highway of interstate commerce." 272 U.S. at 607. The answer to that question, then as now, is yes. This Court explained that the LIA "was intended to occupy the field" of regulation concerning the "design, the construction, and the material of every part of the locomotive and tender and of all appurtenances," irrespective of whether any federal safety standard is "inconsistent with the state legislation." 272 U.S. at 611, 613; *see also S. Ry. Co.*, 297 U.S. at 402. Accordingly, all state laws "directed to the same subject" and that "operate upon the same object"—i.e., "the equipment of locomotives"—are preempted. 272 U.S. at 612.

Petitioners here plainly seek to hold Viad and RFPC liable based on claims challenging the design, construction, and material of the locomotive and its parts. Their claims thus are preempted by the LIA

as construed in *Napier*, as the court of appeals correctly held.

2. Petitioners suggest that *Napier* should not be applied to their claims at all because it represents an anachronistic approach to preemption, one that cannot be reconciled with or survive current doctrine. That argument is incorrect.

a. Although the petition for certiorari urged this Court to overrule *Napier* (Pet. 36-40), petitioners have not expressly renewed that request, *see* U.S. Br. 12 n.3, and the United States expressly asserts that *Napier* retains its full vitality, *e.g.*, U.S. Br. 12-13. Petitioners do suggest, however, that *Napier* should be understood as limited to a "historical context" that no longer exists. Pet. Br. 40. Petitioners argue that when *Napier* was decided, "courts generally concluded that, when the federal government decided to regulate a given subject, any state law governing the same area was automatically invalid." *Id.* That view of preemption changed after the New Deal, petitioners contend, to an approach reflected in this Court's statement in *Rice* that state laws "would not be found to have been preempted 'unless that was the clear and manifest purpose of Congress.'" Pet. Br. 40-41 (quoting *Rice*, 331 U.S. at 230). Petitioners say that *Napier* is at odds with the manifest-congressional-purpose approach to preemption adopted in *Rice*, and so *Napier* must be ignored.

Petitioners' "historical context" argument distorts both *Napier* and *Rice*. Consistent with current preemption doctrine, *Napier* expressly holds that the "intention of Congress to exclude States from exerting their police power must be *clearly manifested*,"

and further holds under this standard that the LIA "was intended to occupy the field." 272 U.S. at 611, 613 (emphasis added). Petitioners' submission that the LIA does not reflect a "clear and manifest" intent to displace state-law claims (Pet. Br. 31-34) ignores *Napier* itself. And when *Rice* observes that a finding of preemption requires a "clear and manifest purpose of Congress," the first case *Rice* cites for that proposition is *Napier*—though petitioners omit the citation. *Rice*, 331 U.S. at 230 (citing *Napier*, 272 U.S. at 611, and *Allen-Bradley Local No. 1111 v. Wis. Empl't Relations Bd.*, 315 U.S. 740, 749 (1942)). *Napier* cannot be inconsistent with the very proposition for which *Rice* cites it.[4]

b. Nor has the underlying rationale for preempting the field of locomotive-equipment design and manufacture changed since *Napier* was decided. As Judge Friendly observed, *Napier*'s field preemption holding was animated by "the paralyzing effect on railroads from prescription by each state of the safety devices obligatory on locomotives that would pass through many of them." *Swift*, 230 F. Supp. at 407-08. The same concern holds true today: "Locomotives are designed to travel long distances, with most railroad routes wending through interstate commerce. The virtue of uniform national regulation is self-evident: locomotive companies need only con-

[4] In any event, if petitioners were correct that this Court's precedents at the time required a finding of field preemption whenever Congress enacted a federal law regulating a particular subject, then the Congress that enacted the LIA necessarily accepted that federal regulation concerning locomotive design, construction, and material would exclude all state regulation on that subject.

cern themselves with one set of equipment regulations and need not be prepared to remove or add equipment as they travel from state to state." *Law*, 114 F.3d at 910 (quotation omitted). By contrast, if each state were permitted "to adopt different liability-triggering standards, manufacturers would have to sell locomotives and cars whose equipment could be changed as they crossed state lines, or adhere to the standard set by the most stringent state. Either way, Congress's goal of uniform, federal railroad regulation would be undermined." *Id.* at 910-11. There is no plausible reason national uniformity in locomotive-equipment regulation should be deemed less important now than it was when the LIA was enacted or *Napier* was decided.

c. Finally, whatever *Napier*'s "historical context," its construction of the LIA's preemptive scope remains entitled to "special force," because Congress at any point could have amended the LIA to revise its preemptive effect. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008); *see CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 457 (2008). But Congress has not altered the LIA in any relevant way since *Napier* was decided in 1926. *See supra* at 10-15. Accordingly, manufacturers have designed and manufactured locomotives and their equipment for more than eight decades relying on *Napier*'s clear holding that their designs and materials needed to comply only with a single, uniform set of standards, clearly prescribed by federal regulations manufacturers could easily find and apply. That understanding has been repeatedly affirmed by an "avalanche of [lower court] authority" applying *Napier*, *W. Va. Asbestos Litig.*, 592 S.E.2d at 822,

and holding that because only DOT may prescribe standards governing the design and manufacture of locomotive equipment, state regulatory requirements concerning the same subject—including tort claims based on the use of asbestos in locomotive equipment—are preempted. *See supra* at 8-9.

Napier remains correct on its own terms, but if there were any doubts, they must be resolved in favor of adhering to precedent, given its especially strong "statutory *stare decisis*" force.[5]

B. Petitioners' Claims Fall Within The LIA's Regulated Field As Described In *Napier*

As petitioners and the government correctly acknowledge, the extent of field preemption is coterminous with the scope of the regulated field. *See United States v. Locke*, 529 U.S. 89, 112 (2000); Pet. Br. 20; U.S. Br. 13. Petitioners and the government argue that even under *Napier*, the LIA does not pre-

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[5] The jurisprudential and regulatory havoc that would result from overruling *Napier* on petitioners' theory would not be limited to the LIA. Since 1912, this Court has held that FELA occupies the field of railroad workplace injuries, and thus displaces state tort remedies for railroad workers against their employers. *See Second Employers' Liability Cases*, 223 U.S. at 53-55; *see also Sorrell*, 549 U.S. at 165. This Court's preemption analysis in *Second Employers' Liability Cases* resembled the "automatic" preemption approach that petitioners erroneously ascribe to *Napier*. *See* 223 U.S. at 55 ("And now that Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is."). If *Napier* were overruled as inconsistent with *Rice*'s "clear and manifest intent to preempt" approach, then FELA preemption would necessarily fall as well, and along with it every railroad's century-old reliance on a single, uniform tort regime for its employees.

empt petitioners' claims because those claims fall outside the scope of the regulated field *Napier* identified. They contend that the LIA permits DOT to regulate locomotive equipment only while the locomotive is actively "in use," and not while it is being repaired in a roundhouse, where Corson was allegedly exposed to asbestos. Pet. Br. 21-28; U.S. Br. 13-22. As a result, "state-law claims seeking to recover for injuries incurred while working in [repair] facilities are not within any field that the LIA might preempt." Pet. Br. 28; *see* U.S. Br. 12-22.

Petitioners and the government misconstrue both *Napier* and the LIA. As *Napier* holds, DOT's authority under the LIA extends *categorically* to regulation of the design, construction, and materials of locomotive equipment. That authority does not cease to exist merely because the locomotive enters a roundhouse for repairs. Indeed, it is difficult to imagine how regulation of locomotive design and manufacture limited to on-line locomotives would function, since a locomotive can change neither its design nor manufacture when it rolls into a repair station. Petitioners' claims are preempted because they seek to regulate locomotive equipment, which is squarely within the scope of DOT's regulatory authority under the LIA.

1. In arguing that the LIA's regulatory field extends only to locomotive equipment that is actively "in use," petitioners and the government focus exclusively on the LIA provision establishing a duty of care for railroads. That provision states that "[a] railroad carrier may *use* or allow to be used a locomotive or tender *on its railroad line* only when the locomotive or tender and its parts and appurte-

nances … are in proper condition and safe *to operate* without unnecessary danger of personal injury." 49 U.S.C. § 20701(1) (emphasis added). The emphasized terms, petitioners and the government argue, demonstrate that the statute governs only locomotives actively being used on-line, and not locomotives that have been taken off-line for repairs. Pet. Br. 21-22; U.S. Br. 13-14.

The duty of care in locomotive operation imposed on railroads, however, does not fully capture the field regulated by the LIA. In order to ensure that locomotives are safely operated, the LIA *also* delegates to DOT the authority to regulate *locomotive equipment itself*. DOT is required to:

- "become familiar, so far as practicable, with the condition of every locomotive tender and its parts and appurtenances,"
- "inspect every locomotive and tender and its parts and appurtenances," and
- "ensure that every railroad carrier makes inspections of locomotives and tenders and their parts and appurtenances … and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again."

49 U.S.C. § 20702(a).

In other words, whereas the railroad duty of care precludes *railroads* from using unsafe equipment, DOT is additionally charged with ensuring that manufacturers do not even *build* (and railroads do not buy) unsafe locomotives in the first instance. DOT's duties concerning off-line locomotives are "not

merely to inspect" them, but also include the authority "to specify the sort of equipment to be used on locomotives" and "to require specific devices." *Napier*, 272 U.S. at 612. DOT's authority thus necessarily extends to inspecting locomotive equipment and ensuring its safe design and manufacture, regardless where the locomotive happens to be sitting—on- or off-line—at a given moment. Indeed, a locomotive may enter a repair shop for the specific purpose of being inspected or repaired to ensure compliance with DOT regulations. *See* 49 U.S.C. § 20702(b) (requiring that locomotives comply with statute and regulations before use on-line). DOT's authority over locomotive equipment is *enforced* in the roundhouse, not *suspended*.[6]

What petitioners and the government fail to appreciate is that a locomotive's design and construction are the same whether the locomotive is in use or not. Of necessity, the design, construction, and ma-

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[6] Petitioners and the United States rely on several statements in *Napier* concerning the use or operation of locomotives, believing that those statements support the proposition that DOT's regulatory authority under the LIA only extends to locomotives "in use." *E.g.*, *Napier*, 272 U.S. at 607 (describing state laws as regulating "locomotives used on [their] lines"); *id.* at 612 (stating that ICC has authority to prescribe rules for determining whether a locomotive is "fit[] for service" and "'in proper condition' for operation"); *see* Pet. Br. 37; U.S. Br. 16-17. But these statements merely demonstrate the obvious—that the LIA's regulatory concern (and hence DOT's authority) is directed toward *operational locomotives*. DOT does not, for example, have authority under the LIA to regulate the design of a locomotive resting in a museum, or even one that is used exclusively in the railyard. But that limit on DOT's authority has no relevance here, because it is undisputed that Corson repaired locomotives for use on the line.

terials of locomotive equipment are first determined off-line, before any locomotive is put to use on a railroad line. Nothing about the design, construction, and materials of locomotive equipment changes when it goes on-line, or returns to the repair station. *Napier* thus properly recognized that the "subject" of DOT's regulatory power is "the equipment of locomotives," *id.*, and that the LIA "occup[ies] the *entire field of regulating locomotive equipment*," *id.* at 611 (emphasis added)—not just the field of locomotive equipment *while it is being operated*. *See*, *e.g.*, *Frastaci v. Vapor Corp.*, 158 Cal. App. 4th 1389, 1399-1403 (2007) (collecting cases and holding that LIA preempts field of locomotive equipment regulation regardless whether locomotive is "in use" or not).

2. The government, in fact, does not actually disclaim DOT authority to regulate locomotive equipment once it enters the roundhouse. To the contrary, the government concedes that DOT has general authority to prescribe rules governing the design and manufacture of locomotives, and that "any particular locomotive subject to the safety rules promulgated by the Secretary pursuant to the LIA will inevitably come in and out of use over time." U.S. Br. 17.[7]

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[7] Petitioners contend that DOT believes it has no regulatory authority over repair-process hazards, and that respondents' preemption argument here "thus rests on the highly dubious proposition that the agency charged with implementing the LIA has misapprehended its regulatory authority." Pet Br. 35. But as explained, DOT fully agrees that "the Secretary may prescribe safety rules governing 'the design, the construction, and the material of every part of the locomotive and tender and

The government nevertheless contends that the LIA's regulatory field should be understood as limited to locomotive equipment actively being used because the *reason* the LIA gives DOT authority to regulate such equipment—whether on- or off-line at a given moment—is to ensure that locomotives are safely operated when they are on-line. U.S. Br. 17-18.

This Court rejected a virtually identical argument in *Napier*. There, the states argued that their laws were outside the scope of the LIA because they were "aimed at distinct and different evils": whereas the LIA sought "to prevent accidental injury in the operation of trains," the state laws sought "to prevent sickness and disease due to excessive and unnecessary exposure." 272 U.S. at 612. This Court held that the difference in statutory objectives was irrelevant: the LIA and the state laws occupied the same field because they were "directed to the same subject—the equipment of locomotives. They operate upon the same object." *Id.* In other words, the scope of regulation—and hence preemption—under the LIA was determined not by the Act's regulatory objective, but by "the physical elements affected by

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of all appurtenances.'" U.S. Br. 17 (quoting *Napier*, 272 U.S. at 612). The government's disagreement with respondents is not over whether the LIA delegates to DOT authority to prescribe rules concerning, for example, the use of asbestos in locomotives, but rather over the effect of that delegation of authority on the LIA's preemptive scope. A federal agency's view of the preemptive scope of the statute it administers is not entitled to deference even when stated in a regulatory preamble, *Wyeth v. Levine*, 129 S. Ct. 1187, 1201 (2009), let alone in an amicus brief.

it." *Id.* Because the state laws were regulating the same physical elements, the laws were "precluded, however commendable or however different their purpose." *Id.* at 613.

The government here makes the same mistake the states made in *Napier*. It is irrelevant that DOT regulation of locomotive equipment under the LIA is ultimately aimed at securing safe locomotive operation, in contrast to the employee-health objectives underlying petitioners' state-law claims. Either way, both regulatory regimes pursue their objectives by regulating the same physical object—the design and manufacture of locomotive equipment. Under the LIA as construed in *Napier*, the fact that DOT is given authority over that subject to permit fulfillment of federal locomotive safety objectives does not permit a state to impose its own laws governing the same subject merely because the state has a different reason for imposing them. Whatever its purpose, any state regulation directed at the object of LIA regulation—locomotive equipment design and manufacture—is preempted.

The government demonstrates its own error by arguing that while off-line claims challenging the design, construction, or material of a locomotive are not *field* preempted, they are *conflict* preempted because allowing such claims to go forward would frustrate a central objective of the LIA—national uniformity in locomotive safety standards, including design and material requirements. U.S. Br. 23-24. But to the extent a conflict exists, it is because the LIA accomplishes that objective by making DOT the exclusive source of legal standards governing locomotive design, construction, and material, irrespec-

tive of whether the locomotive happens to be "in use" at the time a legal standard is applied. The government's correct observation that a state law regulating locomotive design in repair shops conflicts with the LIA thus defeats its argument that the LIA's regulatory field does not extend to locomotives in repair shops.

3. Petitioners make a slightly different analytical mistake. They argue that the LIA duty-of-care provision, as well as other provisions—e.g., requirements concerning locomotive inspection and provisions precluding the use of locomotives that fail to meet safety standards until they are repaired, 49 U.S.C. §§ 20701(2) & (3), 20702-20703—only "concern[] the safe use of locomotives on railroad lines," and do not "govern[] the repair process." Pet. Br. 23. Petitioners contrast the LIA with the statute held to be field-preemptive in *Locke*, which delegated to the Coast Guard the authority to regulate not only the "design" and "construction" of certain maritime vessels, but also the "repair" and "maintenance" of the vessels. Pet. Br. 22 (quoting *Locke*, 529 U.S. at 101, in turn quoting 46 U.S.C. § 3703(a)). If Congress wanted to delegate to DOT the authority to regulate the repair and maintenance of locomotives, petitioners maintain, Congress would have said so explicitly, as it did in the *Locke* statute.

That argument confuses the regulation of underlying equipment design and manufacture itself with the regulation of the conditions under which that equipment is repaired and maintained. It is true that the LIA does not delegate DOT authority to generally regulate the repair and maintenance of locomotives. If it did, DOT would have power under

the statute to prescribe the design of repair facilities, the type of equipment repair facilities can use, the conditions under which they may operate, and so on. DOT does not have that authority under the LIA—that power is conferred on DOT by the FRSA. What the LIA *additionally* delegates to DOT is power to regulate *all aspects* of the design, construction, and materials of locomotive equipment—"the entire field of regulating locomotive equipment," as *Napier* put it. 272 U.S. at 611. It is nonsensical to say that DOT can determine lawful locomotive design, but then say that a state can overrule DOT and mandate a different design because the state believes the DOT-approved design may cause injury during the repair and maintenance process.

FRA drew exactly this distinction between regulation of equipment design and regulation of the repair process in 1978, when it clarified the respective regulatory authority over railroad worker safety of FRA and OSHA. *See supra* at 15-16. Although FRA decided that it would cede most aspects of railroad worker health and safety regulation to OSHA, *see* Railroad Operational Safety & Health Standards; Termination, 43 Fed. Reg. 10,583 (Mar. 14, 1978), it specifically retained primary worker-safety jurisdiction over "the *design of locomotives* and other rolling equipment used on a railroad," *id.* at 10,587 (emphasis added).[8] Because petitioners' claims concern "the

[8] Petitioners' statement that FRA has "generally" not exercised its authority "to regulate rail repair and maintenance facilities" repeats the mistake described in the text. Pet. Br. 33. Even leaving aside *Napier*'s point that preemption in this context is determined by the *existence* of regulatory power, rather than the *exercise* of that power, 272 U.S. at 613, what matters

design of locomotives," they fall squarely within the field regulated by the LIA, and are thus preempted.[9]

Petitioners make another analytical error in asserting that the Third Circuit below relied for its field-preemption holding on the pervasiveness of federal regulation in *the field of locomotive safety*. Pet. Br. 19 (citing *Rice*, 331 U.S. at 230). In fact, the court of appeals relied on the dominant federal interest—identified in *Napier*—in regulating *locomotive design and manufacture*. Pet. App. 16a. The basis for field preemption under *Napier* is not the quantitative pervasiveness of federal locomotive safety regulations. It is, rather, the regulatory "object sought to be obtained" by the LIA and "the character of obligations imposed" by the LIA, which together demonstrate Congress's belief that the "federal interest" in regulating the design of locomotive equipment is "dominant." *Rice*, 331 U.S. at 230 (citing *Napier*).

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here is not whether FRA has authority under the LIA to regulate *repair and maintenance facilities*, but whether FRA has authority to regulate *locomotive-equipment design*. And as explained above, FRA expressly stated that it does have that authority, and thus would continue to exercise jurisdiction over rail-worker safety as it concerns "the design of locomotives." 43 Fed. Reg. at 10,587.

[9] This point applies equally to petitioners' design-defect and failure-to-warn claims. As explained below, *infra* at 54-58, both claims challenge the design or manufacture of locomotive equipment. Thus, both design and warning claims, as courts have uniformly held, fall within the LIA's field preemptive scope. *See*, *e.g.*, *Oglesby*, 180 F.3d at 461; *Law*, 114 F.3d at 911; *Marshall*, 720 F.2d 1149; *Kilgore*, 853 So. 2d 171; *Scheiding*, 993 P.2d at 1004.

4. For reasons similar to those already discussed, cases brought under FELA against railroads for violations of the LIA's duty of care do not capture the full field regulated by the LIA. Pet. Br. 23-27; U.S. Br. 15 & n.5. Nor can those cases be invoked to narrow that field. As explained, FELA permits an injured railroad worker to recover compensatory damages from his employer (i.e., the railroad, not the locomotive equipment manufacturer) when the employer's "negligence played any part in bringing about the injury." *CSX*, 131 S. Ct. at 2634. A worker can establish "negligence per se" under FELA by proving that the railroad violated the duty of care prescribed by the LIA or other rail safety statutes, like the SAA. *Urie*, 337 U.S. at 189. This Court has held that a plaintiff could recover under FELA by showing a violation of the SAA if he was injured while the train was "in use." *Brady v. Terminal R.R. Ass'n*, 303 U.S. 10, 13 (1938). And in FELA claims based on violations of the LIA, the courts of appeals have relied on *Brady* to hold that a railroad is per se liable only when the injury was sustained when the locomotive was "in use." Pet. Br. 25-27; U.S. Br. 15 n.5 (citing cases). (The railroad remains liable for its own negligence under FELA irrespective of whether the employee's injury occurred on- or off-line. *See*, *e.g.*, *Wright v. Ark. & Mo. R.R. Co.*, 574 F.3d 612, 614 (8th Cir. 2009).)

The FELA cases involving railroad LIA violations require a showing that the locomotive was "in use" because, as already explained, railroads have a duty of care under the LIA only when their locomotives are actively in use. But as also already explained, enforcement of a duty of care on-line by railroads is

not the LIA's only regulatory tool for ensuring locomotive safety. The statute also delegates to DOT the authority to directly regulate the physical design and construction of locomotives themselves. A railroad accordingly may not violate the LIA's duty of care when a non-compliant locomotive is being repaired off-line, but DOT certainly possesses regulatory authority over that locomotive's design and manufacture even when it is being repaired. DOT may literally enter the roundhouse to inspect the repairs and prevent the locomotive from being used online until DOT is satisfied. *See*, *e.g.*, 49 C.F.R., parts 229 & 230. In short, the railroad's own duty of care under the LIA may be triggered only by *use* of the locomotive, but DOT's regulatory authority over locomotive equipment applies before, during, and after a locomotive is actively being used. And that broad authority—not the railroad's narrower duty of care—is what determines the scope of LIA preemption under *Napier*.[10]

Petitioners' claims challenge the use of asbestos in the design and manufacture of locomotive equipment. DOT plainly has authority to regulate the use of asbestos in the design of locomotive equipment.

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[10] Both petitioners and the government rely on an early ICC document stating that "it is the 'use' of a locomotive not found to be in proper condition and safe to operate, and not the condition itself, which is a violation of the law." Inspection of Locomotive Boilers: Report of the Commission to the Senate, 73 I.C.C. 761, 763 (Aug. 29, 1922); Pet. Br. 23; U.S. Br. 15. The ICC's statement is irrelevant for reasons already explained—it describes when a railroad violates its duty of care under the Act, not the scope of the ICC's own authority to regulate locomotive equipment.

Indeed, in the 1990s, DOT—acting pursuant to a congressional mandate—expressly considered exercising its rulemaking authority to regulate asbestos use by locomotive manufacturers, and it declined to do so. *See supra* at 16. Because the "scope of field preemption is determined by the scope of the regulated field" (Pet. Br. 16), petitioners' claims are preempted.

C. Petitioners' Remaining Arguments Are Without Merit

1. *Amendments To The LIA's Civil Penalty Provision Did Not Alter The Act's Preemptive Scope*

Petitioners contend that their claims are not field preempted because the LIA's civil-penalty provision—which allows the United States to bring actions for civil penalties for violations of the Act—did not apply to manufacturers of locomotive equipment at the time Corson was allegedly exposed to asbestos. Pet. Br. 28-31. The government persuasively explains the flaws in that argument. U.S. Br. 27-28.

As originally enacted, the LIA provided that "any common carrier violating this Act or any rule or regulation made under its provisions … shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court … having jurisdiction." LIA § 9. That penalty provision was amended in 1988 to say that "an act by an individual that causes a railroad to be in violation of any of the provisions" of the Act "shall be deemed in violation." Rail Safety Improvement Act of 1988, Pub. L. No. 100-342, § 14(7)(B), 102

Stat. 634. And it was amended again in 1992, explicitly to include manufacturers within the penalty provision. Rail Safety Enforcement and Review Act, Pub. L. No. 102-365, § 9(a)(8), 106 Stat. 978.

All of this is irrelevant to the question presented here, because—again—the scope of preemption under the LIA depends not on the identity of the *party* directly regulated, but on the *object* being regulated. *See Napier*, 272 U.S. at 612. As Judge Kozinski explained:

> The [L]IA preempts any state action that would affect "the design, the construction, and the material" of locomotives. *Napier*, 272 U.S. at 611. Imposing tort liability on railroad equipment manufacturers would do just that, by forcing them to conform to design and construction standards imposed by the states. This would transfer the regulatory locus from the Secretary of Transportation to the state courts—a result the [L]IA was clearly intended to foreclose.

Law, 114 F.3d at 911-12; *see also Oglesby*, 180 F.3d at 462; *Springston*, 130 F.3d at 244.

This Court rejected a similar argument in *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004). The party resisting preemption argued that the state regulations at issue were not preempted because they were directed at purchasers of cars, while the Clean Air Act was directed at manufacturers of cars. The Court explained that "treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense. The manufacturer's right to sell federally ap-

proved vehicles is meaningless in the absence of a purchaser's right to buy them." *Id.* at 255.

So it is here. "Just as a car manufacturer's right to sell a car that meets certain specifications would be meaningless if no one were permitted to purchase such a car, a railroad's ability to operate a locomotive that meets certain specifications would be meaningless if no one were permitted to manufacture the parts of such a locomotive." U.S. Br. 29. In fact, on petitioners' view, Georgia and Wisconsin could have evaded this Court's holding in *Napier* and the ICC's authority by requiring that every locomotive sold be equipped with an automatic door for the firebox or a cab curtain, 272 U.S. at 607, rather than requiring railroads to use such equipment. Congress could not have intended that absurd result.

2. *The LIA Preempts State Common-Law Claims Falling Within The Scope Of DOT's Regulatory Power*

Petitioners (but not the government) contend that the LIA preempts only positive state law, and thus does not preempt petitioners' common-law claims. Pet. Br. 38-39. That argument is unavailing. As this Court repeatedly has explained, state "regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 246-47 (1959); *see, e.g.*, *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008); *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 868-69, 872 (2000); *Norfolk S. Ry. Co. v.*

Shanklin, 529 U.S. 344, 358 (2000); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521-23 (1992). Petitioners here seek to sanction Viad and RFPC for the design—and material used in the design—of locomotives and locomotive equipment that they manufactured or distributed. That sanction would have precisely the same effect as any legislative or regulatory enactment imposing a similar penalty.

Petitioners rely (Pet. Br. 39) on the observation in *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002), that the desire to "foster[] uniformity," while "undoubtedly important to the industry," is "not unyielding." *Id.* at 70. But that was true in *Sprietsma* because uniformity was only one of the goals of the statutory scheme at issue, and not the "prominent" one. *Id.* Here, by contrast, uniformity *is* a "prominent" congressional regulatory objective of the LIA, as *Napier* and lower courts have consistently recognized, *see supra* at 28-29, and as the government here acknowledges, U.S. Br. 23-24. Varying state tort standards would undermine regulatory uniformity just as much as positive state regulation—if not more, given the added variability of jury trial outcomes. It is not surprising, then, that no federal court of appeals or state court of last resort has ever held that tort claims are exempt from LIA preemption. *See supra* at 8-9.

3. *The FRSA Has Not Diminished The Scope Of DOT's Authority To Regulate Locomotive Equipment And Thus Has Not Altered The LIA's Preemptive Scope*

a. Petitioners (but not the government) contend that the LIA has lost its field-preemptive scope be-

cause "[s]tatutory changes in the past half-century have transformed the LIA into a relatively minor aspect of the broader regulatory regime created by the FRSA." Pet. Br. 32-33.

Petitioners misunderstand the nature of those regulatory changes. Before 1970, federal regulation of railroad safety was not plenary, but was limited to "certain and special types of railroad safety hazards," like locomotive equipment (LIA) and rail car (SAA) safety. H.R. Rep. No. 91-1194, at 2, *reprinted in* 1970 U.S.C.C.A.N. at 4105. Congress enacted the FRSA to "promote safety in *every* area of railroad operations." 49 U.S.C. § 20101 (emphasis added). Accordingly, Congress delegated *additional* authority to the Secretary of Transportation, *viz.*, the authority to "prescribe regulations and issue orders for every area of railroad safety *supplementing* laws and regulations"—including the LIA—"in effect on October 16, 1970." 49 U.S.C. § 20103(a) (emphasis added).

As the statute makes clear, the FRSA was meant to "supplement" the LIA and other then-existing statutes, not to supplant or alter such statutes. Indeed, as then-Judge Kennedy explained, the FRSA did "not subsume, replace, or recodify any acts." *Marshall*, 720 F.2d at 1153. To the contrary, Congress believed that then-existing laws like the LIA "have served well" and should be "continue[d] … without change." H.R. Rep. No. 91-1194, at 2, *reprinted in* 1970 U.S.C.C.A.N. at 4105. To be sure, the LIA is now one part of a larger scheme of federal railroad-safety regulation, which did not exist until the FRSA was enacted. But DOT's domain over the

relevant field under the LIA—locomotive-equipment design—is just as dominant as it ever was.

b. Petitioners' reliance (Pet. Br. 33) on the saving clause in the FRSA preemption provision, 49 U.S.C. § 20106(a)(2), is misplaced, as the government explains, for the same reason. U.S. Br. 21 n.9. The saving clause—which states that a "State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation … prescribes a regulation or issues an order covering the subject matter of the State requirement"—allows states to continue to regulate in areas *where states have always regulated* until the federal government says otherwise. But because the FRSA was intended to supplement and not supersede the LIA, "[t]he logical inference from this structure is that Congress intended to leave unchanged the force and effect of existing federal regulatory statutes." *Marshall*, 720 F.2d at 1153. For these reasons, the FRSA's preemption provision has no effect on areas previously preempted by federal law, like regulation of locomotive equipment.[11]

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[11] *Marshall*'s analysis is supported by the FRSA's legislative history. The preemption provision was meant to assure that "*[e]xisting* state rail safety statutes and regulations remain in force until and unless preempted by federal regulation." H.R. Rep. No. 91-1194, at 24, *reprinted in* 1970 U.S.C.C.A.N. at 4130 (emphasis added). But there were no "existing" state rules "in force" concerning the design and manufacture of locomotives and their parts in 1970, because this Court had held that entire field preempted in *Napier* and this Court's holding on the breadth of the federal regulatory scheme had been followed consistently.

Petitioners' contrary reading would violate the "cardinal rule" that "repeals by implication are disfavored." *Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 132 (2003) (quotation omitted). And it would undermine the FRSA's express command that "[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable." *Id.* § 20106(a)(1); *see also* H.R. Rep. No. 91-1194, at 12, *reprinted in* 1970 U.S.C.C.A.N. at 4116 ("[I]t is the policy of Congress that rail safety regulations be nationally uniform to the extent practicable."). Granting federal regulatory authority over areas of railroad safety previously outside the bounds of federal authority went a long way toward accomplishing that goal compared to what came before, even though some interstitial state regulation would remain. But allowing states to regulate a subject they had *not* regulated before—i.e., the design and manufacture of locomotive equipment—would undermine rather than further the purpose of federal uniformity.

4. *The Remedial Consequences Of Preempting Claims Like Petitioners' Have Existed For Almost 90 Years And Are Not Irrational*

Petitioners also maintain that if field preemption extends beyond regulation of locomotives "in use," the resulting remedial scheme would be unworkable. Those concerns are inaccurate, overstated, or both; none justifies altering the longstanding preemptive scope of the LIA.

a. Petitioners first argue that employees injured in repair stations would have no claim against

manufacturers of locomotive equipment under either FELA (which applies only to railroads, not manufacturers), or state tort law (because state-law claims would be preempted). That concern is seriously exaggerated. To begin, preemption only applies to claims challenging the design, construction, or materials of a "locomotive or tender and its parts and appurtenances." 49 U.S.C. § 20701(a). If a repair-shop injury is caused by failure of, or defect in, a component that is not "an integral or essential part of a completed locomotive" or is not "definitely prescribed by lawful order" of DOT, *Lunsford*, 297 U.S. at 402, then a claim arising from that injury is not preempted by the LIA. *Cf.* U.S. *Atwell* Br. 18.[12]

Moreover, railroad employees injured off-line would still have a FELA claim against their railroad-employer. While they could not demonstrate *negligence per se* by proving an LIA violation, they could still obtain a FELA remedy simply by demonstrating that negligence by the railroad "played *any part* in bringing about the injury." *CSX*, 131 S. Ct. at 2634 (emphasis added). Particularly given this relaxed proximate cause standard, FELA hardly poses a high bar to recovery for railroad employees injured on the job. There is no need to distort settled LIA preemption doctrine to provide railroad employees with additional claims against locomotive manufacturers.[13]

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[12] It is undisputed that petitioners' claims against Viad and RFPC concern the locomotive and its parts and appurtenances.

[13] The government also notes that independent contractors would lack any remedy for off-line injuries, because FELA only applies to employees and not independent contractors. U.S. Br.

Even if some potential plaintiffs are ultimately left without a damages remedy, that consequence simply follows from field preemption, which by definition precludes state-law claims *whether or not a federal claim or remedy exists*. As the government itself concedes, "[d]epriving injured individuals of a remedy may be justified when allowing a remedy would prevent the LIA from achieving its purpose." U.S. *Atwell* Br. 15. As the government also observes (U.S. Br. 16), a principal purpose of the LIA is to preclude states from regulating any aspect of locomotive equipment design or manufacture, to avoid "the paralyzing effect on railroads from prescription by each state of the safety devices obligatory on locomotives that would pass through many of them." *Swift*, 230 F. Supp. at 407-08. Allowing states to prescribe, through their tort regimes, their own standards for locomotive equipment design and manufacture would plainly undermine that purpose.

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19. Yet when it comes to locomotive-equipment-related injuries, the government concedes, as it must, that independent contractors clearly have no state-law remedy for injuries occurring while the locomotive was "in use," because such claims are preempted. U.S. Br. 12-22. The only class of independent contractors even *potentially* at issue is those injured *in the repair shop* by defective locomotive equipment. And even as to that sharply-circumscribed class, the government itself contends that many claims related to defective locomotive equipment would be barred by *conflict* preemption. U.S. Br. 24-25. It makes no sense to reconfigure almost 90 years of LIA preemption doctrine simply to preserve a vanishingly small class of independent contractor claims, especially absent any evidence that preservation of those claims was among Congress's objectives in enacting the LIA.

b. Petitioners also contend that preempting claims arising from locomotive equipment defects causing off-line injuries (but not on-line injuries) is unworkable because railroads would be precluded from bringing actions against manufacturers for contribution. Pet. Br. 42-43; *see also* U.S. Br. 20 n.8. That consequence says nothing about Congress's intent to preempt such claims against manufacturers. After all, Congress itself chose to preclude FELA claims against manufacturers. And in any event, railroads and manufacturers could presumably allocate responsibility for defective-equipment-related injuries *ex ante* through contractual indemnification provisions. The LIA precludes states from prescribing their own locomotive equipment standards—it does not preclude private parties from deciding how they want to allocate responsibility for equipment-related injuries.

II. TO THE EXTENT PETITIONERS' CLAIMS ARE NOT FIELD PREEMPTED, THEY ARE CONFLICT PREEMPTED

The government asserts that while petitioners' claims are not field preempted, several nevertheless are preempted because they directly conflict with the LIA's objective of establishing national uniformity in locomotive-design regulation. U.S. Br. 22-23. The distinction is little more than semantic. The government is correct, of course, about the LIA's critical and fundamental uniformity objective. But that is precisely why *all* state attempts to regulate the design, construction, or materials of locomotive equipment fall within that Act's ambit, regardless whether the locomotive is on- or off-line. Whether the label attached to the preemption rule is "field" or

"conflict," the substantive outcome should be the same in every case. Accordingly, if the Court were to conclude that field preemption is not the best doctrinal label for the LIA's preemptive effect, the Court should still hold that petitioners' claims are conflict preempted. Allowing petitioners' claims to go forward would undermine national uniformity in locomotive-design standards, and would thus create "an obstacle to the accomplishment of the full purposes and objectives of Congress." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

A. Petitioners' Design-Defect Claims Are Conflict Preempted

1. As explained, one of the LIA's principal purposes (if not the principal purpose) was to establish a single uniform regulatory regime governing the design and manufacture of locomotive equipment. *E.g.*, *Napier*, 272 U.S. at 611; *Swift*, 230 F. Supp. at 407; U.S. Br. 23. Accordingly, the government agrees that any "state-law tort claim[] arising from injuries sustained while a locomotive is not in use" would be preempted if it "would have the effect of prescribing rules about whether a locomotive is fit for use," because it would "result[] in different rules in different states regarding locomotives' fitness for service." U.S. Br. 24. "Because such a result would undermine one of the important objectives of the LIA, those claims would conflict with the LIA and be preempted." *Id.*

Petitioners' design-defect claims are squarely preempted under the government's approach, because they seek to impose sanctions on Viad and RFPC for the design and manufacture of the locomo-

tive equipment they manufactured or distributed. U.S. Br. 24-25. If petitioners' claims and those like them were allowed to go forward, manufacturers and distributors would be subject to the potentially varying policies of numerous jurisdictions through which they travel—policies concerning not only the use of asbestos but also myriad other materials and designs used in the manufacture of locomotives and locomotive equipment. That regime would directly interfere with the LIA's purpose of establishing uniformity in the regulation of locomotive design and manufacture.

2. a. Petitioners nevertheless contend that their design-defect claims do not conflict with any congressional purpose or objective because there is no federal requirement concerning the use of asbestos on locomotives. Pet. Br. 47-48. That argument misses the point. Petitioners' claims interfere with the LIA's objectives even in the absence of a contrary federal standard because the relevant objective is *uniformity*, which would not be possible if states were allowed to fill in the blanks of the federal regulatory scheme.

b. Petitioners also seek to avoid conflict preemption on the ground that asbestos is a hazard mainly to repair workers, and the LIA does not address hazards posed by the repair process. Pet. Br. 48-49. But again, state-law design-defect claims conflict with the LIA because they seek to impose inherently varying state-law standards for locomotive design and manufacture, which will undermine the uniformity in locomotive design and manufacture the LIA is intended to implement.

c. Petitioners further maintain that this Court's precedents at least permit state-law claims based on violation of the LIA's substantive provisions (including its duty-of-care provision). Because the LIA itself would provide the substantive rule of decision, they suggest, such state-law claims would not conflict with the LIA. Pet. Br. 49-52.

To start, petitioners misstate the Court's precedents—not one recognizes a state-law claim based on an LIA violation. Every one of petitioners' cited cases was brought under the SAA, *see supra* at 9, which was not the basis for the preemption ruling here and which does not define or control the field of locomotive equipment occupied by the LIA. No precedent of this Court has allowed a state-law tort claim premised on the LIA as the rule of decision. And even if such claims were allowed, that would demonstrate, at most, that states were permitted to enforce existing federal standards, and *not* to establish new standards different from or in addition to the uniform federal rules. *See*, *e.g.*, *Riegel*, 552 U.S. at 330.

In all events, petitioners' theory would not even salvage their own claims, because they admit that the use of asbestos in locomotive equipment violates neither FRA regulations nor the LIA's generic duty-of-care standard. Pet. Br. 49.

B. Petitioners' Failure-To-Warn Claims Are Conflict Preempted

The government asserts that while petitioners' design-defect claims are conflict preempted, their failure-to-warn claims are not. U.S. Br. 26-27. That purported distinction does not withstand scrutiny.

Federal and state courts have consistently rejected it, holding that the LIA preempts failure-to-warn claims concerning asbestos in locomotive equipment. *See supra* note 9 (citing cases).

The government says failure-to-warn claims are not preempted by the LIA's locomotive equipment regulatory scheme because they do "not require manufacturers of locomotives or railroads to alter the design or construction of their locomotives." U.S. Br. 26. But even though failure-to-warn claims may not themselves literally mandate physical alteration of the locomotive's design or construction, they still impose liabilities under differing state-law standards for lawful locomotive design and manufacture. Accordingly, the government's proposed distinction between failure-to-warn claims and design-defect claims is, for purposes of LIA preemption, "a distinction without a difference." *Oglesby*, 180 F.3d at 461.

The government's argument also is inconsistent with DOT's own exercise of its regulatory authority under the LIA. Citing its LIA authority explicitly, DOT has promulgated specific warning requirements for locomotive equipment. *See*, *e.g.*, 49 C.F.R. §§ 229.85 (warning notices for high voltage equipment), 229.113 (warning notices for steam generators); *see also Law*, 114 F.3d at 911 (DOT's warning requirements are promulgated under LIA). DOT's reliance on the LIA for these warning requirements confirms the should-be-obvious point that authority to regulate design and manufacture encompasses authority to determine whether a given design requires a warning. And if DOT's authority to regulate locomotive design and manufacture is exclusive, the same must be true for its subordinate authority

to prescribe warnings for locomotive designs. Put differently, if states are precluded by the LIA from deciding that certain locomotive designs are unlawfully dangerous, they cannot have authority to decide that the same designs are unlawfully dangerous if implemented without state-prescribed warnings.

Any other result would defeat the LIA's core objective. Absent preemption of failure-to-warn claims, "states could promulgate otherwise preempted safety regulations in the guise of instructional labels and then create causes of action for injured workers if railroads failed to post them." *Oglesby*, 180 F.3d at 461. Such claims would undermine the "uniformity-of-regulation objective of the LIA." U.S. Br. 25. Because repairs to locomotives may need to take place at any time, locomotives would need to be equipped with warnings that are sufficient in every state through which they travel. But states may require different formulations of the same warning, and a warning that one state mandates might be viewed by another as unnecessarily cluttering a warning label and thus affirmatively reducing the effectiveness of its own required warnings. That result is the antithesis of national uniformity. *See*, *e.g.*, *Law*, 114 F.3d at 910-11.

Even if it were possible to comply simultaneously with each state's warning requirements, the state with the most stringent requirements would effectively be able to impose its law as a nationwide standard. Under such a regime, the states, rather than DOT, would set the standard for locomotive equipment requirements, including warning requirements. That is exactly what Congress sought to avoid by enacting the LIA.

The government responds by suggesting that manufacturers can comply with differing state standards either by placing warnings in repair shops, by labeling their product with several different warnings, or by adopting the most stringent warning required by any state. U.S. Br. 27. None of those solutions makes sense. Manufacturers do not control repair shops, and thus they cannot simply post the relevant state's warnings in each shop. "[O]nce [manufacturers] sell the train, it's out of their hands." *Law*, 114 F.3d at 912 n.3. Even if they notified the railroad that purchased their product of the warning that needed to be given workers in a particular state, railroads often use repair shops that they do not own or control. When a locomotive breaks down in Montana, there is simply no way for the manufacturer or the railroad in New York to ensure that the workers at the closest repair shop receive the warning mandated by Montana law about the specific products that might be on that locomotive.

Labeling the product itself is similarly problematic. While warnings can be placed on product packaging, workers who repair or remove parts from trains after their initial installation will never see the packaging in which that product arrived. And it simply is not possible to place warnings directly on many parts and appurtenances, including boiler insulation and brake shoes, because of their physical properties. Even where a product could be stamped with a warning, the problem of conflicting state warnings persists. California might require manufacturers to label asbestos-containing products with detailed information about working with asbestos,

while Florida could require that manufacturers place only a single, state-created warning on all products containing asbestos to avoid confusing language or voluminous warnings that obscure the most important information. Failure-to-warn claims thus squarely conflict with the LIA's essential uniformity-of-regulation objective.

C. This Court Should Hold Petitioners' Claims Conflict Preempted If It Rejects Field Preemption

If this Court holds that petitioners' claims fall outside the preemptive field identified in *Napier*, it should hold they are conflict preempted for the reasons discussed above. The question whether petitioners' claims are conflict preempted is fairly encompassed within the question presented. Pet. i ("Did Congress intend the federal railroad safety acts to preempt state law-based tort lawsuits?"); *see* Pet. Br. 45 n.34. This Court also "may consider … alternative grounds for affirmance." *United States v. Tinklenberg*, 131 S. Ct. 2007, 2017 (2011).

There is good reason to decide the conflict preemption issue now. As explained, the basis for conflict preemption in this case is substantively identical to the basis for field preemption—the LIA's policy of national uniformity in locomotive-design regulation. The difference between the two is formal at most. There is thus no prudential basis for declining to reach and resolve the conflict preemption question.

Moreover, current law in nearly every jurisdiction in the United States—including every federal circuit that has considered the question—is that the field of

locomotive design is preempted under *Napier*. A reversal of the Third Circuit on that ground would only lead to more confusion and division in the lower courts. Therefore, if the Court holds that petitioners' claims are not field preempted, it should address conflict preemption and hold petitioners' claims preempted, to provide lower courts with clear guidance concerning the scope of preemption under the LIA.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

DANIEL MARKEWICH
ELLEN G. MARGOLIS
AMY KALLAL
MOUND COTTON WOLLAN
& GREENGRASS
One Battery Park Plaza
New York, New York 10004
(212) 804-4200

Attorneys for Viad Corp

JAMES C. MARTIN
JOHN L. VITSAS
COURTNEY C.T. HORRIGAN
DAVID J. BIRD
ROBERT H. OWEN
REED SMITH LLP
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
(412) 288-3131

Attorneys for Railroad Friction Products Corp.

WALTER DELLINGER
JONATHAN D. HACKER
(*Counsel of Record*)
jhacker@omm.com
ANTON METLITSKY
JOANNA NAIRN*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
**Admitted in Massachusetts only*

Attorneys for Viad Corp

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