

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

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NORTH COAST RAILROAD AUTHORITY,

*Applicant,*

v.

FRIENDS OF THE EEL RIVER, ET AL.,

*Respondents.*

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**APPLICATION TO THE HON. ANTHONY M. KENNEDY  
FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF CALIFORNIA**

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Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant North Coast Railroad Authority (NCRA) respectfully requests a 58-day extension of time, to and including Friday, December 22, 2017, within which to file a petition for a writ of certiorari in this case. The Supreme Court of California issued its decision on July 27, 2017. Unless extended, the time to file a petition for a writ of certiorari will expire on October 25, 2017. This application is being filed more than 10 days before that date.

The opinion of the Supreme Court of California, which is reported at 3 Cal. 5th 677, is attached. The jurisdiction of this Court is based on 28 U.S.C. § 1257.

1. This case presents an important question of law—the scope of federal preemption under the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. §§ 10101 *et seq.* As the Supreme Court of California stated in this case,

“ICCTA contemplates a unified national system of railroad lines subject to federal, and not state, regulation.” Slip Op. 2. ICCTA contains a broad express-preemption provision that states in relevant part that “the remedies provided under [ICCTA] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b).

Respondents Friends of the Eel River and Californians for Alternatives to Toxics filed these now-consolidated citizen suits under the California Environmental Quality Act (CEQA) against NCRA and Northwestern Pacific Railroad Company. The California Superior Court held that ICCTA preempts respondents’ lawsuits in their entirety. Slip Op. 17. The California Court of Appeal agreed and affirmed the trial court’s judgment. *Id.* The Supreme Court of California affirmed in part and reversed in part. The court unanimously held that ICCTA preempts application of CEQA as to the Northwestern Pacific Railroad Company, a privately owned railroad and respondent here under Rule 12.6. *See* Slip Op. 66–68. But—over a dissent by Justice Corrigan and in conflict with the stated views of the California Attorney General as *amicus curiae*—the majority held that ICCTA does *not* preempt CEQA claims against NCRA. The majority reasoned that application of CEQA to NCRA, a state-owned railroad, constitutes self-governance rather than regulation by the State and therefore is not preempted by ICCTA. *Id.* at 45–60.

2. The Supreme Court of California “acknowledge[d]” that its holding squarely conflicts with that of the Surface Transportation Board, the federal agency that administers ICCTA. Slip Op. 57–58. Indeed, the Surface Transportation Board has concluded that ICCTA preempts application of CEQA even as to publicly owned

railroads. *See California High-Speed Rail Authority—Petition for Declaratory Order*, Docket No. FD 35861, 2014 WL 7149612, at \*1 (S.T.B. 2014). The Supreme Court of California’s decision also conflicts with holdings of other state courts of last resort, including opinions that the California Court of Appeal cited in this case and the Supreme Court of California subsequently ignored. *See, e.g., Friends of Eel River v. N. Coast R.R. Auth.*, 178 Cal. Rptr. 3d 752, 776–777 (Cal. Ct. App. 2014) (citing, among other decisions, *State of N.Y. ex rel. Grupp v. DHL Express (USA), Inc.*, 19 N.Y.3d 278 (2012)).

3. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Only on September 29, 2017, did NCRA retain new Counsel of Record, Andrew Tauber of Mayer Brown LLP. Mr. Tauber was not involved in the litigation before the California state courts and therefore must familiarize himself with the proceedings and arguments below. Mr. Tauber requires the additional requested time to research the legal issues fully and prepare an appropriate petition for consideration by this Court. Mr. Tauber also has competing obligations in other matters with proximate due dates.

4. An extension of time will not prejudice respondents.

For the foregoing reasons, the application for a 58-day extension of time, to and including December 22, 2017, within which to file a petition for a writ of certiorari should be granted.

October 3, 2017

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Andrew Tauber, counsel for applicant North Coast Railroad Authority, and a member of the Bar of this Court, certify on this 3rd day of October, 2017, that I caused a copy of the Application for an Extension of Time to File a Petition for a Writ of Certiorari in the above-captioned case to be served by overnight delivery and electronic means upon the following, and that all parties required to be served have been served.

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