

**13-1080 DEPT. OF TRANSPORTATION V. ASSOCIATION OF AMERICAN RAILROADS**

DECISION BELOW: 721 F.3d 666

LOWER COURT CASE NUMBER: 12-5204

QUESTION PRESENTED:

Section 207(a) of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, Div. B, 122 Stat. 4916, requires that the Federal Railroad Administration (FRA) and Amtrak "jointly \* \* \* develop" the metrics and standards for Amtrak's performance that will be used in part to determine whether the Surface Transportation Board (STB) will investigate a freight railroad for failing to provide the preference for Amtrak's passenger trains that is required by 49 U.S.C. 24308(c) (Supp. V 2011). In the event that the FRA and Amtrak cannot agree on the metrics and standards within 180 days, Section 207(d) of the Act provides for the STB to "appoint an arbitrator to assist the parties in resolving their disputes through binding arbitration." 122 Stat. 4917. The question presented is whether Section 207 effects an unconstitutional delegation of legislative power to a private entity.

CERT. GRANTED 6/23/2014