No. 18-579

IN THE

Supreme Court of the United States

ALASKA AIRLINES, INC.,
Petitioner,

v.

JUDY SCHURKE, in her official capacity as Director of the State of Washington Department of Labor and Industries, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR *AMICUS CURIAE* AIRLINES FOR AMERICA IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT 2

ARGUMENT 5

A. The Decision Below Is Wrong 5

B. If Left To Stand, The Decision Below Will Have Significant Adverse Practical Consequences For The Nation's Airlines..... 13

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Air Line Pilots Ass'n, Int'l v. US Airways Grp., Inc., 609 F.3d 338 (4th Cir. 2010).....6

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985).....*passim*

Bhd. of R.R. Trainmen v. Chi. River & Ind. R.R. Co., 353 U.S. 30 (1957).....7

Bhd. of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969).....7, 14

Bowen v. U.S. Postal Serv., 459 U.S. 212 (1983).....7, 14

City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973).....13

Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n, 491 U.S. 299 (1989).....10, 14

Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union, 396 U.S. 142 (1969).....7

Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).....12

Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246 (1994).....3, 7, 8, 9

TABLE OF AUTHORITIES
(continued)

Page(s)

Int'l Ass'n of Machinists v. Cent. Airlines, Inc.,
372 U.S. 682 (1963).....3, 7, 19

Lehman Bros. v. Schein,
416 U.S. 386 (1974).....13

Lingle v. Norge Div. of Magic Chef, Inc.,
486 U.S. 399 (1988).....*passim*

Livadas v. Bradshaw,
512 U.S. 107 (1994).....7, 8, 14

Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Lucas Flour Co.,
369 U.S. 95 (1962).....15

Nw. Airlines, Inc. v. Minnesota,
322 U.S. 292 (1944).....14

Pa. R.R. Co. v. Day,
360 U.S. 548 (1959).....17

Republic Steel Corp. v. Maddox,
379 U.S. 650 (1965).....17

Rueli v. Baystate Health, Inc.,
835 F.3d 53 (1st Cir. 2016).....18

Tice v. Am. Airlines, Inc.,
288 F.3d 313 (7th Cir. 2002).....12

Union Pac. R.R. Co. v. Sheehan,
439 U.S. 89 (1978).....6, 7

TABLE OF AUTHORITIES
(continued)

Page(s)

United Steelworkers of Am. v. Am. Mfg. Co.,
363 U.S. 564 (1960).....10

United Steelworkers of Am. v. Rawson,
495 U.S. 362 (1990).....11

Statutes

45 U.S.C. § 151a 7

49 U.S.C. § 101 13

49 U.S.C. § 40101 13

Wash. Rev. Code § 49.12.270 9

Other Materials

FAA Report to Congress, National Plan of Integrated Airport Systems 2017-2021 (Sept. 30, 2016), *available at* https://www.faa.gov/airports/planning_capacity/npias/reports/historical/ 18

INTEREST OF *AMICUS CURIAE*[1]

Airlines for America (A4A) is the nation's oldest and largest airline trade association, representing passenger and cargo airlines throughout the United States. In 2016, A4A's passenger carrier members and their marketing partners accounted for 72% of all U.S. scheduled passenger airline capacity and carried 593 million passengers, and its all-cargo and passenger members together carried nearly 90% of the total cargo shipped on U.S. airlines.

As part of its core mission, A4A works to foster a business and regulatory environment that ensures a safe, secure, and healthy U.S. air transportation industry—including stable, uniform, and predictable legal rules to govern it. Thus, throughout its seventy-five-plus year history, A4A has been actively involved in the development of the federal law applicable to commercial air transportation, including by participating as *amicus curiae* in some of this Court's landmark preemption cases. *See, e.g.*, Br. of Air Transport Ass'n of Am. as *Amicus Curiae* in Support of Pet. for Writ of Certiorari, *Hawaiian Airlines, Inc. v. Norris*, 1993 WL 13010921 (July 23, 1993) (No. 92-2058); Br. of Air Transport Ass'n of Am. as *Amicus Curiae* in Support of Pet. for Writ of Certiorari, *Atchison, Topeka & Santa Fe Ry. Co. v.*

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[1] Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of the intent to file this brief. All parties have consented to the filing of this brief.

Buell, 1985 WL 669497 (Oct. 1, 1985) (No. 85-1140).[2]

The decision below threatens to disrupt and compromise A4A's mission by undermining settled preemption principles under the Railway Labor Act (RLA), which have long protected A4A's members from being subject to a complicated patchwork of state labor laws by requiring that disputes in the airline industry involving the interpretation or application of a collective-bargaining agreement (CBA) be addressed through federal arbitration, and that state-law claims requiring resolution of such disputes are preempted. A4A's members have operations across countless state lines, with nationwide bargaining units and CBAs pursuant to the RLA. These operations cannot be administered efficiently or effectively when varied laws and remedies are applied to disputes involving a single, multistate CBA, as is now the case throughout the Ninth Circuit. For the reasons explained below, ensuring the proper scope of RLA preemption—including federal court authority to determine whether a state-law claim is preempted under the RLA—is vitally important to A4A's members, and can only be accomplished through this Court's review of the decision below.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the Railway Labor Act and later extended it to airlines to ensure stable labor-management relations and promote interstate commerce in our nation's rail and air industries. Essen-

[2] A4A was formerly known as the Air Transport Association of America.

tial to those purposes is the RLA's mandatory arbitral mechanism. The RLA provides that all disputes between carriers and employees or unions involving the interpretation or application of air and rail CBAs (i.e., "minor" disputes) must be decided through mandatory arbitration, and that state-law claims that turn on CBA construction are preempted. It is therefore clear federal policy that only federal arbitrators, not courts or administrative agencies, are authorized to construe an air carrier CBA.[3]

Congress viewed RLA minor-dispute preemption as crucial because it ensures that CBAs are subject to uniform and consistent federal interpretation, not varying interpretations under the laws of each of the states. Mandatory arbitration thus promotes both collective bargaining *ex ante* and peaceful, predictable resolution of labor-contract disputes *ex post*. Mandating such "prompt and orderly settlement" of airline labor disputes was, Congress believed, the best way to "minimiz[e] interruptions in the Nation's transportation services." *Int'l Ass'n of Machinists v. Cent. Airlines, Inc.*, 372 U.S. 682, 687, 689 (1963).

The Ninth Circuit's decision below fundamentally undermines the uniformity in federal labor policy that the RLA was meant to achieve. In a sharply divided decision, a bare majority of the en banc court held that federal courts lack jurisdiction to construe state law in the course of determining whether a

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[3] This preemption rule, moreover, applies equally to CBA disputes in "nearly all" other industries, by virtue of § 301 of the Labor Management Relations Act (LMRA). *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 411 n.11 (1988); *see Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 260-63 (1994).

state-law claim involves the interpretation or application of a CBA and therefore is preempted by the RLA. In the Ninth Circuit, federal courts are instead relegated to accepting a plaintiff's theory of state law as pleaded, a dramatic constriction of federal court authority that allows and incentivizes litigants to game their way out of RLA preemption. Under the Ninth Circuit's rule, so long as a plaintiff pleads an alternative state-law theory that, according to the plaintiff's own assertion, does not require the construction of a CBA, her claim is not preempted, *even if* the plaintiff's pleaded construction of state law is incorrect—i.e., even if her claim would in fact require interpreting or applying the CBA under a proper application of state law. Otherwise said, the Ninth Circuit's rule, if allowed to stand, will necessarily (and, under the RLA, impermissibly) result in courts assuming jurisdiction of claims that are artfully pleaded under state law but that are actually "minor" disputes requiring CBA construction.

As Judge Ikuta persuasively explained in dissent, the decision below is "unprecedented," and the Ninth Circuit's dim view of preemption "effectively eviscerates" federal court enforcement of the RLA. Pet. App. 39a (Ikuta, J., dissenting). That is reason enough for this Court's review.

But it is not the only reason. The decision below also invites precisely the multitude of conflicting CBA interpretations that the RLA is designed to prevent, with all the predictable practical consequences that Congress sought to avoid. Because federal courts are no longer authorized to construe state law in determining preemption, the Ninth Circuit's rule allows plaintiffs to "clever[ly] plead[]" them-

selves out of mandatory federal arbitration. Pet. App. 72a (Ikuta, J., dissenting). As a result, litigants throughout the Ninth Circuit now have free reign to invoke nine states' multifarious laws, which will necessarily result in disparate constructions of CBA terms and conditions. The resulting disuniformity in CBA interpretation will result in a single labor contract for a nationwide airline meaning different things in different states; protracted litigation rather than efficient arbitration resolving CBA disputes; an increased likelihood of service disruptions in this crucial national industry; and, ultimately, greater difficulty for air carriers and their employees' unions to agree to contract terms in the first place.

These adverse practical consequences—which are exacerbated by the fact that the rule of law adopted below now governs the vast geographical expanse of the Ninth Circuit, and by the forum shopping opportunities that follow the existence of a circuit conflict over the question presented—should not be allowed to persist without this Court's review. The petition should be granted, and the decision below reversed.

ARGUMENT

A. The Decision Below Is Wrong

The RLA preempts any claim that turns on construction of CBA terms, and mandates that such claims can be resolved, if at all, only through arbitration. The question here is whether, when a plaintiff pleads a state-law cause of action that could plausibly require CBA construction, a federal court is authorized to determine whether the best reading

of state law in fact *would* require CBA construction for the plaintiff to prevail, or whether the court instead must blindly defer to the plaintiff's construction of state law.

The Ninth Circuit held below that federal courts are powerless to determine whether a state-law claim will require CBA construction, so long as the plaintiff asserts that it will not. That decision rests on a fundamental misreading of the RLA and abdicates the federal courts' role in enforcing the RLA's preemptive mandate. As this Court repeatedly has recognized, Congress determined that the law applicable to labor-contract disputes in our nation's air and rail industries should be uniform and federal, not subject to varying interpretations in each of the states. The decision below, however, invites plaintiffs to artfully plead their claims out of federal arbitration and into state forums, a result that invites the very disuniformity in CBA construction that the RLA was enacted to prevent. In so doing, the decision not only contravenes the RLA, but also directly conflicts with cases from this Court and other courts of appeals.

1. a. Congress enacted the RLA and extended it to air transportation "to promote stability in labor-management relations" in two exceedingly "important national industr[ies]." *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978). Congress recognized that stable labor relations have "special importance in the rail and air industries, where failure to resolve labor disputes in a prompt and orderly manner may … adversely affect the public interest in traveling and shipping." *Air Line Pilots Ass'n, Int'l v. US Airways Grp., Inc.*, 609 F.3d 338, 341 (4th

Cir. 2010) (quotation and alterations omitted). Congress thus designed the RLA both to "encourage collective bargaining" and to prevent "wasteful strikes and interruptions of interstate commerce." *Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 148 (1969); *see* 45 U.S.C. § 151a.

At the "'heart'" of the RLA is the statute's mandatory arbitral mechanism. Pet. App. 46a (Ikuta, J., dissenting) (quoting *Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377-78 (1969)). Mandatory arbitration, Congress "found from ... experience," was the key to "minimizing interruptions in the Nation's transportation services." *Bhd. of R.R. Trainmen v. Chi. River & Ind. R.R. Co.*, 353 U.S. 30, 40 (1957); *Cent. Airlines*, 372 U.S. at 687. Congress accordingly deemed it "essential" that so-called "minor" disputes—i.e., disputes involving the interpretation or application of a CBA—be kept "out of the courts." *Sheehan*, 439 U.S. at 94; *see Norris*, 512 U.S. at 252-53.

b. To that end, the RLA makes arbitration the "uniform and exclusive method" for resolving minor disputes, and preempts all other claims involving CBA construction. *Bowen v. U.S. Postal Serv.*, 459 U.S. 212, 226 (1983); *see Norris*, 512 U.S. at 252-53. It is, as a result, "a central tenet of federal labor-contract law ... that it is the arbitrator, not the court, who has the responsibility to interpret [a] labor contract in the first instance." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985).

To determine whether a state-law claim is an RLA-preempted minor dispute, a court must evaluate its "legal character." *Livadas v. Bradshaw*, 512

U.S. 107, 123 (1994). If resolution of the claim involves "interpretation or application" of a CBA, then the claim is preempted. *Norris*, 512 U.S. at 252-53; *see also Lingle*, 486 U.S. at 407 n.7. Notably, this same preemption analysis applies not only to railroads and airlines under the RLA, but also to virtually every other CBA-covered industry in the private sector via § 301 of the LMRA. *See supra* at 3 n.3.

Preemption promotes labor stability and uninterrupted interstate commerce not just by ensuring that minor disputes are resolved efficiently, but also by requiring that CBAs be "subject to uniform federal interpretation." *Lueck*, 471 U.S. at 211. When "resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is pre-empted and federal labor-law principles—necessarily uniform throughout the Nation—must be employed to resolve the dispute." *Lingle*, 486 U.S. at 405-06. That rule applies however a plaintiff labels her claims. *See infra* at 11, 17-18.

2. This case concerns a claim filed under the Washington Family Care Act (WFCA) by Laura Masserant, a flight attendant who works for petitioner Alaska Airlines and who is covered by a system-wide CBA negotiated between petitioner and the Association of Flight Attendants. A straightforward application of the principles just described requires holding Masserant's claim preempted. Pet. 12-14, 21-26; Pet. App. 55a-57a (Ikuta, J., dissenting).

Masserant contends that petitioner violated the

WFCA when it refused to allow her to reschedule pre-set vacation days for family care purposes, consistent with petitioner's policy and practice and its understanding of the CBA. Pet. 8. To prevail on her WFCA claim, Masserant was required to show that she was "entitled to" this paid time off "under the terms of [the] collective bargaining agreement," and that she "compl[ied] with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave." Wash. Rev. Code § 49.12.270(1). Masserant alleges (and respondents agree) that as a matter of Washington law, the WFCA supersedes CBA provisions relating to the rescheduling of paid vacation. But that is an incorrect construction of Washington law. *See* Pet. App. 50a-55a (Ikuta, J., dissenting). Rather, "advanced scheduling of vacation time is a term 'of the collective bargaining agreement or employer policy applicable to the leave' that an employee 'must comply with' in order to take leave under WFCA." *Id*. at 52a (quoting Wash. Rev. Code § 49.12.270(1)).

It follows that "resolution" of Masserant's state-law claim will involve the interpretation or application of a CBA, *Lingle*, 486 U.S. at 406-07 & n.7; *see Norris*, 512 U.S. at 252-53—determining whether Masserant was "entitled to" paid time off under the CBA and whether she "compl[ied] with the terms of" the CBA are fundamental questions of contract interpretation that will have to be resolved in this case. After all, "Masserant's WFCA claim ... turns on whether she was entitled to reschedule her December vacation time under the terms of the CBA," Pet. App. 55a (Ikuta, J., dissenting), and there is a

dispute over whether in fact the CBA allowed Masserant to do so. Resolution of that question requires interpreting and applying not just the CBA's text but also, as Judge Ikuta emphasized, prevailing policies and practices, because "'the common law of a particular industry or of a particular plant'" may inform the CBA's interpretation. *Id.* at 55a-57a (Ikuta, J., dissenting) (quoting *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 311-12 (1989)); *see also, e.g.*, *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 567 (1960) (resolution of CBA disputes "may assume proportions of which judges are ignorant"). Under the RLA, that is not a question for courts—only industry-expert RLA arbitration boards may construe a CBA. Masserant's claim is thus preempted by the RLA and "must be resolved through the RLA's mandatory arbitral mechanism." Pet. App. 74a (Ikuta, J., dissenting).

3. The decision below turns this straightforward analysis on its head. According to the Ninth Circuit, federal courts lack "jurisdiction" even to "construe state law" to determine whether a proper application of state law would require construction of CBA terms (and, thus, RLA preemption). Pet. App. 23a, 32a-33a. Instead, the majority below held that a federal court's RLA-preemption analysis is confined exclusively to "the plaintiff's pleading." *Id.* at 22a. Put differently, in the Ninth Circuit, a federal court facing a disputed question about how state law interacts with a CBA is required uncritically to accept the plaintiff's interpretation of that law in determining whether the plaintiff's claim is preempted. And because Masserant pleaded a view of Washington law under which the CBA would not have to be inter-

preted, the court below held that the RLA did not preempt her claim. *Id.* at 32a. The court of appeals' position is thus that a plaintiff can escape RLA preemption through artful pleading of a state-law cause of action, even if the plaintiff's reading of state law turns out to be incorrect and the cause of action in fact does require CBA construction.

The Ninth Circuit's rule is flatly inconsistent with this Court's cases, which definitively reject this exceedingly narrow view of federal court authority. In *United Steelworkers of America v. Rawson*, 495 U.S. 362 (1990), for example, the Court construed Idaho law to determine whether the plaintiff's claim was preempted. *Id.* at 370-71. "Pre-emption by federal law cannot be avoided," the *Rawson* Court held, merely based on the plaintiff's "characteriz[ation]" of her claim. *Id.* at 371-72. As Judge Ikuta forcefully demonstrated, *Rawson* "forecloses the [Ninth Circuit] majority's view that a federal court must defer to any proposed interpretation of state law and allow a state-law claim to proceed on that theory." Pet. App. 62a (Ikuta, J., dissenting). This Court's decision in *Lueck* prescribes the same analysis, Pet. 25-26, as do the decisions of almost all other courts of appeals, *id.* at 15-21.

4. The Ninth Circuit's rule also makes no sense. To determine whether resolution of a state-law claim will involve interpreting or applying a CBA, a federal court must necessarily determine what state law *is*. When there is a threshold dispute about the meaning of state law, a federal court has no choice but to resolve it; if the court does not, then the entire case, including potentially a dispute about the meaning and application of a CBA, will be resolved in a

state forum, contrary to the RLA's preemptive command. And if, in a case like this one, the state court or agency rejects the plaintiff's interpretation of state law, then it, not an arbitrator, would be tasked with interpreting and applying the CBA—a result that Congress proscribed in the RLA. A federal court therefore must be able to interpret state law to ensure this prohibited result is avoided.

The Ninth Circuit identified no principled rationale for its contrary conclusion. Federal courts obviously are competent to interpret and apply state law. *See generally Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). And while federal courts may not in this context have the authority "to resolve a state law claim" outright, Pet. App. 23a, that is not what they are asked to do. The court simply must resolve a contested *issue* of state law to determine whether the claim may be resolved in its entirety in state court or whether instead an exclusively federal aspect of the claim—*viz.*, the interpretation and application of the CBA—must first be resolved in the federally-mandated arbitral forum. *See, e.g.*, *Tice v. Am. Airlines, Inc.*, 288 F.3d 313, 318 (7th Cir. 2002) (in case brought in federal court, recognizing that "the suit must be stayed until the dispute over the agreement is resolved by the only body authorized to resolve such disputes, namely an arbitral panel"). That analysis was mandated by Congress in the RLA and is well within the federal courts' bailiwick, as this Court's cases demonstrate.[4]

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[4] Moreover, any concern that state law is too uncertain or that federal construction of state law would thwart its substantive development, *see* Pet. App. 34a, is easily addressed by cer-

The decision below thus conflicts with decades of this Court's jurisprudence and lacks any cogent basis. It is, in short, "unprecedented," Pet. App. 39a (Ikuta, J., dissenting), and should be reversed.

B. If Left To Stand, The Decision Below Will Have Significant Adverse Practical Consequences For The Nation's Airlines

The decision below is not only plainly incorrect, but also will, if left to stand, have significant adverse practical consequences for the airline industry. Most obviously, the rule adopted below will undermine the very uniformity on which nationwide air carriers and unions alike rely and for which they bargain—precisely the result Congress intended to avoid when it enacted the RLA.

1. a. As this Court has recognized, air transportation is "in [its] nature national," and "imperatively demand[s] a single uniform rule, operating equally [throughout] the United States." *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 625 (1973) (quotations omitted). Congress has thus repeatedly recognized the importance of national uniformity in air carrier regulation. For example, Congress has declared that the "public interest" requires "a complete and convenient system" of "interstate air transportation." 49 U.S.C. § 40101(a). By making travel "fast, safe, efficient, and convenient," air transportation promotes the "general welfare, economic growth and stability, and security of the United States." *Id.* § 101(a). Air transportation can

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tification to the state's highest court, *see, e.g.*, *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974).

achieve these vital objectives only if "our national air commerce" remains free from "local burdens." *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 302 (1944) (Jackson, J., concurring).

b. Nowhere is national uniformity more important than in the context of federal labor policy as to the airline industry—a principle reflected in the RLA, which was established to "diminish the risk of interruptions in commerce" and promote "the peaceable settlement of labor controversies." *Consol. Rail*, 491 U.S. at 311.

As explained above, the RLA achieves these goals in part through mandatory arbitration of disputes involving construction of CBA terms, and preemption of state-law claims that require such CBA construction. These rules ensure that CBAs affecting national industries and interests will be "subject to uniform federal interpretation," *Lueck*, 471 U.S. at 211, "by arbitrators who are experts in the common law of the particular industry," *Consol. Rail*, 491 U.S. at 310-11 (quotation and alteration omitted); *see also Bowen*, 459 U.S. at 225-26 (mandatory arbitral mechanism provides employers and employees a "uniform and exclusive method" for "giving content to [a CBA] and determining their rights and obligations under it"). Railway and airline "labor disputes typically present problems of national magnitude," so it was of "paramount ... import[ance]" to Congress that CBAs in those industries not be "subjected to various and divergent state laws." *Jacksonville Terminal*, 394 U.S. at 381-82; *see also Livadas*, 512 U.S. at 122 (preemption ensures that "common terms in bargaining agreements" are not "given different and potentially inconsistent inter-

pretations in different jurisdictions"). After all, without the RLA, "there could be as many state-law principles" applicable to CBAs "as there are States." *Lingle*, 486 U.S. at 406.

Nationwide uniformity in labor-contract law, moreover, promotes not just peaceful *resolution* of CBA disputes, but also collective bargaining in the first place—both linchpins of Congress's plan to secure labor peace and thereby prevent interference with interstate commerce. As this Court explained in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962), even "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Id.* at 103. If CBAs were subject to varying interpretations depending on the jurisdiction in which a suit was brought, "the process of negotiating an agreement would be made immeasurably more difficult" because the parties would need *ex ante* "to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract." *Id.* "Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms" at all, and surely "would tend to stimulate and prolong disputes as to" any negotiated contract's "interpretation." *Id.* at 104. For all these reasons, "the need for a single body of federal law [is] particularly compelling." *Id.*; *see also, e.g.*, *Lueck*, 471 U.S. at 211 (it would "stultify … congressional policy … [w]ere state

law allowed to determine the meaning … [of] a particular contract phrase or term" (quotations omitted)).

2. The obvious corollary to the principles just discussed is that *disuniformity* in CBA construction will undermine rather than further Congress's goals in enacting the RLA. Allowing state courts to apply 50 different rules to CBA construction means that the same multistate CBA—common in the airline industry—will mean different things depending on the forum in which an action is brought. It means that labor-contract disputes will be resolved under varying rules through lengthy judicial proceedings rather under uniform federal rules through efficient arbitration. It means that airline service, crucial to this nation's commerce, will be more likely to be disrupted by labor disputes. And it means that carriers and their employees' bargaining representatives will have increased difficulty agreeing to contract terms in the first place.

Yet disuniformity in CBA construction—coupled with the adverse practical consequences that necessarily stem from that state of affairs—is the necessary result of the decision below, for several reasons.

a. For starters, the rule adopted by the court below invites state courts and administrative agencies to resolve CBA-based contract disputes. The Ninth Circuit adopted an unduly crabbed conception of RLA preemption, holding that federal courts are prohibited from even construing state law in determining whether a state-law claim is preempted, *even if* under one interpretation of state law, the claim would require the interpretation or application of a

CBA. The decision below thus invites "state courts [and agencies to] apply the potentially conflicting state law of each of the fifty states to interpret [a multistate] CBA's terms and conditions." Pet. App. 58a (Ikuta, J., dissenting). If the decision is left standing, therefore, "'the congressional goal of consistent, reliable operation would be threatened.'" *Id.* (quoting *Lingle*, 486 U.S. at 406); *see also, e.g.*, *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1965) (rule that "would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances" contravened congressional intent); *Pa. R.R. Co. v. Day*, 360 U.S. 548, 553 (1959) (allowing judges, rather than federal arbitrators, to determine interpretation and application of CBA would "hamper if not defeat the [RLA's] central purpose").

b. Worse still, the Ninth Circuit's methodology makes circumventing the RLA's mandatory arbitral mechanism particularly easy. According to the en banc majority, "in conducting an RLA preemption analysis, a federal court ... must limit itself to determining whether the plaintiff has pleaded a claim that constitutes a … dispute" subject to federal preemption. Pet. App. 39a (Ikuta, J., dissenting). Requiring a federal court to accept the plaintiff's version of state law as pleaded, however, "effectively eviscerates federal court review" and "impairs or extinguishes RLA preemption." *Id.* Under the Ninth Circuit's rule, all a plaintiff needs to avoid preemption is a crafty lawyer and "clever pleading." *Id.* at 72a. That cannot be right. In fact, this Court's RLA- (and LMRA-) preemption analysis is specifically designed to "prevent [plaintiffs] from avoiding ...

preemption through artful pleading." *Rueli v. Baystate Health, Inc.*, 835 F.3d 53, 58 (1st Cir. 2016) (citing, *e.g.*, *Lueck*, 471 U.S. at 210-11 (because labor arbitration needs to be protected and encouraged, courts should be wary of allowing employees to try to bypass arbitration by recasting disputes with employers as state-law claims)).

c. The disuniformity problems stemming from the legal rule adopted by the court below, moreover, are especially pronounced because the court below is the Ninth Circuit. Two of the nation's largest commercial carriers—Alaska Airlines and Hawaiian Airlines, both A4A members—are headquartered in the Ninth Circuit, and virtually every major carrier (each also an A4A member) has a hub in one or more of the Ninth Circuit's 16 Large or Medium Hub airports.[5] Under the Ninth Circuit's rule, CBAs for all these carriers may be subject to the divergent contract "principles" of nine different states, inevitably leading to the "inconsistent results" that the RLA was designed to avoid. *Lingle*, 486 U.S. at 405-06.

And that is just the tip of the iceberg. The RLA applies equally to railroads, and the very same

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[5] Large Hubs receive 1% or more of annual commercial enplanements. The international airports in Phoenix, Los Angeles, San Diego, San Francisco, Honolulu, Las Vegas, Portland, and Seattle are all Large Hubs. Medium Hubs receive more than 0.25% of annual enplanements and include the international airports in Anchorage, Oakland, Ontario, Sacramento, San Jose, Santa Ana, and Kahului. *See* FAA Report to Congress, National Plan of Integrated Airport Systems (NPIAS) 2017-2021, App. A (Sept. 30, 2016), *available at* https://www.faa.gov/airports/planning_capacity/npias/reports/historical/.

preemption principles apply under the LMRA, which covers "nearly all" CBAs in the private sector, and thus myriad important industries, nationwide. *Id.* at 411 n.11. The Ninth Circuit's rule, in fact, will effectively subject *virtually every CBA*, *in virtually every industry*, to state court (or agency) interpretation if the plaintiff can plead a CBA-free state-law theory in the alternative. It is thus no exaggeration to say that in a wide swath of cases, the decision below throws open the floodgates to conflicting state-court interpretations of CBAs in critical industries.

d. That state of affairs would be intolerable even without the circuit conflict identified in the petition. *See* Pet. 26-31. But that decisional conflict only exacerbates the problem. As the petition explains at length (*id.* at 14-21), the courts of appeals are divided as to whether federal courts have authority to construe state law when determining whether resolution of a state-law claim will involve the interpretation or application of a CBA and thus trigger RLA preemption. In the Ninth Circuit the answer to that question is no. But in nearly every other circuit the answer is yes.

Forum shopping will inevitably follow. Plaintiffs seeking to avoid arbitration are now well advised to file suit in the courts and agencies of any of the nine states in the Ninth Circuit, so long as their lawyer can concoct a "clever pleading" that avoids on its face the application of a CBA. Pet. App. 72a (Ikuta, J., dissenting). And because the rail and air transportation industries operate nationwide, countless covered employees will have their choice of forum and applicable state law. *Cf. Cent. Airlines*, 372 U.S. at 692 n.15 (noting "the difficult conflict of laws

problems which applying state law would raise"). The result of this forum shopping will surely be disparate interpretation of multistate CBAs and disparate treatment of similarly situated employees.

Forum shopping is objectionable in its own right, but it is especially problematic where (as here) it may cause divergent interpretations of national CBAs, a result antithetical to Congress's expressed goal of promoting uniformity and predictability of the law applicable to labor-contract disputes in vital interstate transportation industries. Only this Court's review can reestablish the uniform federal labor policy that the RLA mandates, and that the decision below eradicates.

The petition should be granted, and the decision below reversed.

CONCLUSION

For these reasons, as well as those presented in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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