No. 18-579

IN THE
Supreme Court of the United States

ALASKA AIRLINES, INC.,

Petitioners,

v.

JUDY SCHURKE, in her official capacity as Director of the State of Washington Department of Labor and Industries; ELIZABETH SMITH, in her official capacity as Employment Standards Program Manager of the State of Washington Department of Labor and Industries,

Respondents.

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

BRIEF IN OPPOSITION OF INTERVENOR AMERICAN ASSOCATION OF FLIGHT ATTENDANTS- COMMUNICATION WORKERS OF AMERICA, AFL-CIO

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 1

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

Cases:

Armstrong v. Exceptional Child Center, Inc.,
135 S. Ct. 1378 (2015).....8

Bhd. of R.R. Trainmen, Enter. Lodge, No. 27 v. Toledo, Peoria & W. R.R.,
321 U.S. 50, 64 S. Ct. 413, 88 L. Ed. 534 (1944)..7

Geddes v. Am. Airlines, Inc.,
321 F.3d 1349 (11th Cir. 2003).....8

Hawaiian Airlines, Inc. v. Norris,
512 U.S. 246, 114 S. Ct. 2239, 129 L. Ed. 2d 203 (1994)..... 5, 6, 7

Livadas v. Bradshaw,
512 U.S. 107 (1994).....3

Moore-Thomas v. Alaska Airlines, Inc.,
553 F.3d 1241 (9th Cir. 2009).....8

Sullivan v. Am. Airlines, Inc.,
424 F.3d 267 (2d Cir. 2005) 8

Statutes and Other Authorities:

28 U.S.C. § 1331.....8

45 U.S.C. § 184.....5

Wash. Admin. Code § 296-130-070 5

Wash. Rev. Code § 49.12.270(1)..... 4

INTRODUCTION

Respondent Association of Flight Attendants–Communication Workers of America, AFL-CIO (AFA) respectfully requests that the petition for writ of certiorari be denied because the Petition asks the Court to answer a question that is not presented by the decision below.

The lower court embraced its obligation to construe the state law to decide the preemption question. Specifically, it examined the parties' competing interpretations of the state law with an eye toward determining whether the parties' dispute involved an assertion of contractual rights or required contractual interpretation for its resolution. Having done so, the court below concluded that the Respondent Washington State Department of Labor and Industries' (Department) enforcement of the Washington Family Care Act (WFCA) and its issuance of a Notice of Infraction to Alaska Airlines Inc., (Alaska), was not preempted by the Railway Labor Act (RLA).

ARGUMENT

The Petition Should Be Denied Because The Decision Below Does Not Provide A Proper Vehicle For The Question Presented By The Petition.

The petition for a writ of certiorari purports to present the following question:

> Whether federal courts lack authority to inquire into the nature and scope of an alleged state law claim in determining

> whether resolution of that claim would involve interpretation or application of a CBA and thus trigger preemption.

Pet. at 2.

That question is not presented for the simple reason that the courts below *did* "inquire into the nature and scope of [the] alleged state law claim" to the extent necessary to determine that the claim did not entail any dispute over the meaning of the relevant collective bargaining agreement.

The petition mischaracterizes the decision below when it asserts that "in the majority's view, the court lacked 'jurisdiction' to 'construe state law and resolve [the dispute] between the parties as to its meaning' as part of it RLA preemption analysis." Pet. at 12 (quoting with alteration Pet. App. at 32a-33a). In fact, what the majority declined to do was "construe state law and resolve *all* disputes between the parties as to its meaning." Pet. App. at 32a-33a (emphasis added). It took this approach, not because it claimed a lack of jurisdiction to *construe state law* in the course of conducting its preemption analysis, but rather because it recognized that as a federal court it did not have jurisdiction to *resolve the merits of the state claim* because it could "no more invade the province of the state court to resolve a state law claim over which we lack jurisdiction than we may invade the province of the labor arbitrator to construe the CBA." App. at 23a.

As to its determination of the RLA preemption issues, the majority opinion sufficiently construed the WFCA in light of the interpretation given it by both the Department and Alaska without attempting

to resolve that state law dispute. The majority repeatedly emphasized the necessity of "an inquiry into the claim's 'legal character'—whatever its merits—so as to ensure it is decided in the proper forum." Pet. App. at 23a (quoting *Livadas v. Bradshaw*, 512 U.S. 107, 123–24 (1994)). *See also* Pet. App. at 17a & 29a.

In examining the "legal character" of the claim raised the Department's enforcement of the WFCA against Alaska, the majority identified three pertinent aspects of the statute: (i) it "guarantees workers the flexibility to use accrued sick leave or other paid leave for family medical reasons;" (ii) "[w]orkers invoking the WFCA must generally comply with the terms of the [CBA] or employer policy applicable to the leave;" (iii) "except that they need not comply with terms or policies relating to the choice of leave." Pet. App. at 4a (quotation marks and citation omitted). Against that background, the majority determined that the Department's prosecution of "Masserant's claim . . . gives rise to a state law dispute, not a dispute over the meaning of the CBA." *Id*. at 29a.

The court noted that, "[i]t was common ground among the parties that Masserant had banked vacation days." Pet. App. at 6a. "[I]t was undisputed that Masserant's banked vacation days were available as of May 2011 [when she sought to take paid leave to care for her son] for exchange, personal medical leave, maternity-related leave, bereavement leave, or immediate cash out." *Id.* at 5a. It was also common ground that Masserant "was not permitted, under the terms of the CBA, to take them early for her son's medical care." *Id*. at 6a.

That left only the question "whether banked, prescheduled vacations days were subject to the state's nonnegotiable right to use accrued paid leave for family medical purposes." *Id.* at 7a. The answer to this question, which was "purely one of state law," *id.*, turned on whether "the CBA's limits on the use of banked vacation time, which could be used for certain other unscheduled purposes, served only to limit 'the choice of leave,' and were therefore void under state law." *Id.* at 5a.

The court examined the Department's view of the statutory language, specifically its view "that the statute's 'choice of leave' exception applies to banked vacation already earned, even if under workplace practices (whether CBA-governed or not) prescheduled vacation may be rescheduled or used for exigencies only under specified circumstances." Pet. App. at 29a. The Court held that the legal character of the Department's claim is that it "invokes a state law right that applies to all workers," *Id.* at 29a, and that it "gives rise to a state law dispute, not a dispute concerning the meaning of the CBA." *Id.*

The court also examined Alaska's interpretation of the statutory language and Alaska's view that "requiring adherence to the CBA's vacation-scheduling regime was not a prohibited restriction on 'the choice of leave,' Wash. Rev. Code § 49.12.270(1), but a permissible condition on earning leave in the first place," a reference to the statute's restriction of advance leave to "earned" leave: ("An employee may not take advance leave until it has been earned."). *Id.*, Pet. App. at 5a.

Observing that the dispute about whether the Department or Alaska correctly interpreted the "choice of leave" provision was a matter of state law, not the CBA, the court noted that the state proceeding was in its infancy and that after "further administrative or state court review, the Airline may yet prevail in its view of Washington law," in which case it would also prevail in overturning the Department's notice of infraction. Pet. App. at 29a (citing Wash. Admin. Code § 296-130-070 (describing the administrative appeal process at L&I)).

In examining Alaska's interpretation of the WFCA, the court noted that, although the parties agree "that Masserant, did in fact, have seven days of banked leave," Alaska contends that "a dispute exists over whether Masserant truly 'earned' her vacation and was 'entitled' to take it within the meaning of the WFCA." Pet. App. at 30a-31a. Observing that those terms are "contained within the WFCA, not the CBA," the court held that the "dispute over their meaning is a dispute over state law and therefore outside the scope of the minor disputes to which an RLA system adjustment board is limited," because the construction of the CBA is simply not involved. *Id.* at 31a (internal quotations omitted) (citing 45 U.S.C. § 184); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 245-55, 114 S. Ct. 2239, 129 L. Ed. 2d 203 (1994)).

And importantly, the court explained that the dispute was confined to whether, as the Department would have it, the WFCA equated being "entitled" to "earned" leave with already

"banked" leave, or instead, as Alaska would have it, incorporated CBA scheduling restrictions on the "entitlement" to take "earned" advance leave. Although the CBA placed restrictions on using pre-scheduled vacation leave for WFCA purposes, because the statute's language expressly stated that choice of leave restrictions contained in an employer policy or CBA could not be applied to restrict an employee's use of WFCA leave, that state labor regulation obviated the CBA restriction.

As the "choice of leave" provision of the WFCA was independent of the CBA, there was no CBA interpretation needed to resolve the state statutory question presented below. Pet. App. at 32a. ("The fact that a CBA provides a remedy or duty related to a situation that is *also* directly regulated by non-negotiable state law does not mean the employee is limited to a claim based on the CBA.") (internal quotations omitted) (citing *Norris*, 512 U.S. at 261, 114 S.Ct. 2239; *Lingle*, 486 U.S. at 412–13, 108 S.Ct. 1877).

It was therefore proper, as the court below explained, for the state proceeding to continue to determine the merits of the parties' dispute:

> If the state agency or state courts ultimately decide that the Airline is correct about the meaning of the WFCA, Masserant will not have been entitled to use her seven banked vacation days to care for her sick child, and she will lose without regard to any construction of the CBA; if

> Masserant is correct about the meaning of the WFCA, the remedies accorded by state law will be available, and she will win without regard to any construction of the CBA.

Pet. App. at 31a.

The court below engaged in a thoughtful inquiry into the legal character of the Department's claim and Alaska's defense–based on its interpretation of the state law being enforced—and concluded that the legal nature of the claim was independent of the CBA and that litigation of the claim and defenses would not require interpretation of the CBA.

The court's analysis comported with this Court's precedent and its sister courts of appeals decisions. *See* Department's brief in opposition. And importantly, it comported with the "purpose of Congress" to protect the role of grievance and arbitration and of federal labor law in resolving CBA disputes, not to alter or displace state law labor rights." Pet. App. at 28a (citing *Norris*, 512 U.S. at 256, 114 S.Ct. 2239; *Lingle*, 486 U.S. at 408–09, 108 S.Ct. 1877; *Maddox*, 379 U.S. at 654–57, 85 S.Ct. 614; *Bhd. of R.R. Trainmen, Enter. Lodge, No. 27 v. Toledo, Peoria & W. R.R.*, 321 U.S. 50, 58, 64 S.Ct. 413, 88 L.Ed. 534 (1944)). [1]

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[1] Indeed, the procedural posture of the case also raises questions concerning the federal courts' jurisdiction to entertain Alaska's challenge to the Department's enforcement actions with respect to WFCA claims. First, to the extent Alaska relies on the Supremacy Clause to provide an implied cause of action and thus a potential basis for jurisdiction under

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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28 U.S.C. § 1331, *see* Am. Compl., ECF No. 49, ¶¶ 1, 29–31, 35–37, that argument is foreclosed by this Court's decision in *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1383 (2015). Moreover, insofar as Alaska attempts to invoke RLA preemption as a sword rather than a shield in order to trigger federal-question jurisdiction, *see* Am. Compl. ¶¶ 1, 32–34, 38–40, that argument is foreclosed by the well-pleaded complaint rule. *See Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1245 (9th Cir. 2009) (holding that RLA preemption does not give rise to federal jurisdiction under the "complete preemption" doctrine, which serves as a corollary and necessary exception to the well-pleaded complaint rule); *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 277 (2d Cir. 2005) (same); *Geddes v. Am. Airlines, Inc.*, 321 F.3d 1349, 1357 (11th Cir. 2003) (same).