No. _____

IN THE

Supreme Court of the United States

UNION PACIFIC RAILROAD COMPANY,

Petitioner,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Railway Labor Act ("RLA") prohibits carriers from interfering with their employees' "choice of representatives." 45 U.S.C. § 152 Third.

Union Pacific began disciplinary proceedings against six employees involved in a fistfight in a restaurant parking lot. The court of appeals held that 45 U.S.C. § 152 Third applied, and enjoined the disciplinary proceedings, because some of the employees were local union officers, even though none was a collective bargaining representative. The court also held that federal jurisdiction existed based on an unwritten "antiunion animus" exception to the RLA's provision vesting arbitrators with jurisdiction over minor disciplinary disputes, *see id.* § 153 First (i), even though this Court has held that the arbitrators' jurisdiction over such disputes is "mandatory, exclusive, and comprehensive," *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33, 38 (1963).

The questions presented are:

1. Whether union "representatives" under 45 U.S.C. § 152 Third means all union officers (as the court below held), only those union officers serving as collective bargaining agents (as the Sixth Circuit has held), or only the union itself (as the Second Circuit has held).

2. Whether the RLA contains an unwritten "anti-union animus" exception to the mandatory and exclusive arbitration procedures in 45 U.S.C. § 153 First (i).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The caption contains the names of all the parties to the proceeding below.

Pursuant to this Court's Rule 14(b) and Rule 29.6, undersigned counsel states that petitioner Union Pacific Railroad Company is a wholly owned subsidiary of Union Pacific Corporation, a publicly traded company. No publicly traded corporation is known to own 10% of the stock of Union Pacific Corporation.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co., No. 21-cv-122 (W.D. Tex. June 11, 2021) (granting motion for temporary and preliminary injunctive relief).

Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co., No. 21-50544, 31 F.4th 337 (5th Cir. Apr. 13, 2022), *reh'g denied*, Order at 1 (5th Cir. May 10, 2022).

There are no additional proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Union Pacific Railroad Company respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

The Railway Labor Act protects the rights of railroad employees to choose their own collective bargaining representative. That protection is enshrined in 45 U.S.C. § 152 Third, which provides that neither a railroad nor a labor organization "shall in any way interfere with, influence, or coerce the other in its choice of representatives."

This case presents the question of who is a "representative[ ]" entitled to protection. The Sixth Circuit has squarely held that *only* a union's collective bargaining representatives—i.e., those individuals who negotiate a collective bargaining agreement with the employer—are "representatives" under 45 U.S.C. § 152 Third. *See Int'l Bhd. of Teamsters v. United Parcel Serv. Co.*, 447 F.3d 491, 501–02 (6th Cir. 2006) (Sutton, J.) (Section 152 Third "only protects an employee's choice of a collective bargaining representative" (quotation marks omitted)). The Second Circuit has construed the statute even more narrowly, holding that "the term 'representative' refers to the *union* or other *organization* designated to represent an employee, and not merely to an individual official within that organization." *United Transp. Union v. Nat'l R.R. Passenger Corp.*, 588 F.3d 805, 812 (2d Cir. 2009).

In this case, the Fifth Circuit held—in direct conflict with the Sixth and Second Circuits—that Section

152 Third applies to *all* union officers, even officers of "a local unit" who have no involvement whatsoever in collective bargaining. Pet. App. 16a–17a. The court concluded that the RLA "says that carriers shall not 'seek in any manner' to interfere with employees' 'choice of representatives'; there is no mention of particular offices or duties those representatives must have." *Id*. (quoting 45 U.S.C. § 152 Third).

This Court's review is warranted to resolve the clear circuit split over who is covered by 45 U.S.C. § 152 Third.

Review is further warranted for a related reason. By interpreting "representative" to include any union officer, the court of appeals dramatically expanded the reach of § 152 Third and created federal jurisdiction over routine disciplinary disputes that are subject to mandatory arbitration. The RLA requires that disciplinary and other "minor" disputes be resolved by a specialized arbitration tribunal known as an Adjustment Board. *See* 45 U.S.C. § 153 First (i). But many circuits, including the court below, have seized on § 152 Third's language protecting the "choice of representatives" to recognize an unwritten "antiunion animus" exception. This purported exception allows union officials to circumvent mandatory arbitration and bring their claim directly in federal district court merely by alleging that the railroad's disciplinary actions were motivated by antiunion animus. The courts that recognize the exception reason that an antiunion animus claim is intended to vindicate the statutory right protecting the "choice of representatives" rather than a contractual right established by the collective bargaining agreement, so it is properly heard by a federal court. *See*, *e.g.*, Pet. App. 12a.

This Court should grant review and hold that the RLA's mandatory arbitration provision contains no exception for claims allegedly motivated by "antiunion animus." The purported exception defies the Act's plain text, and conflicts with this Court's recognition that arbitrators have "mandatory, exclusive, and comprehensive" jurisdiction over disciplinary disputes between railroads and their employees. *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33, 38 (1963). It also conflicts with this Court's recognition that once the employees' bargaining representative is selected, federal jurisdiction over post union-certification disputes is extremely limited—and does not exist where congressionally established remedies are available. As the Court explained in *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 489 U.S. 426, 441 (1989) ("*TWA*"), "judicial intervention in RLA procedures [is] limited to those cases where but for the general jurisdiction of the federal courts, there would be no remedy to enforce the statutory commands which Congress [has] written into the Railway Labor Act." (quotation marks omitted).

A case involving discipline over a fistfight in a parking lot is a textbook example of a minor disciplinary dispute that does not belong in federal court and should have been arbitrated. By holding that the local union officers in this case are "representatives" under 45 U.S.C. § 152 Third—and that a disciplinary action over a fistfight can be litigated in federal court based merely on allegations that Union Pacific's actions were motivated by antiunion animus—the court of appeals eviscerated the congressional scheme designed to channel these types of garden-variety disciplinary disputes into arbitration.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 31 F.4th 337. Pet. App. 1a. The Fifth Circuit's order denying rehearing en banc is not reported. *Id.* at 40a. The order of the district court granting temporary and preliminary injunctive relief is not reported. *Id.* at 18a. Neither the order of the district court staying the district court proceedings during the pendency of the Fifth Circuit appeal, *id.* at 36a, nor its order continuing the stay of district court proceedings pending disposition of this petition, *id.* at 38a, is reported.

JURISDICTION

The Fifth Circuit entered its judgment on April 13, 2022, and denied Union Pacific's timely petition for rehearing en banc on May 10, 2022. On July 6, 2022, Justice Alito granted a 30-day extension of time to file a petition for certiorari, up to and including September 7, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Railway Labor Act, 45 U.S.C. §§ 151–165, provides, in relevant part:

> Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.

45 U.S.C. § 152 Third.

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice . . . .

45 U.S.C. § 152 Fourth.

> The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

45 U.S.C. § 153 First (i).

STATEMENT OF THE CASE

A. The Railway Labor Act

The RLA protects the right of workers to choose their representatives to negotiate collective bargain-

ing agreements on their behalf. After Congress enacted the initial version of the Act in 1926, railway unions complained that carriers were interfering with employees' right to choose representatives and "attempting to undermine the employees' participation in the process of collective bargaining." *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 759 (1961).

Congress therefore amended the Act in 1934, in an effort to protect "the choice by employees of their collective bargaining representatives." *Gen. Comm. of Adjustment v. Mo.-Kan.-Tex. R.R. Co.*, 320 U.S. 323, 329 (1943). The amendments provided that "[r]epresentatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion," and that "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." 45 U.S.C. § 152 Third. Congress further forbade railroads from "deny[ing] or in any way question[ing] the right of its employees to join, organize, or assist in organizing the labor organization of their choice" and from "interfer[ing] in any way with the organization of its employees." *Id.* § 152 Fourth.

The RLA provides for the designation of a single "representative" for a particular craft or class of employees on a system-wide basis. Once a union has been certified as the representative for a particular craft or class, "the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter." 45 U.S.C. § 152 Ninth.

The RLA also provides a comprehensive framework for resolving post-certification disputes between railroads and their employees. By providing "effective

and efficient remedies" for labor disagreements arising out of the interpretation of collective bargaining agreements, *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978) (per curiam), Congress sought to achieve "prompt and orderly settlement" of such disputes and "[t]o avoid any interruption to commerce or to the operation of any carrier," 45 U.S.C. § 151a.

The cornerstone of the Act's dispute-resolution framework is its arbitration mechanism. The Act requires that "minor" disputes be resolved through arbitration. *See Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen*, 558 U.S. 67, 72 (2009) (explaining that Congress "mandate[d] arbitration of minor disputes"). A dispute qualifies as "minor" if it "grow[s] out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." 45 U.S.C. § 151a. In other words, a dispute must be arbitrated if it "involve[s] controversies over the meaning of an existing collective bargaining agreement in a particular fact situation." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 253 (1994) (quotation marks omitted). So long as the party "assert[ing] a contractual right to take the contested action" is "arguably justified by the terms of the parties' collective-bargaining agreement," the dispute is considered minor. *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 307 (1989). Disciplinary matters have long been recognized as minor disputes. *See*, *e.g.*, *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 789 F.2d 139, 141 (2d Cir. 1986) ("The labor-management boards . . . have exclusive jurisdiction over 'minor disputes,' which include disciplinary disputes even if involving employee discharge.").

B. Proceedings Below

1. Petitioner Union Pacific Railroad Company is a national rail carrier that operates throughout the American West. Pet. App. 2a. Respondent Brotherhood of Locomotive Engineers and Trainmen is a labor union that represents Union Pacific employees in collective bargaining and other matters. The union is organized into dozens of geographical divisions, each of which elects its local representatives. *Id*. By its own count, the union has more than 600 local union officers nationwide who represent Union Pacific locomotive engineers. *See* Brief of Appellant at 6, *Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co.*, 31 F.4th 337 (5th Cir. 2022) (No. 21-50544), 2021 WL 3822940.

This case arises from a fistfight in a restaurant parking lot in El Paso, Texas. In early 2021, tension arose within Division 192—the local unit for Union Pacific employees in and around El Paso—over the union's stance on employees taking extra shifts (called "shoves") at the railroad's request. Pet. App. 2a. The local union officers asked members not to accept shoves, but one member, engineer David Cisneros, continued to accept the extra work. *Id.* That did not sit well with the Division 192 officers, some of whom confronted Mr. Cisneros via text and social media about his actions. *Id.* at 2a–3a. The disagreement soon reached a boiling point. After arriving at a restaurant for a routine union meeting, Mr. Cisneros saw the union officers that had confronted him—Peter Shepard and Jose Reyes—in the restaurant parking lot, and a fistfight ensued. *Id.* at 3a. In the aftermath of the fight, Mr. Cisneros filed a complaint with Union Pacific alleging that Mr. Shepard and Mr. Reyes had

threatened and assaulted him in retaliation for accepting shoves. *Id*.

Union Pacific began an investigation into six individuals—Mr. Shepard, Mr. Reyes, and four other Union Pacific employees, three of whom were local union officers—who were involved in or witnessed the fight. Pet. App. 3a. Union Pacific temporarily suspended all six employees during the pendency of the investigation. *Id.* at 3a–4a.

Several days later, the union bypassed arbitration and filed a complaint in the Western District of Texas. Pet. App. 5a. The district court granted a preliminary injunction, holding that the union was likely to succeed on its claim that Union Pacific's commencement of disciplinary proceedings interfered with employees' "choice of representative" in violation of 45 U.S.C. § 152 Third. *See* Pet. App. 21a–22a. The court rejected Union Pacific's argument that it lacked jurisdiction. It reasoned that, even though "the case may also present a minor dispute," the union had alleged Union Pacific was motivated by antiunion animus and the court had jurisdiction to enforce 45 U.S.C. § 152 Third. Pet. App. 28a.

2. The court of appeals affirmed, holding that "the animus exception gave the district court jurisdiction to intervene." *See* Pet. App. 2a, 17a.

First, the court rejected Union Pacific's argument that § 152 Third provided no basis for jurisdiction because the employees at issue were local officers who did not represent employees in collective bargaining. Pet. App. 16a–17a; *see also* Hearing on Motion for Temporary and Preliminary Injunctive Relief at 22, *Bhd. of Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co.*, No. 21-cv-122 (W.D. Tex. June 17, 2021), Dkt. 39 (respondent's admission that the local officers

were not involved in collective bargaining) ("Hearing Transcript"). The court held that federal courts properly "exercise[ ] jurisdiction over interference claims involving disciplinary actions that target[ ] an individual union representative or a particular union branch." Pet. App. 16a. The court noted that the RLA "says that carriers shall not 'seek in any manner' to interfere with employees' 'choice of representatives'; there is no mention of particular offices or duties those representatives must have." *Id*. at 16a–17a (quoting 45 U.S.C. § 152 Third).

Second, the court held that the alleged violation of § 152 Third triggered the antiunion animus exception, empowering the court to exercise jurisdiction rather than dismissing the case in favor of arbitration. The court explained that federal jurisdiction exists because antiunion animus claims present a statutory question under § 152 Third that is independent of the collective bargaining agreement. Pet. App. 10a–11a, 13a. In short, the court concluded, "[f]ederal courts thus have jurisdiction over postcertification disputes alleging that railroad conduct motivated by antiunion animus is interfering with the employees' 'choice of representatives.'" *Id.* at 14a (quoting 45 U.S.C. § 152).

3. After the court of appeals denied rehearing en banc, Pet. App. 40a–41a, the district court stayed all further proceedings pending this Court's disposition of Union Pacific's petition for a writ of certiorari, *id.* at 38a.

REASONS FOR GRANTING THE PETITION

I. This Court Should Resolve The Circuit Split Over The Scope Of The Railway Labor Act's Non-Interference Mandate.

The Railway Labor Act provides that neither a railroad nor a labor organization shall "in any way interfere with, influence, or coerce the other in its choice of representatives." 45 U.S.C. § 152 Third. The circuits are intractably split over who qualifies as a "representative" entitled to protection under the statute. This is a critically important question because, as this case illustrates, giving "representative" an expansive reading threatens to open the floodgates to federal court litigation over garden-variety disciplinary actions that Congress and this Court have recognized must be arbitrated.

A. The Circuits Are Split Over The Meaning Of "Representative" In 45 U.S.C. § 152 Third.

The circuits have adopted conflicting interpretations as to who is a "representative."

The Fifth Circuit holds that "representative" includes *any* union officer who represents union members for any purpose or in any capacity. *See* Pet. App. 16a–17a. Officers of a local unit are covered even if they have no involvement in collective bargaining. In the Fifth Circuit's view, federal courts have long "exercised jurisdiction over interference claims involving disciplinary actions that targeted an individual union representative or a particular union branch." *Id*. at 16a. The court rests its interpretation on "the RLA's text," which "says that carriers shall not 'seek in any manner' to interfere with employees' 'choice of representatives'; there is no mention of particular offices or

duties those representatives must have." *Id*. at 16a–17a (quoting 45 U.S.C. § 152 Third). Thus, the court held that disciplinary action against the local union officers in this case—individuals who respondent conceded had no involvement in collective bargaining, *see* Hearing Transcript at 22, was nonetheless actionable under § 152 Third. Under this approach, every one of respondent's more than 600 officers would qualify as a "representative" within the meaning of § 152 Third.

The Sixth Circuit, in contrast, holds that "representative" means a collective bargaining representative and none other. In *International Brotherhood of Teamsters v. United Parcel Service Co.*, 447 F.3d 491 (6th Cir. 2006) (Sutton, J.), the court held that Section 152 Third "protects the rights of employees to choose their own collective bargaining representative, not to choose any member of any committee ever set up by a collective bargaining agreement, whether called a 'representative' or not." *Id*. at 501 (cleaned up). Especially when "[r]ead in conjunction with other parts of the section," it is clear that the provision "concerns the collective-bargaining process and other interactions between employer and employee that occur before the parties enter into (or re-negotiate) a collective bargaining agreement." *Id.* The court concluded that because the union officer was not involved in collective bargaining, a dispute over the carrier's refusal to allow that officer to serve on a safety committee was not covered by Section 152 Third and was "subject[ ] to mandatory arbitration." *Id.*

The Second Circuit, in contrast to the Fifth and Sixth Circuits, holds that "representative" means the union itself, not an individual union officer. In *United Transportation Union v. National Railroad Passenger Corp.*, 588 F.3d 805 (2d Cir. 2009), the court held that

the "provisions of the RLA suggest that the term 'representative' refers to the *union* or other *organization* designated to represent an employee, and not merely to an individual official within that organization." *Id.* at 812. Thus, the court concluded, an Amtrak employee that served as a union officer did not qualify as a "representative" for purposes of an interference claim under Section 152 Third. The court noted that Section 152 Ninth provides that if there is a dispute "among employees 'as to who are the *representatives* of such employees,' it is the duty of the mediation board to resolve this dispute, and thereafter, 'the carrier shall treat with the *representative so certified as the representative of the craft or class for the purposes of this chapter*.'" *Id.* (quoting 45 U.S.C. § 152 Ninth). This context, the court concluded, indicated that "representative" means the actual union rather than a union officer.

The outcome of this case would have been different if it had arisen in the Sixth or Second Circuits. Under the Fifth Circuit's rule, the local officers at issue here are "representatives" under § 152 Third and the case can proceed in federal court. But under the rule in the Sixth or Second Circuits, the local officers would *not* have been "representatives" under § 152 Third and the case could *not* have proceeded in federal court. It would have been sent to arbitration.

B. The Fifth Circuit's Interpretation Is Inconsistent With Decisions Of This Court.

The court of appeals' expansive interpretation of Section 152 Third is in substantial tension with decisions of this Court. Although this Court has yet to definitely decide the question, it has strongly suggested that "representative" in Section 152 Third does

not extend to *all* union officers but, as the Sixth Circuit held, only to those officers who serve as collective bargaining representatives.

In *General Committee of Adjustment v. Missouri-Kansas-Texas Railroad Co.*, 320 U.S. 323 (1943), the Court explained that "Congress stated in § 2, Fourth . . . that the choice by employees of their collective bargaining representatives should be free from the carriers' coercion and influence." *Id.* at 329. Similarly, in *International Association of Machinists v. Street*, 367 U.S. 740 (1961), the Court recognized that Congress enacted Section 152 Third "to reinforce the prohibitions against interference with the choice of representatives" and thus prevent carriers from "attempting to undermine the employees' participation in the process of collective bargaining." *Id.* at 759.

The Fifth Circuit's interpretation of an RLA "representative" goes well beyond the narrow scope this Court has indicated. If this Court is correct in suggesting that Congress confined Section 152 Third to employees' choice of a *bargaining* representative, then the court of appeals got it wrong in extending the statutory protection to all union members who can be deemed "representatives"—regardless of the "duties those representatives . . . have." Pet. App. 16a–17a.

II. This Court Should Grant Review And Hold There Is No Antiunion Animus Exception.

The court of appeals recognized and applied an antiunion animus exception to the Railway Labor Act's requirement of mandatory arbitration. In doing so, the court aligned itself with the six other circuits that have recognized some version of the exception. *See*, *e.g.*, *Ass'n of Flight Attendants, AFL-CIO v. Horizon Air Indus., Inc.*, 280 F.3d 901, 906 (9th Cir. 2002); *Wightman v. Springfield Terminal Ry. Co.*, 100 F.3d

228, 234 (1st Cir. 1996); *Bhd. of Locomotive Eng'rs v. Kan. City S. Ry. Co.*, 26 F.3d 787, 795 (8th Cir. 1994); *Davies v. Am. Airlines, Inc.*, 971 F.2d 463, 468 (10th Cir. 1992); *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 789 F.2d 139, 142 (2d Cir. 1986); *Conrad v. Delta Air Lines, Inc.*, 494 F.2d 914, 918 (7th Cir. 1974).

Although seven circuits have recognized the anti-union animus exception, its scope varies by circuit. The Fifth Circuit gives it a broad reading, holding that the exception applies to ordinary disciplinary proceedings. *See*, *e.g.*, *Bhd. of R.R. Trainmen v. Cent. of Ga. Ry. Co.*, 305 F.2d 605, 609 (5th Cir. 1962) (holding that an individual employee subject to a disciplinary hearing could bypass arbitration and bring a § 152 Third claim in court). Other courts, in contrast, recognize a much narrower version of the exception. They hold that the exception is reserved for "extraordinary" cases—those in which the employer's conduct rises to such an extreme level that it threatens the collective bargaining process or the very existence of the union itself, and cannot be remedied through the mandatory arbitration procedures in 45 U.S.C. § 153 First (i). *See*, *e.g.*, *Nat'l R.R. Passenger Corp. v. Int'l Ass'n of Machinists & Aerospace Workers*, 915 F.2d 43, 53 (1st Cir. 1990) (concluding that "the disciplinary investigation of the three Union representatives in the case at hand, even if unjustified, does not approach the kind of extraordinary anti-union animus" that opens the doors to federal court); *Wightman*, 100 F.3d at 234 ("In post-certification disputes . . . we must limit our intervention to cases in which the aggrieved union has no other remedy to enforce the statutory commands which Congress had written into the [RLA]" (quotation marks omitted)); *Indep. Union of Flight Attendants*, 789 F.2d at 141 ("The labor-management boards

. . . have exclusive jurisdiction over 'minor disputes,' which include disciplinary disputes even if involving employee discharge.").

This Court should grant review and hold that there is no antiunion animus exception to the RLA's mandatory arbitration requirement. The purported exception defies the plain language and purpose of the Act, and conflicts with this Court's precedents. This Court has never recognized the exception. To the contrary, it has described the Act's arbitration requirement as "mandatory, exclusive, and comprehensive." *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33, 38 (1963). The unwritten animus exception is a product of a "bygone era" when courts took "a more freewheeling approach to interpreting legal texts." *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1603 (2022) (Gorsuch, J., concurring in the judgment) (quotation marks omitted). Its time has passed.

At a minimum, review is warranted to clarify the scope of the exception. Even if this Court were to affirm the exception's existence, it should ensure that the circuits are applying the exception consistently.

A. The Animus Exception Defies The Statute's Text And Purpose, And Conflicts With This Court's Decisions.

1. The Railway Labor Act provides for mandatory arbitration of minor disputes—those that arise from grievances or concern the collective bargaining agreement—at the request of either party. The statute provides:

> The disputes between an employee or group of employees and a carrier or carriers grow-

> ing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

45 U.S.C. § 153 First (i). The statute says nothing about an exception for claims of antiunion animus.

In accordance with the statute's plain language, this Court has long recognized that arbitration of minor disputes is mandatory. *See*, *e.g.*, *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen*, 558 U.S. 67, 72 (2009) (Congress amended the RLA in 1934 "to mandate arbitration of minor disputes"); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994) ("the RLA establishes a mandatory arbitral mechanism for 'the prompt and orderly settlement'" of "'minor' disputes"); *Louisville & Nashville R.R. Co.*, 373 U.S. at 38 (the "statutory grievance procedure is a mandatory, exclusive, and comprehensive system for resolving grievance disputes").

Parties may not frustrate that mandate by choosing to bring minor disputes in court instead of arbitration. *See Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 322 (1972) (holding that arbitration is the "exclusive" remedy for minor disputes); *Louisville & Nashville R.R. Co.*, 373 U.S. at 38 ("the other party may not defeat [the right to arbitration] by resorting to some other forum"); *Bhd. of R.R. Trainmen v. Chi. River & Ind. R.R. Co.*, 353 U.S. 30, 34 (1957) (rejecting the argument that "parties are free to make use of [the arbitration] procedures if they wish to; but that there is no compulsion on either side to allow the Board to

settle a dispute if an alternative remedy" is "more desirable"). After all, "if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3, First (i) of the Railway Labor Act," *Order of Ry. Conductors v. S. Ry. Co.*, 339 U.S. 255, 256–57 (1950), and the mandatory arbitration scheme would be rendered a nullity.

This Court's approach is faithful to the Act's text and statutory history. *Chi. River & Ind. R.R. Co.*, 353 U.S. at 33–35 (a "literal interpretation of the [RLA]" reveals its mandatory nature). Section 153 empowers "either party" to submit a minor dispute to arbitration. 45 U.S.C. § 153 First (i). And the arbitral process culminates in an award that is final and binding. *Id.* § 153 First (m). Only then may a party seek judicial review in connection with a minor dispute. *See id.* § 153 First (q). That Congress intended arbitration to be mandatory for minor disputes is also evident from the Act's amendment history. "[T]he 1934 amendments were enacted because the scheme of *voluntary* arbitration contained in the original Railway Labor Act had proved incapable of achieving peaceful settlements of grievance disputes." *Louisville & Nashville R.R. Co.*, 373 U.S. at 36 (footnote omitted; emphasis added). By modifying the original act so that "either party" could initiate arbitration, Congress corrected the Act's principal defect by making arbitration compulsory. *See Union Pac. R.R. Co.*, 558 U.S. at 72.

2. The antiunion animus exception also conflicts with *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 489 U.S. 426 (1989).

First, the exception conflicts with *TWA*'s recognition that once the employees' bargaining representative has been selected, federal jurisdiction does not exist where congressionally established remedies are

available. *See TWA*, 489 U.S. at 441 ("judicial intervention in RLA proceedings [is] limited to those cases where but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which Congress [has] written into the Railway Labor Act" (quotation marks omitted)). Here, there *is* an adequate alternative remedy: Animus claims based on § 152 Third may be decided by the arbitration panel. *See*, *e.g.*, *United Transp. Union*, 588 F.3d at 814. This Court has emphasized that when Congress establishes an administrative remedy for vindicating statutory rights, courts should not second-guess that remedy by allowing litigants to circumvent it. *See Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297, 300–06 (1943) ("it is for Congress to determine how the rights which it creates shall be enforced").

Second, the exception conflicts with the *TWA* Court's recognition that § 152 Third primarily applies *before* employees choose a collective-bargaining representative. "[T]he 1934 amendments," which modified § 152 Third and Fourth to strengthen protections for the selection of "representatives," were "directed particularly at control over the *initial step* in collective bargaining—the determination of the employees' representatives." *TWA*, 489 U.S. at 441 (quotation marks omitted; emphasis added). Accordingly, the non-interference principles established in § 152 Third and Fourth "addres[s] primarily the *precertification* rights and freedoms of *unorganized* employees." *Id.* at 440 (emphases added). That is consistent with the Court's repeated admonition that § 152 Third protects the right of employees to choose their collective bargaining representatives. *See supra* I.B (citing *Gen. Comm. of Adjustment v. Mo.-Kan.-Tex. R.R. Co.*, 320 U.S. 323 (1943), and *Int'l Ass'n of Machinists v. Street*, 367 U.S.

740 (1961)). The animus exception turns that principle on its head by using § 152 Third to justify *postcertification* judicial intervention into minor disputes involving officers who are not engaged in collective bargaining, and for whom the mandatory arbitration procedures under § 153 First (i) can provide complete relief.

The animus exception enables unions embroiled in minor disputes to circumvent arbitration. Indeed, the courts that recognize the exception acknowledge that it pulls into federal court disputes that otherwise would be arbitrated. *See*, *e.g.*, *Bhd. of Ry. Carmen (Div. of TCU) v. Atchison, Topeka & Santa Fe Ry. Co.*, 894 F.2d 1463, 1468 n.10 (5th Cir. 1990) (actions taken "for the purpose of weakening or destroying a union" present a "special circumstanc[e] in which federal courts may assert jurisdiction over cases that would otherwise involve minor disputes subject to compulsory arbitration"); *Indep. Union of Flight Attendants*, 789 F.2d at 141–42 (a dispute "concerning existing rights" arising under § 153's arbitration provision "might nonetheless" be brought in court when "it is clear that the employer's conduct has 'been motivated by anti-union animus'"); *see also* Pet. App. 11a ("The treatise focused on the RLA also recognizes that courts can exercise jurisdiction over a disciplinary proceeding that 'raises issues that can be resolved by interpretation of a [collective bargaining agreement]' if 'the plaintiff can demonstrate antiunion animus[.]'").[1]

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[1] Some courts justify the animus exception on the basis that animus claims present *statutory* questions about § 152 rather than *contractual* questions about collective bargaining agree-

B. The Animus Exception Rewrites The RLA And Erases Important Distinctions Between Labor Statutes.

The antiunion animus exception also erases important distinctions that Congress created between the Railway Labor Act and the National Labor Relations Act ("NLRA").

The NLRA generally prohibits interference with "concerted activity for . . . mutual aid or protection" and makes it unlawful for employers to engage in employment discrimination in an effort to "discourage membership in any labor organization." 29 U.S.C. §§ 157, 158(a)(1), (3). Moreover, the NLRA creates an administrative agency—the National Labor Relations Board—to adjudicate such claims. *See* 29 U.S.C. § 160. In doing so, the Board must consider whether "antiunion animus was a substantial or motivating factor in [an employee's] discharge." *Big Ridge, Inc. v. NLRB*, 808 F.3d 705, 713 (7th Cir. 2015). Thus, aggrieved employees may seek redress for disciplinary actions that are actually motivated by animus.

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ments, and thus those claims simply do not qualify as minor disputes subject to arbitration. *E.g.*, Pet. App. 12a–13a. That is incorrect. The RLA expressly incorporates § 152 Third and Fourth into collective bargaining agreements. 45 U.S.C. § 152 Eighth ("The provisions of" the "third [and] fourth" paragraphs of § 152 "are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them."). So questions about whether the carrier acted with animus *do* involve the interpretation and application of the collective bargaining agreement. *See*, *e.g.*, *United Transp. Union*, 588 F.3d at 814. Regardless, even if animus claims present statutory questions, "[c]ourts do not have a roving writ to supplant" arbitration "under the guise of adjudicating 'statutory rights.'" *Air Line Pilots Ass'n Int'l v. Guilford Transp. Indus., Inc.*, 399 F.3d 89, 105 (1st Cir. 2005).

The RLA, by contrast, contains no such free-standing anti-discrimination provision, nor does it create an administrative agency to adjudicate such claims. Section 152 Third prohibits interference with employees' right to select and maintain a collective bargaining representative of their choice. Those provisions do *not* purport to protect all union officers from any conduct allegedly arising from antiunion animus. By giving § 152 Third a contrary interpretation, the antiunion animus exception effectively rewrites the RLA to mirror the NLRA's anti-discrimination provision as applied to union officers, and vests federal courts with jurisdiction over such claims because no administrative agency exists to handle them. That is inconsistent with the text of the two statutes and this Court's decisions.

* * *

The antiunion animus exception has no basis in the RLA's text and conflicts with this Court's decisions. Reading the Railway Labor Act to include an exception that allows parties to circumvent the statute's "mandatory, exclusive, and comprehensive" arbitration scheme, *Louisville & Nashville R.R. Co.*, 373 U.S. at 38, is "to invent a statute rather than interpret one," *Clark v. Martinez*, 543 U.S. 371, 378 (2005). The Court should grant review and hold that the RLA does not contain an antiunion animus exception.

III. The Questions Presented Are Exceptionally Important.

This Court has long recognized the importance of questions arising under the RLA—a statute that governs the day-to-day operations of the nation's railroads. *See*, *e.g.*, *Louisville & Nashville R.R. Co.*, 373 U.S. at 36 (granting "certiorari to consider an obvi-

ously substantial question affecting the administration of the Railway Labor Act"); *Chi. River & Ind. R.R. Co.*, 353 U.S. at 33 (granting "certiorari in order to resolve an important question concerning interpretation and application of the Railway Labor Act"); *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 713 (1945) (granting certiorari "to resolve . . . important questions affecting application and operation of the [Railway Labor] Act"); *Switchmen's Union*, 320 U.S. at 300 (granting certiorari "because of the importance of the problems which are raised"); *see also Gunther v. San Diego & Ariz. E. Ry. Co.*, 382 U.S. 257, 260 (1965) (granting certiorari because the holding of the lower courts "r[a]n counter to the requirements of the Railway Labor Act as [the Court] ha[s] construed it").

Resolving the RLA circuit split presented here is critically important because the court of appeals' mistaken approach threatens to inundate the courts with litigation over ordinary disciplinary decisions. The number of union members who could claim to be "representatives" of one sort or another is astronomical. It would include officers of local divisions, such as the individuals involved in this case. And it would include union members who serve on the universe of national or local committees and would consequently claim to represent union members in that capacity. Even considering only the single union involved in this case, it has more than 600 officers that would fall under § 152 Third even though the majority of them have nothing to do with the collective bargaining process. If the court of appeals' decision is allowed to stand, routine disputes about whether an employee's actions warranted discipline will morph into federal court litigation over whether the carrier has interfered with its employees' choice of representative. Giving federal courts jurisdiction over garden-variety disciplinary

actions is precisely what Congress sought to avoid by enacting the Railway Labor Act.

Nor can the importance of the second question presented be seriously questioned. The antiunion animus exception strikes at "[t]he heart of the Railway Labor Act"—its dispute-resolution procedures. *See Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377–78 (1969). The exception guts the "mandatory" and "exclusive" arbitral scheme by permitting unions to circumvent the RLA merely by alleging that routine disciplinary actions involving employees who happen to hold union office are motivated by antiunion animus. If the mere allegation of animus in violation of § 152 Third suffices to sue in federal court, Pet. App. 13a–14a, the Act's carefully wrought arbitration scheme will disintegrate at an accelerated pace as the *thousands* of arbitrations that occur per year may now more easily be channeled into federal court, *see* Nat'l Mediation Bd., Annual Performance & Accountability Report FY 2021, at 38 (2021).

The animus exception likewise frustrates the Act's statutory purposes. After witnessing a "complete breakdown" in the Act's dispute-resolution process when arbitration was voluntary, Congress amended the Act to make arbitration mandatory. *Elgin*, 325 U.S. at 725–27. It did so because it determined that disputes about the application of workplace rules were best adjudicated by "an expert body" uniquely "familiar with the thorny problems and the whole range of grievances that constantly exist in the railroad world." *See Gunther*, 382 U.S. at 261. The Adjustment Board, whose membership "is in daily contact with workers and employers, and knows the industry's language, customs, and practices," provided the expertise Congress desired. *Id.* The animus

exception turns the Act upside down by rerouting untold numbers of minor disputes away from the Adjustment Board and towards the courts.

Worse still, the animus exception flouts the Act's stated goal of prompt settlement of minor disputes. 45 U.S.C. § 151a. Congress channeled minor disputes through arbitration to streamline their resolution; it deemed it "*essential*" to keep those disputes "out of the courts." *Union Pacific R.R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978) (emphasis added). The Act's limitations on judicial review are thus an important feature of the statutory design—not a bug. *See Union Pac.*, 558 U.S. at 74 (explaining that the RLA "largely 'foreclose[d] litigation' over minor disputes" (alteration in original)); *Order of Ry. Conductors v. Pitney*, 326 U.S. 561, 566 (1946) ("Congress . . . intended to leave a minimum responsibility to the courts" over minor disputes.). But the antiunion animus exception diverts cases back into court, which inevitably delays dispute resolution and threatens to "interrup[t]" the "operation of [railroads]" engaged in commerce. 45 U.S.C. § 151a.

The animus exception has the pernicious effect of entangling federal courts in the day-to-day operations of carriers. Nearly a century ago, the Court emphasized that the Act "does *not* interfere with the normal exercise of the right of the carrier to select its employees or to discharge them." *Tex. & New Orleans R.R. Co. v. Bhd. of Ry. & S.S. Clerks*, 281 U.S. 548, 571 (1930) (emphasis added). It is instead focused on "the right of employees to have representatives of their own choosing." *Id.* This case illustrates how far courts have departed from that understanding. The court of appeals upheld an injunction requiring the

railroad to end its disciplinary investigation immediately, rescind the suspension, and order the return of those employees to work. Pet. App. 4a–5a, 14a. Under the guise of enforcing § 152 Third, the animus exception co-opts federal courts into policing contract-based workplace disputes, all in defiance of the mandatory arbitration scheme Congress created.

This case is an excellent vehicle for resolving the circuit split over the meaning of "representative" and for deciding whether the Railway Labor Act contains an antiunion animus exception. The questions are cleanly presented because the court of appeals' judgment rests entirely on its interpretation of § 152 Third. The court of appeals squarely decided the question of who qualifies as a "representative" in a way that directly conflicts with decisions from other circuits. The court of appeals also squarely held that the RLA contains an antiunion animus exception. And there are no factual disputes that would prevent this Court from resolving the pure questions of statutory interpretation. Neither of the questions presented requires further percolation in the lower courts. The circuit split is mature, and the majority of circuits—7 of 13—have already ruled on the existence of the exception. Although the case comes to this Court in an interlocutory posture, the district court proceedings have been stayed since Union Pacific appealed to the Fifth Circuit, Pet. App. 36a–39a, and the proceedings will remain stayed pending disposition of this petition. Consequently, there is no risk of this dispute becoming moot; the district court proceedings have been suspended and will remain suspended until this Court rules.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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