No. 23-249

IN THE

Supreme Court of the United States

DAWN C. POLK,

Petitioner,

v.

AMTRAK NATIONAL RAILROAD PASSENGER CORPORATION, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under the Railway Labor Act, disputes that "grow[] out of … the interpretation or application of" covered collective-bargaining agreements must be arbitrated. 45 U.S.C. §§ 151a(5), 153 First(i). The Act thus preempts litigation of state-law claims, and precludes litigation of federal-law claims, that fall within this category of "minor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252-53 (1994). Petitioner frames the question presented as whether, and when, discrimination claims under state or federal statutes can be minor disputes subject to preemption or preclusion under the Act. Pet. i.

Properly framed, the question presented is:

Whether the Railway Labor Act preempts or precludes a claim under an antidiscrimination statute when the claim depends on interpretation of a covered collective-bargaining agreement.

RULE 29.6 STATEMENT

The Amtrak National Railroad Passenger Corporation (Amtrak) is a corporation, authorized under the Rail Passenger Service Act, 49 U.S.C. §§ 24101 *et seq.*, that has no parent corporation. Two non-publicly traded subsidiaries of publicly traded companies own more than ten percent of Amtrak's common stock: American Premier Underwriters, Inc. (a subsidiary of American Financial Group, Inc.) and Burlington Northern and Santa Fe, LLC (a subsidiary of Berkshire Hathaway).

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INTRODUCTION

In *Hawaiian Airlines v. Norris*, 512 U.S. 246 (1994), this Court clarified the general standard for when the Railway Labor Act (RLA) preempts litigation of state claims, and precludes litigation of federal claims, asserted under other laws. *Id.* at 256-63. Applying *Hawaiian Airlines*, the Fourth Circuit here held—in a decision written by Judge Wilkinson and joined by Judges Agee and Heytens—that the RLA precluded litigation of a particular Title VII claim that "require[d] the interpretation" of a covered collective-bargaining agreement (CBA). Pet.App. 2a, 13a. That fact-bound holding is both correct and consistent with the legal conclusion of every other court of appeals that has decided how discrimination claims should be analyzed under *Hawaiian Airlines*. This Court should deny the petition for a writ of certiorari.

All seven circuits that have directly addressed the question under *Hawaiian Airlines* have held that the RLA preempts or precludes litigation of a discrimination claim if the claim requires CBA interpretation. *See* Pet.App. 8a (citing cases from the Fifth, Seventh, and Eighth Circuits); Part I.A, *infra* (discussing those cases and others from the Third, Sixth, and Ninth Circuits). This consensus is dictated by *Hawaiian Airlines* itself, which squarely held that claims under non-RLA laws are preempted or precluded by the RLA when they are "dependent on the interpretation of a CBA." 512 U.S. at 262-63 (citing *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1988)). And the Court made clear that this standard applies across the board—whether claims are pled under federal or state law;

statutory or common law; or antidiscrimination or other types of law. *See id.* at 256-63.

The certiorari petition mischaracterizes certain judicial formulations of the RLA standard as being materially different, even though this Court has already held that they are effectively the same. Petitioner argues that *Hawaiian Airlines* "set out three different standards" and that each one has been chosen by certain circuits. Pet. 2-3. To the contrary, *Hawaiian Airlines* itself emphasized that the various verbal formulations in prior decisions, properly understood, were "fully consistent" with the "dependent on the interpretation of a CBA" standard that it was "adopt[ing]." 512 U.S. at 262-63. There is thus no genuine circuit split merely because some decisions quote the alternate formulations. Critically, Petitioner does not identify (and Amtrak is unaware of) any appellate decision that rejected preemption or preclusion under *Hawaiian Airlines* for a discrimination claim found to depend on CBA interpretation. Indeed, Petitioner primarily relies on cherry-picked language from a few decisions that pre-date *Hawaiian Airlines* and do not reach results inconsistent with its standard. Nor does she even try to contest the Fourth Circuit's clearly correct reading of *Hawaiian Airlines*.

Just a few years ago, this Court denied a certiorari petition similarly alleging illusory circuit splits about how *Hawaiian Airlines* applies to Title VII claims. *See Stanley v. ExpressJet Airlines, Inc.*, 141 S. Ct. 1058 (2021). It should do so again here, because the Fourth Circuit's decision breaks no new ground.

STATEMENT OF THE CASE

A. Legal Background

The RLA "provide[s] a comprehensive framework for resolving labor disputes" in the rail and airline industries. *Hawaiian Airlines*, 512 U.S. at 248, 252. To "promote stability in labor-management relations," the RLA creates mandatory dispute-resolution mechanisms for "two classes of disputes," which are described as "major" and "minor" disputes in this Court's decisions. *Id.* at 252-53. Major disputes relate to "the formation of [CBAs]" regarding "rates of pay, rules, or working conditions." *Id.* at 252; *see* 45 U.S.C. § 151a(4). Minor disputes "grow[] out of grievances or out of the interpretation or application of [such CBAs]." 45 U.S.C. § 151a(5). For major disputes, the RLA requires the parties to exhaust a mandatory "process of bargaining and mediation." *Consolidated Rail Corp. v. Railway Labor Execs. Ass'n*, 491 U.S. 299, 302 (1989) (*Conrail*) (citing 45 U.S.C. §§ 155-156). For minor disputes, the RLA requires "binding arbitration," subject only to "limited" judicial review. *Id.* at 303-04 (citing 45 U.S.C. §§ 152 Sixth, 153 First(i)).

Because minor disputes "must be resolved only through the RLA mechanisms," claims falling within that category of disputes cannot be litigated in court. *Hawaiian Airlines*, 512 U.S. at 253. Minor disputes include any claim in which "the terms of an existing agreement either establish or refute the presence of a right to take the disputed action." *Conrail*, 491 U.S. at 305. The paradigmatic minor dispute is a claim simply asserting or denying "a breach of the CBA itself." *Hawaiian Airlines*, 512 U.S. at 257.

This Court has long recognized, though, that certain claims under other state or federal "cause[s] of action" may also be minor disputes, and that litigation of such claims is likewise subject to "pre-emption" or "preclusion," respectively. *Id.* at 259 n.6.

Since the RLA was enacted in 1926, this Court has decided several cases addressing whether particular state or federal claims implicate minor disputes subject to preemption or preclusion. On one hand, for instance, the Court held that the RLA is "not a preemption of the field of regulating working conditions themselves." *Terminal R.R. Ass'n of St. Louis v. Trainmen*, 318 U.S. 1, 7 (1943). And it likewise held that the mere fact that disputed conduct "may have been subject to arbitration under the RLA does not deprive an employee of his opportunity" to seek "independent" remedies under statutes like the Federal Employers' Liability Act. *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 564-65 (1987). On the other hand, the Court held that the RLA *did* preempt an employee's wrongful-discharge claim under state tort law that "depend[ed] on the interpretation of [a CBA]." *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 324 (1972). Because "[t]he [employee's] claim, and [the employer's] disallowance of it, stem[med] from differing interpretations of the [CBA]," it was subject to the RLA's "mandatory provisions for the processing of grievances." *Id.*

In *Hawaiian Airlines*—the most recent case in the line—this Court synthesized its prior decisions on RLA preemption and preclusion into a single, uniform standard. The Court held that "the category of minor disputes … are those that are grounded in

the CBA," 512 U.S. at 256, because they "depend on the interpretation of the [CBA]," *id.* at 258 (quoting *Andrews*, 406 U.S. at 324). In so holding, the Court invoked its precedents under Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, as the LMRA caselaw applied a preemption standard "virtually identical" to the RLA caselaw. *Hawaiian Airlines*, 512 U.S. at 260. Under the LMRA cases, "where the resolution of a state-law claim depends on an interpretation of [a covered] CBA, the claim is preempted." *Id.* at 261 (citing *Lingle*, 486 U.S. at 405-06); *accord Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 218 (1985). The Court explained that the "ruling in *Lingle* that the LMRA pre-empts state law only if the state-law claim is dependent on the interpretation of a CBA is fully consistent with" the RLA precedents—including "the holding in *Buell* that the RLA does not pre-empt 'substantive protection … independent of the [CBA]," and "the description in *Conrail* of a minor dispute as one that can be 'conclusively resolved' by reference to an existing CBA." *Hawaiian Airlines*, 512 U.S. at 262-63 (citations omitted).

"Given this convergence in the pre-emption standards under the two statutes," the Court "adopt[ed] the *Lingle* standard to resolve claims of RLA pre-emption," *id.* at 263, and RLA preclusion, *id.* at 259 n.6 (RLA preclusion governed by same principles as RLA preemption). Accordingly, "if the resolution of a state-law [or federal-law] claim depends upon the meaning of a [covered CBA]," *Lingle*, 486 U.S. at 405-06, the RLA preempts or precludes litigation of the claim and the CBA

interpretive dispute must be arbitrated, *Hawaiian Airlines*, 512 U.S. at 253.

In *Hawaiian Airlines* itself, the employee's particular state-law wrongful-discharge claims did *not* depend on CBA interpretation. Rather, they required only a "purely factual" determination whether the employee had been discharged for a retaliatory reason. *See id.* at 266 (quoting *Lingle*, 486 U.S. at 407). That dispute over the employer's motive could be litigated without raising any disputed CBA interpretation. *See id.* at 249-52. Accordingly, this Court held that the employee's claims were not preempted. *Id.* at 266.

B. Procedural History

1. Petitioner Dawn Polk worked as a conductor for Respondent, the Amtrak National Railroad Passenger Corporation. Pet.App. 2a. She was represented by the Sheet Metal, Air, Rail and Transportation Workers Union (SMART) and subject to a CBA between the union and Amtrak. *Id.*

In March 2019, Polk was required under Amtrak's Drug and Alcohol-Free Workplace Program (Drug-Free Program) to take a drug test before returning from an injury that had caused her to miss several months of work. Pet.App. 2a-3a. But when she tried to take the test, she was unable to produce enough urine for a sufficient sample. Pet.App. 3a. After she later tested negative for shy bladder syndrome, an ailment that would have explained the failed drug test, Amtrak terminated her employment pending an investigatory hearing. *Id.*

A few weeks later, Amtrak reinstated Polk after she signed a settlement agreement "by and between

SMART and Amtrak." Pet.App. 3a, 23a-24a. The settlement required Polk to see a substance-abuse specialist, undergo follow-up drug testing over the next year, and waive her rights under the CBA if she again violated the Drug-Free Program. Pet.App. 3a.

Polk later complained that Amtrak was continuing to subject her to drug tests beyond the one-year period contemplated in the settlement. Pet.App. 4a. She filed an internal grievance, but it was never resolved. Pet.App. 4a, 24a. Polk then retired on disability in May 2021. Pet.App. 24a. The same month, Polk obtained a right-to-sue letter from the EEOC after having filed an unsuccessful race-discrimination charge. *Id.*

2. In July 2021, Polk sued Amtrak and several Amtrak employees in the District of Maryland. Pet.App. 22a, 27a. She asserted "state-law claims of breach of contract and tort, as well as a federal claim of racial discrimination in violation of Title VII of the Civil Rights Act of 1964." Pet.App. 4a; *see* Pet.App. 22a. As the district court explained, the "gravamen" of her claims was that Amtrak had "improperly terminated her employment[] by incorrectly implementing" its Drug-Free Program, Pet.App. 24a-25a, under which any disciplinary action must comply with an employee's applicable CBA, Pet.App. 23a n.3. In particular, Polk's Title VII claim alleged race discrimination based on Amtrak's assertedly having "breach[ed]" the Drug-Free Program's requirements. Pet.App. 25a; *see* Pet.App. 14a-15a (elaborating that Polk's theory of discrimination was that Amtrak "broke its own rules" by denying her a second chance to complete her drug test and then testing her excessively).

The district court granted Amtrak's motion to dismiss Polk's claims as barred under the RLA. Pet.App. 33a. It held that the RLA preempted or precluded all of her claims because they each "require[d] that the Court interpret the rights within the CBA to resolve the[m]." *Id.* In concluding that Polk's Title VII "discrimination claim is not independent of the CBA," the court reasoned that the claim depended on CBA interpretation because her theory of racial discrimination was based on Amtrak's alleged breach of the Drug-Free Program's requirements enforced through the CBA's disciplinary provisions. Pet.App. 38a-39a.

3. Polk appealed only the dismissal of her Title VII claim, raising two arguments. Pet.App. 6a. First, she argued that Title VII claims can "never" be minor disputes under the RLA because Title VII provides a cause of action that is "independent" of a CBA and available "whether or not a [CBA] exists." Pet.App. 6a-7a. Second, she argued that "at least her particular claim is not a minor dispute because it does not require the 'interpretation or application' of a CBA," as the claim purportedly depended on "Amtrak's discriminatory behavior and not the [CBA] itself." Pet.App. 6a, 13a. Rejecting each argument, the court of appeals affirmed. Pet.App. 19a.

The Fourth Circuit held that categorically exempting Title VII claims from RLA preclusion would "run[] headlong" into *Hawaiian Airlines* and caselaw across the circuits. Pet.App. 7a-8a. "The lesson from these cases," the court explained, is that claims under Title VII and other federal statutes "can at times be" minor disputes—*i.e.*, when they raise "disagreements over the 'interpretation or

application' of a CBA"—"even though they can [also] arise in the absence of a CBA." *Id.* The court emphasized that the RLA "opted for the centralized arbitration of minor disputes" in order to "get[] courts out of the business of interpreting CBAs"—a "rationale" that "has little to do with whether" the CBA interpretive dispute "arises from a contractual claim or some other cause of action under state or federal law." Pet.App. 9a.

The Fourth Circuit further held that, in particular, "Polk's Title VII claim requires the interpretation of a CBA." Pet.App. 13a. The court reasoned that CBA interpretive disputes played a "dispositive role" in her race-discrimination claim because "her theory of differential treatment would require a court to interpret CBA provisions covering employee discipline and reinstatement." Pet.App. 14a. More specifically, Polk's claim rested on her allegations that "Amtrak broke its own rules" under the Drug-Free Program in disciplining and testing her, Pet.App. 15a, and the court deemed those rules to be part of the CBA because "the CBA incorporates the Drug-Free Program" and provides the disciplinary "remedy" for a violation, Pet.App. 17a-19a. The court thus concluded that because "Polk relies on her interpretation of these provisions as a stand-in for allegations about Amtrak's factual treatment of her similarly situated colleagues" who were not black, "establish[ing] the element of differential treatment" through such allegations would "necessitate the 'interpretation or application' of a CBA." Pet.App. 14a-15a (quoting *Hawaiian Airlines*, 512 U.S. at 252); *accord* Pet.App. 15a-17a. Polk's Title VII claim was therefore precluded by the RLA. Pet.App. 19a.

REASONS FOR DENYING THE PETITION

I. THE FOURTH CIRCUIT'S DECISION IS CONSISTENT WITH THE DECISIONS OF EVERY OTHER CIRCUIT TO CONSIDER THE QUESTION

The certiorari petition erroneously asserts that the "divergent standards set out in *Hawaiian Airlines*" have created a three-way circuit split on whether and when discrimination claims are preempted or precluded by the RLA. Pet. 14. On Petitioner's account, three circuits purportedly hold *never*; two circuits purportedly hold yes but only where the CBA would *conclusively resolve* the claim; and four circuits purportedly hold yes so long as the claim would *merely involve* CBA interpretation. Pet. 14-15.

In actuality, every circuit to decide how *Hawaiian Airlines* applies to discrimination claims has reached the same conclusion as the Fourth Circuit. Such claims, like all other claims, are preempted or precluded by the RLA "only if" they are "*dependent* on the interpretation of a CBA"—the LMRA standard from *Lingle* that *Hawaiian Airlines* "adopt[ed]" as "fully consistent" with the RLA standard and prior RLA precedents. 512 U.S. at 262-63 (emphasis added). Although some opinions use different verbal formulations to describe this standard, there is no decision by any court of appeals that construes *Hawaiian Airlines* to permit a substantively different standard for discrimination claims—more specifically, a decision *rejecting* RLA preemption or preclusion under *Hawaiian Airlines* even though the discrimination claim asserted *did* depend on CBA interpretation; or a decision *finding* RLA preemption or preclusion under *Hawaiian*

Airlines even though the discrimination claim asserted did *not* depend on CBA interpretation.

Indeed, three years ago, another petition likewise tried to manufacture circuit splits about how *Hawaiian Airlines* applies to Title VII claims—citing many of the same cases—and this Court denied certiorari without even calling for a response. *See Stanley*, 141 S. Ct. at 1058. As the consensus among the circuits remains unbroken, further review is unwarranted here.

A. Seven Circuits Hold Discrimination Claims Are Preempted Or Precluded Under *Hawaiian Airlines* If The Claim "Depends On" CBA Interpretation

As noted above, the Fourth Circuit held in this case that "Polk's Title VII claim" is precluded under the RLA because it "requires the interpretation of a CBA." Pet.App. 13a. Petitioner thus errs in suggesting that the decision found preclusion merely because her claim "involves" CBA interpretation. Pet. 24-25. The court instead emphasized "[t]he dispositive role of the CBA" in light of the particular "substance of Polk's Title VII claim." Pet.App. 14a. In other words, the specific discrimination claim she asserted was "dependent on the interpretation of a CBA." *Hawaiian Airlines*, 512 U.S. at 262 (citing *Lingle*, 486 U.S. at 405-06).

Six other circuits have directly addressed how *Hawaiian Airlines* applies to discrimination claims. Like the Fourth Circuit, each one has applied a "depends on" standard, either using that precise phrase or a semantic equivalent.

Petitioner admits as much for the Fifth and Seventh Circuits. As she explains (Pet. 19-23), those courts hold that the RLA preempts or precludes a discrimination claim when CBA interpretation would "conclusively resolve[]" the claim. *Brown v. Illinois Cent. R.R. Co.*, 254 F.3d 654, 658 (7th Cir. 2001); *Carmona v. Sw. Airlines Co.*, 536 F.3d 344, 348 (5th Cir. 2008). *Hawaiian Airlines* expressly stated that the "conclusively resolved" language from *Conrail* is "fully consistent" with the "dependent on" standard from *Lingle* that it was adopting. 512 U.S. at 262-63. The Fifth and Seventh Circuits have thus also used the latter formulation or another synonym. *Brown*, 254 F.3d at 668 (standard satisfied where plaintiff's affirmative claim was "substantially dependent upon an analysis of the terms of a [CBA]"); *Carmona*, 536 F.3d at 349-50 (standard not satisfied where "interpretation of the CBA itself" was not "required to resolve [the plaintiff's] claims").

Moreover, the Third, Sixth, Eighth, and Ninth Circuits have applied *Hawaiian Airlines* to discrimination claims in the same way. *See Stouffer v. Union R.R. Co.*, 85 F.4th 139, 144 (3d Cir. 2023) (whether claim "depends for its resolution on the interpretation of a CBA"); *Emswiler v. CSX Transp., Inc.*, 691 F.3d 782, 792 (6th Cir. 2012) (whether claim would "depend[] on," or "require," CBA interpretation); *Avina v. Union Pac. R.R. Co*, 72 F.4th 839, 843 (8th Cir. 2023) (whether claim would "require the interpretation of some specific provision of the [CBA]" (cleaned up)), *pet. for cert. filed*, No. 23-275 (U.S. Sept. 19, 2023); *Espinal v. Nw. Airlines*, 90 F.3d 1452, 1456 (9th Cir. 1996) (whether claim "is dependent on the interpretation of

a [CBA]"). Petitioner's contrary assertion is mistaken. *See infra* at 14-15, 19-20.[1]

Of course, under the "depends on" standard, whether litigation of a discrimination claim is barred by the RLA turns on the particular "manner in which [a plaintiff] styles [the] claim." *Emswiler*, 691 F.3d at 792-93. Where, as in this case, the plaintiff's affirmative theory of discriminatory treatment requires establishing a disputed CBA interpretation, the claim cannot proceed in court. Pet.App. 13a-17a; *Avina*, 72 F.4th at 843-45; *Emswiler*, 691 F.3d at 792-93; *Brown*, 254 F.3d at 659-61, 667-68. By contrast, the claim may proceed in cases where "provisions of the CBA are relevant to, but *not* dispositive of, the resolution of [the] claims" because "there is no disagreement about how to interpret the[] provisions," *Carmona*, 536 F.3d at 349, or where the defendant "assert[s] certain CBA-based defenses to what is essentially a non-CBA-based claim," *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 833 (7th Cir. 2014) (quoting *Brown*, 254 F.3d at 668).

In sum, the courts of appeals agree that the standard under *Hawaiian Airlines* is whether or not the plaintiff's claim itself raises a "purely factual question" about discriminatory treatment that "can[] be decided without interpretation of the CBA." *Emswiler*, 691 F.3d at 793. Although the answer will vary based on the specific theory underlying a discrimination claim, there is consensus among the circuits that this is the controlling question.

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[1] In addition, the First Circuit applied the same standard to a discrimination claim pre-*Hawaiian Airlines* and has since recognized its general applicability. *See infra* at 20-21.

B. No Circuit Holds That Discrimination Claims Can Never Be Preempted Or Precluded Under *Hawaiian Airlines*

To invent a circuit split, Petitioner argues that the Second, Ninth, and Tenth Circuits have deemed RLA preemption and preclusion categorically unavailable in the antidiscrimination context. Pet. 15-19. Not so. Petitioner overreads the Ninth Circuit decision it cites, which applied the "depends on" standard, consistent with other decisions from that court. And while Petitioner cherry-picks overbroad language from decisions in the Second and Tenth Circuits before *Hawaiian Airlines*, the results in those cases were not inconsistent with the "depends on" standard, and neither court has squarely addressed the question in a published decision after *Hawaiian Airlines*. The asserted circuit split is thus illusory.

1. For starters, the Ninth Circuit *does* apply the "depends on" standard to discrimination claims. As noted above, the court in *Espinal* rejected RLA preemption because "[the plaintiff's] disability discrimination claims [were] not dependent on an interpretation of the CBA" under the theory of discrimination advanced there—*not* because discrimination claims are *per se* immune from RLA preemption. 90 F.3d at 1458; *see id.* at 1456-58. More generally, under the circuit's "two-step test" for RLA preemption, even when a claim does not "seek[] purely to vindicate a right or duty created by the CBA itself," litigation of the claim is preempted insofar as it would still "require[] interpretation of a CBA." *Ward v. United Airlines, Inc.*, 986 F.3d 1234, 1244 (9th Cir. 2021) (cleaned up). RLA preemption and preclusion thus *do* apply when a discrimination

claim depends on resolving "an active dispute over the meaning of contract terms," *id.*—as district courts in the circuit have held. *See, e.g.*, *Quigley v. United Airlines, Inc.*, No. 3:21-cv-538, 2021 WL 1176687, at *6 (N.D. Cal. Mar. 29, 2021) ("[A]s with any claim, a discrimination claim can be preempted to the extent that it requires interpretation of a CBA provision.").

Failing to mention any of this, Petitioner tries to portray a single Ninth Circuit case as adopting a contrary rule. Pet. 17-18. But while that decision observed that statutory antidiscrimination rights are generally "independent of a CBA" and thus not categorically *barred* by the RLA, it did not further hold that such claims are categorically *immune* from RLA preemption or preclusion. *Saridakis v. United Airlines*, 166 F.3d 1272, 1276 (9th Cir. 1999). Rather, focusing on the particular facts presented, the court concluded that the plaintiff's affirmative theory of discrimination could "be resolved without interpreting the [CBA] itself," regardless of whether the defendant tried "to introduce and rely upon the CBA … as a part of its defense." *Id.* at 1277; *accord Felt v. Atchison, Topeka & Santa Fe Ry. Co.*, 60 F.3d 1416, 1419-21 (9th Cir. 1995). This type of case-specific analysis is irreconcilable with the *per se* rule that Petitioner suggests, and it is consistent with the "depends on" standard applied by other circuits. *See, e.g.*, *Brown*, 254 F.3d at 667-68 & n.12 (factually distinguishing *Saridakis* and acknowledging the legal line between CBA-based claims and CBA-based defenses).

2. For its part, the Tenth Circuit has no published decision on how *Hawaiian Airlines* applies

to discrimination claims in particular. In general, though, the court recognizes that the key question under *Hawaiian Airlines* "is whether resolution of [a] claim requires interpretation or application of a CBA." *Ertle v. Continental Airlines*, 136 F.3d 690, 693 (10th Cir. 1998). And district courts in the circuit have applied that standard to find discrimination claims barred by the RLA. *See, e.g.*, *Haskew v. Sw. Airlines Co.*, No. 19-732, 2020 WL 2615525, at *7-8 (D.N.M. May 22, 2020).

Petitioner's invocation of an antidiscrimination case pre-dating *Hawaiian Airlines* (Pet. 18) thus does not present a ripe circuit conflict. Moreover, while the court in that case broadly emphasized that the claim arose under a federal statute, *McAlester v. United Airlines, Inc.*, 851 F.2d 1249, 1253-56 (10th Cir. 1988), it also specifically found that the plaintiff did "not allege that his claim of racial discrimination [was] based upon violation of the [CBA]," *id.* at 1253. Likewise, the unpublished decision post-dating *Hawaiian Airlines* that Petitioner cites (Pet. 19) relied in part on the absence of such an allegation. "[W]ithout deciding which [was] most important or dispositive" to its rejection of RLA preclusion, the court noted *both* that "a cause of action under Title VII emanates from a source independent of the CBA" *and* that it was "not necessary" for the plaintiff there to "establish[] a breach of the CBA" to "prov[e] the elements of her Title VII claim"—especially since "the evidence relating to the CBA" went "to disprov[ing] the defendant's justification rather than to prov[ing] an element of the plaintiff's case." *Adams v. American Airlines, Inc.*, No. 98-5118, 2000 WL 14399, at *7 (10th Cir. Jan. 10, 2000).

In short, neither *McAlester* nor *Adams* provides any basis to conclude that the Tenth Circuit has departed from its sister circuits. Those cases are consistent with the consensus position that the "general rule that the RLA will not bar a plaintiff from bringing a claim under an independent federal statute … no longer applies if the federal claim asserted by the plaintiff depends for its resolution on the interpretation of a CBA." *Brown*, 254 F.3d at 667-68 (emphasis omitted).

3. Finally, the same goes for the Second Circuit. Although that court lacks a published decision on how *Hawaiian Airlines* applies to discrimination claims, it too recognizes that the general standard under *Hawaiian Airlines* is whether a "claim depends on an interpretation of the [CBA]." *Gay v. Carlson*, 60 F.3d 83, 87 (2d Cir. 1995). It also has applied that standard to find discrimination claims barred in the parallel LMRA context. *Whitehurst v. 1199 SEIU United Healthcare Workers E.*, 928 F.3d 201, 207-10 (2d Cir. 2019) (per curiam). Likewise, district courts in the circuit have applied that standard to find discrimination claims barred by the RLA. *See, e.g.*, *Crayton v. Long Island R.R.*, No. 05-cv-1721, 2006 WL 3833114, at *4-5 (E.D.N.Y. Dec. 29, 2006); *Parker v. Metro. Transp. Auth.*, 97 F. Supp. 2d 437, 446-47 (S.D.N.Y. 2000).

Petitioner thus does not present a ripe circuit split by citing two published decisions that pre-date *Hawaiian Airlines* and two unpublished decisions that do not mention the case. *See* Pet. 15-17. All the more so because three of those cases did not even involve discrimination claims and thus did not have occasion to decide whether such claims are barred *if*

they depend on CBA interpretation. *See Coppinger v. Metro-North Commuter R.R.*, 861 F.2d 33, 35-38 (2d Cir. 1988); *Goss v. Long Island R.R. Co.*, No. 97-7671, 1998 WL 538026, at *3 (2d Cir. Mar. 16, 1998); *Urena v. Am. Airlines, Inc.*, 152 F. App'x 63, 65 (2d Cir. 2005). As for the fourth case, while it primarily emphasized that the discrimination claims at issue arose under a federal statute independent of the RLA, it never decided whether those claims actually "require[d] interpretation of the applicable [CBA]" or merely "implicate[d]" the CBA in a lesser manner. *Bates v. Long Island R.R. Co.*, 997 F.2d 1028, 1034-35 (2d Cir. 1993). Since that is a critical distinction under the *Hawaiian Airlines* standard, *see, e.g.*, *Brown*, 254 F.3d at 668, it is possible that the result in this pre-*Hawaiian Airlines* case is consistent with how other circuits would decide the case under their post-*Hawaiian Airlines* precedent. And regardless of any uncertainty about the precise facts and holding of *Bates*, the Second Circuit clearly would now hold that a discrimination claim that *does* depend on CBA interpretation is barred under *Hawaiian Airlines*—consistent with its parallel approach under the LMRA and with decisions of district courts in the circuit under the RLA. Accordingly, the outdated *Bates* decision is far too thin a reed to support a circuit conflict warranting this Court's review.

C. No Circuit Holds That Discrimination Claims Are Preempted Or Precluded Under *Hawaiian Airlines* So Long As They "Involve" CBA Interpretation

Petitioner is also wrong that the First, Fourth, Sixth, and Eighth Circuits deem it sufficient for RLA preemption or preclusion that a discrimination claim merely "involves" some level of CBA interpretation. Pet. 2, 23-29. Of course, this case would not be an appropriate vehicle to resolve any circuit split between an "involves" standard and the "depends on" standard—as the Fourth Circuit dismissed Polk's claim even under the standard more favorable for her, *supra* at 11—but the asserted split is illusory regardless. The petition mischaracterizes decisions from the First, Sixth, and Eighth Circuits in the same way it did the Fourth Circuit's decision here.

Most obviously, as Petitioner's block-quote from the Sixth Circuit's *Emswiler* decision makes clear (Pet. 23-24), that court held that a discrimination claim must "require," or "depend[] on," CBA interpretation to be barred under *Hawaiian Airlines*. 691 F.3d at 792. Far from deeming the mere involvement of a CBA to suffice, the court concluded that the claim there "cannot be decided without interpretation of the CBA" to resolve the "competing positions" upon which the plaintiff's affirmative theory of discrimination turned. *Id.* at 793; *see Stanley v. ExpressJet Airlines, Inc.*, 808 F. App'x 351, 355 (6th Cir. 2020) (citing *Emswiler* as a case applying the "conclusively resolve" standard).

Likewise, as Petitioner's block-quote from a Minnesota district-court opinion confirms (Pet. 27-

28), the Eighth Circuit's most recent decisions "have seized upon th[e] language [in *Hawaiian Airlines*]—regarding whether a claim is *dependent upon the interpretation of a CBA*—to find claims preempted where analyzing the elements of the plaintiff's claim would *require* interpreting" the CBA. *Ratfield v. Delta Air Lines, Inc.*, No. 22-cv-2212, 2023 WL 5178593, at *10 (D. Minn. Aug. 11, 2023) (second emphasis added). That the claim might involve some amount of CBA interpretation is not sufficient to bar it. *See Avina*, 72 F.4th at 843-45 (finding discrimination claim precluded because it "require[d] the interpretation of some specific provision of the [CBA]" (cleaned up)); *cf. Richardson v. BNSF Ry. Co.*, 2 F.4th 1063, 1067-68 (8th Cir. 2021) (finding a contract claim preempted, but a tort claim not preempted, because only the former "cannot be resolved without interpreting the [CBA]"); *Sturge v. Nw. Airlines, Inc.*, 658 F.3d 832, 837-39 (8th Cir. 2011) (finding ERISA claim not preempted because it did not "depend[] on an interpretation of [the] CBA" given that the application of the implicated CBA provisions was "not disputed").

Similarly, Petitioner's own quotation again shows (Pet. 26) that the First Circuit's pre-*Hawaiian Airlines* decision in *O'Brien v. Consolidated Rail Corp.*, 972 F.2d 1 (1st Cir. 1992), held that a discrimination claim was preempted only because it "require[d] the interpretation of a [CBA]." *Id.* at 4-5 (quoting case applying the *Lingle* standard). While that court has not specifically considered a discrimination claim under *Hawaiian Airlines*, it has recognized more generally that the controlling RLA standard is whether the claim "depend[s] upon," or

"hinges upon," a CBA interpretive dispute. *Adames v. Exec. Airlines, Inc.*, 258 F.3d 7, 11 (1st Cir. 2001); *see Fant v. New Eng. Power Serv. Co.*, 239 F.3d 8, 15-16 (1st Cir. 2001) (applying that standard to discrimination claim under LMRA).

In sum, there is no circuit split on the question presented. Every court of appeals to have decided the question—seven in all—agrees that litigating a discrimination claim is preempted or precluded by the RLA under *Hawaiian Airlines* if, but only if, the plaintiff's affirmative theory of discrimination depends on a disputed interpretation of a CBA. This Court need not review that consensus position.[2]

II. THE FOURTH CIRCUIT'S DECISION IS CORRECT

This Court's review is especially unwarranted because the circuit consensus is clearly correct. Indeed, the certiorari petition never even tries to argue that the Fourth Circuit misinterpreted or misapplied *Hawaiian Airlines*, and it could not plausibly have done so. The "depends on" CBA interpretation standard that this Court expressly adopted for RLA preemption and preclusion fully applies to discrimination claims. And the Fourth Circuit properly found that Petitioner's Title VII claim depends on disputed CBA interpretations.

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[2] Petitioner further asserts (Pet. 15) that there is a circuit split over the subsidiary procedural question of how courts should dispose of a discrimination claim that is barred by the RLA, but this case is not a proper vehicle to resolve that question. It was not pressed below, Pet.App. 6a, and Polk identifies no reason why it matters that her claim was dismissed, rather than stayed, pending arbitration of the CBA interpretive disputes underlying her discrimination claim.

A. *Hawaiian Airlines* Adopted A "Depends On" CBA Interpretation Standard, And That Standard Applies To Discrimination Claims

The RLA seeks "to provide for the prompt and orderly settlement of *all* disputes growing out of … the interpretation or application of [covered CBAs]." 45 U.S.C. § 151a(5) (emphasis added). Congress directed that such interpretive disputes are "subject to compulsory and binding arbitration," *Conrail*, 491 U.S. at 303; *see* 45 U.S.C. § 153 First(i), deeming it "essential to keep these so-called 'minor' disputes … out of the courts," *Buell*, 480 U.S. at 562 n.9; *see Hawaiian Airlines*, 512 U.S. at 252-53.

As the Fourth Circuit explained, this "rationale has little to do with whether a minor dispute arises from a contractual claim or some other cause of action under state or federal law." Pet.App. 9a. This Court has thus long held that litigation of non-contract claims can be barred by the RLA in some circumstances. *Hawaiian Airlines*, 512 U.S. at 257-58 (citing *Andrews*, 406 U.S. at 324); *cf. id.* at 260 (same under LMRA, citing *Lueck*, 471 U.S. at 218).

In *Hawaiian Airlines*, the Court surveyed its prior precedents and synthesized a definitive standard for RLA preemption and preclusion. It viewed the RLA cases as establishing the rule that "the category of minor disputes … are those that are grounded in the CBA." 512 U.S. at 256; *see id.* at 258 (explaining that the wrongful-termination claim in *Andrews* "depend[ed] on the interpretation of the [CBA]"). And it "adopt[ed]" the "virtually identical" standard that had been established in the LMRA context—

namely, that preemption occurs "only if a state-law claim is dependent on the interpretation of a CBA." *Id.* at 260, 262-63; *see id.* at 259 n.6 (equating principles governing preemption of state-law claims and preclusion of federal-law claims).

Moreover, the Court expressly emphasized that *Lingle*'s "dependent on" standard was "fully consistent" with "the holding in *Buell* that the RLA does not pre-empt 'substantive protection … independent of the [CBA]," and with "the description in *Conrail* of a minor dispute as one that can be 'conclusively resolved' by reference to an existing CBA." *Id.* at 262-63 (citations omitted). As *Lingle* put the point, "the sense of 'independent' that matters" is that the "claim does not require construing the [CBA]." 486 U.S. at 407. Thus, "as long as the … claim can be resolved without interpreting the agreement itself," litigation is not barred. *Hawaiian Airlines*, 512 U.S. at 262 (quoting *Lingle*, 486 U.S. at 410). But where the claim's "resolution … depends on an interpretation of the CBA," it cannot proceed in court. *Id.* at 261.

Accordingly, the Fourth Circuit and its sister circuits are clearly correct that the RLA bars litigation of discrimination claims, no less than any other claims, where the plaintiff's affirmative theory of discrimination would require a court to resolve a minor dispute involving the proper interpretation of a CBA. Of course, "*as a general rule*," discrimination claims will not be barred because they usually can "be adjudicated under non-CBA standards." *Brown*, 254 F.3d at 667-68; *cf. Hawaiian Airlines*, 512 U.S. at 249-52, 266 (plaintiff's wrongful-discharge claims required only a "purely factual" determination

whether the employee had been discharged for a retaliatory reason, as the employee did not raise any disputed CBA interpretation as the basis for his claims). But where the particular "manner in which [the plaintiff] styles [the] claim" affirmatively "requires" resolution of a CBA interpretive dispute, *Emswiler*, 691 F.3d at 792-93, the "rule no longer applies" and the claim is barred because it "depends for its resolution on the interpretation of a CBA," *Brown*, 254 F.3d at 668.

Indeed, *Lingle* itself implicitly acknowledged that discrimination claims could sometimes be barred. The Court there cited "the antidiscrimination laws" to "illustrate" the point that a statutory claim is "not dependent upon the terms of [a] private contract" based on "the mere fact" that the CBA also provides "contractual protection" against unlawful conduct. 486 U.S. at 412-13. It reasoned that, "[i]n the typical case," a court "could resolve either a discriminatory or retaliatory discharge claim without interpreting the [analogous] language of a [CBA]." *Id.* at 413. This Court was thus careful to recognize that there may be *atypical* cases where a discrimination claim *does* depend on resolving a CBA interpretive dispute. And so the circuit-court consensus that the RLA bars such claims follows directly from the adoption of the *Lingle* standard in *Hawaiian Airlines*.

B. The Fourth Circuit Properly Found That Petitioner's Title VII Claim Depends On CBA Interpretation

Lastly, while any "misapplication of a properly stated rule of law" would not warrant review in any event, Sup. Ct. R. 10, the Fourth Circuit was right to

find that "Polk's Title VII claim requires the interpretation of [the] CBA," Pet.App. 13a.

As the decision below recognized, "[t]he thrust of Polk's Title VII claim is that Amtrak deviated from its policies when dealing with her." *Id.* In fact, Polk "d[id] not refer to her race or the race of her colleagues in her complaint, apart from a conclusory statement that she was 'discriminated against due to [her] race.'" Pet.App. 14a (quoting CA.JA 14). Instead, she alleged that Amtrak "broke its own rules" by denying her a second chance to complete her drug test and then testing her excessively. Pet.App. 15a. She used those alleged rule breaches "as a stand-in for allegations about Amtrak's factual treatment of her similarly situated colleagues," in order to satisfy "the element of differential treatment in [her] Title VII claim." Pet.App. 14a-15a.

As a result, Polk's Title VII claim was effectively pleaded as a CBA dispute. The rules at issue were part of the CBA because "the CBA incorporates the Drug-Free Program" and provides the disciplinary "remedy" for a violation. Pet.App. 17a-19a. So "evaluating [Polk's] theory of differential treatment would require a court to interpret CBA provisions covering employee discipline and reinstatement." Pet.App. 14a; *see* Pet.App. 15a-17a (detailing the relevant interpretive disputes). In fact, while Polk's briefing below contested whether the relevant Amtrak rules were part of her CBA, she did not deny that her theory of discrimination depended on the interpretive dispute over those rules. *See* CA Opening Br. 10-12; CA Reply Br. 4-7.

In sum, the Fourth Circuit was correct about "[t]he dispositive role of the CBA" given "the substance of Polk's Title VII claim." Pet.App. 14a. As her "claim is dependent on the interpretation of [the] CBA," the RLA precludes her from litigating it in court. *Hawaiian Airlines*, 512 U.S. at 262 (citing *Lingle*, 486 U.S. at 405-06).

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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