NO. 25-495

In the Supreme Court of the United States

THE BOEING COMPANY,

Petitioner,

v.

SOUTHWEST AIRLINES PILOTS ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

BRIEF IN OPPOSITION

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QUESTION PRESENTED

This Court rejects preemption of a state-law claim by the Railroad Labor Act (RLA) when:

- "adjudication of those rights does not depend upon the interpretation of" a CBA, *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988);
- "the meaning of [CBA] terms is not the subject of dispute," *Livadas v. Bradshaw*, 512 U.S. 107, 124 (1994); and
- the claim turns on "purely factual questions" about "the conduct and motivation of the employer," *Lingle*, 486 U.S. at 407.

The Texas Supreme Court held that SWAPA's claims against Boeing:

- did not involve the parties' 2006 CBA, which was destined to end once it became "amendable" under federal labor law in 2012, *Boeing Co. v. Sw. Airline Pilots Ass'n*, 716 S.W.3d 140, 145, 151 (Tex. 2025) ["*SWAPA*"];
- presented no dispute that the 2016 CBA required Southwest pilots to fly the 737 MAX, *id.* at 151; and
- turned on "purely factual" issues about what Boeing said and did to induce SWAPA and Southwest's pilots to fly the MAX. *Id.*

The question presented is whether this Court should review this faithful application of its settled precedent by the Texas Supreme Court.

CORPORATE DISCLOSURE STATEMENT

SOUTHWEST AIRLINES PILOTS ASSOCIATION has no parent company and no public company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Respondent SWAPA respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari. The Petition should be denied for these reasons:

1. ***No CBA interpretation***. The Texas Supreme Court correctly held that the RLA does not preempt SWAPA's claims because they do not require construction of any term in a CBA.

As for causation, the 2006 CBA cited by Boeing became irrelevant to SWAPA's claims after 2012, when that contract became "amendable" under federal labor law. A new CBA was inevitable at that point.

SWAPA's state-law tort claims arise from what Boeing said about the safety of the 737 MAX while negotiating that new CBA, which was ultimately finalized in 2016. No party disputes that the 2016 CBA required Southwest's pilots to fly the MAX. The Texas Supreme Court correctly rejected Boeing's contrived claim that the 2006 CBA impacted the causation argument that SWAPA is actually making.

As for damages, SWAPA's state-law tort claims seek to recover the difference between (A) what SWAPA and its pilots actually received (a known fact), and (B) what SWAPA and its pilots would have received if Boeing's representations about the MAX were truthful (a hypothetical). Consistent with this Court's precedent on that specific issue, the Texas court correctly held that no CBA interpretation is needed to make that comparison.

2. *No conflict.* The *SWAPA* opinion does not create any conflict about the application of the *Lingle /Norris* test for RLA preemption. The Texas court's holdings about causation and damages are fully consistent with factually similar cases from the U.S. Court of Appeals from the Fifth Circuit and other Circuit courts around the country. Boeing's claims about conflicts on this point rely on selective citation of easily distinguishable cases, as well as flatly irrelevant ones about unrelated preemption doctrines.

Boeing also claims that this litigation creates a conflict about the RLA's scope; specifically, its potential application to claims among parties who are not airlines or airline employees. The source of that conflict is not apparent, because the Texas Supreme Court expressly declined to address this issue. In any event, that court's resolution of this case is fully consistent with the statutory text and all opinions cited by Boeing—none of which involve a case where neither party is an airline or airline employee—and none of which found RLA preemption of any claim similar to SWAPA's.

3. *Poor vehicle.* This case is a poor vehicle for a general review of RLA preemption for four reasons.

First, it is factually atypical. Boeing cites no preemption case about negotiation of a new CBA after its predecessor became "amendable" under federal labor law, and that uniquely complicated situation is a poor vehicle for a general review of preemption. Similarly, the dearth of case law about RLA preemption among parties in similar positions to SWAPA and Boeing (neither of which is an airline or an airline employee) strongly signals that this case does not present matters of broad concern about the RLA's application.

Second, as of the date of this response, the Texas Supreme Court's opinion has been cited exactly once—about the elements of fraud under state law. Whatever preemption question this case may raise—which SWAPA contends is none—it is of no serious interest outside of this proceeding. Boeing's claims about alleged "havoc" flowing from this litigation are not-well-founded.

Third, state law pervades Boeing's arguments, as it repeatedly claims that the Texas Supreme Court misapplied state tort and contract law in reviewing SWAPA's claims. Those claims are wrong, and that topic is not a proper subject for this Court's review. Boeing's repeated resort to it further shows why its appeal to this Court is misguided.

Fourth, Boeing is free to keep arguing about preemption in state court. Under state procedure, the Texas Supreme Court simply held that Boeing did not conclusively establish its preemption defense on this pretrial record. If in the future, Boeing believes that it has built a stronger record, it can seek summary judgment or judgment as a matter of law. Appellate review can then proceed, based on that further-developed record. Nothing about Boeing's arguments compels this Court's consideration of them today.

STATEMENT

The Texas opinions accurately describe the relevant factual background, taking SWAPA's pleadings as true for purposes of resolving the question of preemption. For ease of reference, SWAPA summarizes the key points here; additional factual detail appears in the relevant argument sections.

Most basically: Boeing is a manufacturer of aircraft. It is not an airline or an employee of an airline. SWAPA is a labor union that represents roughly 11,000 Southwest Airlines pilots. It also is not an airline or an employee of an airline.

In 2011, Boeing introduced the 737 MAX airplane, marketing it as an updated design that would not require additional pilot training because of its similarity to earlier versions of the 737. That proposal was attractive to Southwest, which agreed to purchase 150 MAX aircraft from Boeing.

At that time, Southwest and SWAPA were operating under a CBA finalized in 2006. That CBA became "amendable" under federal labor law in 2012. *SWAPA*, 716 S.W.3d at151; *see also id.* at 146. When that happened, the end of the 2006 CBA became inevitable. While Southwest and SWAPA had to maintain the status quo and negotiate in good faith from that point forward, the end of that process was certain—a new agreement that would "free[] the parties from their contractual obligations and the RLA's rules governing the preservation of the status quo." *See In re N.W. Airlines Corp.*, 483 F.3d 160, 157 *et seq.* (2d Cir. 2007).

Understandably, the list of aircraft subject to that CBA did not include the MAX, which did not exist in 2006. *SWAPA*, 716 S.W.3d at 146, 150-51. SWAPA thus argued that the 2006 CBA did not require pilots to fly the new MAX, while Southwest took a contrary position. That dispute led to litigation on that point. *Id.* at 141-42.

Boeing, anxious to make this massive sale of its new aircraft, made representations to SWAPA executives to impact ongoing CBA negotiations, repeatedly representing that the aircraft was safe, airworthy, flew the same as the previous 737 model and would only require computer-based training.

Specifically, SWAPA alleged that Boeing did not tell SWAPA executives about a new flight-control device called "MCAS," which was required because Boeing's flight testing showed that the aircraft was not airworthy and would not pass certification without it. MCAS had never been used on a passenger aircraft, and was designed to take control of the aircraft from the pilot. Boeing withheld this information because it already told and incentivized Southwest into believing the new aircraft flew similarly to the current 737 and would not require simulator training.[1]

Those representations induced SWAPA to agree in 2016 to fly the MAX. That year, SWAPA entered a CBA [the "2016 CBA"] in which SWAPA agreed that its members would operate Boeing's 737 MAX aircraft —after which SWAPA dismissed its complaint about

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[1] *See also* U.S. House Comm. on Transp. & Infrastructure, *Final Comm. Report: Design, Development & Certification of the Boeing 737 MAX* (2020) (https://tinyurl.com/ynztmmvb).

the 2006 CBA and Southwest began to fly the MAX in 2017. *SWAPA*, 716 S.W.3d at 147.

During the first year that the MAX entered service, 346 people died after a sensor failed inflight and the pilots—never trained on how to disable MCAS during a flight—could not recover the aircraft. The MAX fleet was then grounded worldwide.

SWAPA filed this suit in Texas state court against Boeing on behalf of itself and its members. The petition alleges that SWAPA seeks damages on behalf of itself and its pilots "who have collectively lost, and are continuing to lose, millions of dollars in compensation as a result of Boeing's false representations concerning its 737 MAX aircraft, namely that the 737 MAX was safe, airworthy, and was essentially the same as the time-tested 737 aircraft that SWAPA pilots were already flying." *Sw. Airlines Pilots Ass'n v. Boeing Co.*, 704 S.W.3d 832, 839 (Tex. App.—2022) ["*SWAPA Interm.*"].

In that Texas state court lawsuit, SWAPA pleaded claims for fraudulent and negligent misrepresentation, fraud by nondisclosure, negligence, and tortious interference, seeking damages for lost member wages and SWAPA's own damages in lost dues. *SWAPA*, 716 S.W.3d at 147.

Boeing removed, asserting complete preemption; the federal district court remanded, holding that the RLA does not create complete preemption. *Sw. Airlines Pilots Ass'n v. Boeing Co.*, 613 F.Supp.3d 975, 981–82 (N.D. Tex. 2020). While the matter was pending in federal court, SWAPA obtained individual claim assignments from thousands of member pilots.

After remand to state court, the trial court granted Boeing's plea to the jurisdiction. A Texas intermediate

court reversed, concluding that the RLA did not apply to a dispute between Boeing (who is not an airline) and SWAPA (who is not an airline employee). *SWAPA Interm*. 704 S.W.3d at 849-53.

In the meantime, SWAPA filed a companion case asserting the same claims, to avoid a limitations issue based on the timing of the pilot assignments. The trial court dismissed that companion case and the Texas intermediate court reinstated it, in light of the earlier opinion about the lack of RLA preemption. *Sw. Airlines Pilots Ass'n v. Boeing Co*., No. 05-21-00598-CV, 2022 WL 16735379 (Tex. App. Nov. 7, 2022).

The Texas Supreme Court granted review and affirmed on a different ground, holding that the RLA did not preempt SWAPA's claims because they did not require construction of any CBA term. *SWAPA*, 716 S.W.3d at 150-51. It also rejected Boeing's challenge to the validity of the pilots' assignments under state law, *id.* at 156-57, and denied review of the companion case in light of its opinion in this matter. This petition followed.

REASONS TO DENY THE WRIT

The petition presents no meaningful question for this Court. The Texas Supreme Court's opinion is a routine application of the basic rule that the RLA does not preempt a state-law claim that requires no interpretation of a CBA. Because that unexceptional holding does not implicate any circuit split or unusual policy issue, this Court should deny certiorari.

I. The Texas Supreme Court Correctly Resolved a Straightforward Preemption Issue

The Texas Supreme Court correctly concluded, applying well-settled precedent from this Court, that SWAPA's proof of causation, damages, and the other elements of its claims did not substantially depend on the interpretation of any CBA provision.

Congress enacted the RLA in 1926 and extended it to the airline industry ten years later. *See* 45 U.S.C. §§ 181-188; H.R. Rep. No. 2243, at 2-3 (1936). The RLA "establishes a mandatory arbitral mechanism for the 'prompt and orderly' settlement of two classes of disputes"—"major" and "minor." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). A major dispute involves "formation of collective [bargaining] agreements or efforts to secure them," *id.*, and is not presented in this case.

The RLA preempts minor disputes and channels them to specialized arbitration tribunals called "adjustment boards." *Consol. Rail Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299, 305 (1989). The preemption test developed in this context is often called "*Lingle/Norris*"

for the two leading cases from this Court. Because a minor dispute "involv[es] the interpretation or application of existing labor agreements," the test asks whether "the dispute may be conclusively resolved by interpreting the existing [CBA]." *Norris*, 512 U.S. at 256 (quoting, *inter alia*, *Consol. Rail*, 491 U.S. at 305; *see also Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) (holding that preemption applies only "when resolution of a state-law claim is substantially dependent upon analysis of the terms of" a CBA).

Conversely, the RLA does not pre-empt the enforcement of rights that arise independently from the CBA. *Norris*, 512 U.S. at 256; *see also Lingle*, 486 U.S. at 409 (noting that the RLA "says nothing about the substantive rights a State may provide to workers when adjudication of those rights does not depend upon the interpretation of [a CBA]"). As a result, "not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted." *Luec*k, 471 U.S. 202, 211 (1985). A claim is not preempted if it turns on "purely factual questions pertain[ing] to . . . the conduct and motivation of the employer." *Lingle*, 486 U.S. at 407.

The Texas Supreme Court acknowledged the above principles, *SWAPA*, 716 S.W.3d at 149-50, and then applied them to this record by "consider[ing] the proof required to establish the claim's elements." *Id.* at 151 (quoting *Lingle*, 486 U.S. at 407). The court then reviewed the elements of SWAPA's state-law tort claims, *SWAPA*, 716 S.W.3d at 150 nn.19-20, and concluded that no interpretation of a CBA was necessary for SWAPA to establish those elements.

Causation. Boeing argued that SWAPA could not prove causation without interpreting the 2006 CBA,

contending that it already required pilots to fly the MAX. As the Texas court correctly held, this argument ignores the "amendable" status of the CBA as of 2012 and has no support in the record.

When the 2006 CBA became amendable, its end became inevitable. To be sure, Southwest and SWAPA had to maintain the status quo and negotiate in good faith from that point forward, but the end of that process was certain: "[After the parties have fully exhausted the dispute resolution and re-negotiation processes," the old CBA expires, "freeing the parties from their contractual obligations and the RLA's rules governing the preservation of the status quo." *See generally In re Northwest Airlines Corp.*, 483 F.3d 160, 167 *et seq*. (2d Cir. 2007) (applying 45 U.S.C. § 156 and explaining how this process typically proceeds). The 2006 CBA was not some sort of backstop or alternative to the new CBA. It was simply irrelevant. The question whether the 2006 CBA required SWAPA pilots to fly the 737 MAX has no bearing on this dispute about whether Boeing fraudulently induced SWAPA into signing a different contract, the 2016 CBA.

Boeing's causation argument also has serious practical problems. The MAX did not exist in 2006. Boeing's argument assumes that Southwest's pilots committed, sight unseen, to fly a nonexistent plane at an unknown future time, knowing nothing about that plane's safety, reliability, or training requirements.

That claim makes no sense. No rational pilot would ever be so cavalier about safety. Boeing's speculation that Southwest's pilots irrationally committed to a phantom plane in 2006 is not a legitimate basis for preemption. *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 690-93 (9th Cir. 2001) (cautioning against

preemption claims based on "hypothetical connection" and "creative linkage"); *see generally DeCoe v. Gen. Motors Corp.*, 32 F.3d 212, 216 (6th Cir. 1994)) ("[N]either a tangential relationship to the CBA, nor the defendant's assertion of the contract as an affirmative defense will turn an otherwise independent claim into a claim dependent on the labor contract.").

On this point, Boeing cites the 1991 intermediate-court opinion of *Bernal v. Garrison*, in which the plaintiff testified "I think I would have anyway" when asked about his reliance on the alleged misrepresentation. 818 S.W.2d 79, 84 (Tex. App. 1991). Factually, that plaintiff's self-destructive testimony has nothing to do with the "amendable contract" negotiation environment in this one. And legally, the Texas Supreme Court's interpretation of Texas tort law is not a proper subject for this Court's review. This irrelevant citation does not make the 2006 CBA relevant to RLA preemption.

The claim is also flatly inconsistent with what actually happened. SWAPA sued Southwest to oppose this very argument about the requirements of the 2006 CBA. *SWAPA*, 716 S.W.3d at 146. As the Texas court noted, SWAPA would never have flown the MAX pursuant to the 2006 CBA. *Id.* at 150-51. SWAPA changed its position only after Boeing made representations about the 737 MAX's safety to induce SWAPA to sign the 2016 CBA. And Boeing, eager to enter the market quickly and powerfully with its new aircraft, was eager to give those assurances.

The Texas Supreme Court correctly held that no construction of the 2006 CBA is needed for SWAPA to establish causation on its tort claims because Southwest's pilots were never going to fly the MAX under the 2006 CBA, under any circumstances. 716 S.W.3d

at 151. The question whether Boeing induced the MAX flight requirement into the 2016 CBA by lying about the MAX's safety was correctly characterized by the Texas court as "purely factual" and unrelated to CBA interpretation. *See id.*

Nothing about the 2016 CBA changes this conclusion. No party disputes that the 2016 CBA requires pilots to fly the MAX. *See SWAPA*, at 150-51 ("SWAPA does not dispute that it agreed in the 2016 CBA to fly the MAX, and Boeing has identified no other provisions of the 2016 CBA that a court would have to interpret to resolve SWAPA's claims."). Under this Court's precedent, "when the meaning of contract terms is not the subject of dispute, the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished." *Livadas*, 512 U.S. at 124.

Additionally, as to tortious interference, SWAPA expressly disavowed any claim premised on a breach of the 2006 CBA. SWAPA, 714 S.W.3d at 150 n.20. SWAPA only alleges interference with a prospective 2016 relationship. That claim requires proof of Boeing's independently tortious conduct (fraud) and the effects of that misconduct (causation). *See id.* (citing *inter alia*, *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 923 (Tex. 2013)). As just explained, proof of those matters does not require interpretation of the 2016 CBA.

Here, Boeing cites *Ancor Holdings, L.P. v. Landon Capital Partners, LLC*, in which the Fifth Circuit reversed a summary judgment on a claim of tortious interference with contract, finding triable issues about proximate cause and damage. 114 F.4th 382, 398 *et seq*. (5th Cir. 2024). That specific holding is irrelevant

to this case, and that claim—for interference with a contract—is not what SWAPA asserts here.

Damages. As for damages, SWAPA's state-law tort claims seek to recover the difference between (A) what SWAPA and its pilots actually received (a known fact), and (B) what SWAPA and its pilots would have received if Boeing's representations about the MAX were truthful (a hypothetical). *See Formosa Plastics Corp. USA v. Presidio Eng'rs & Contrs., Inc.*, 960 S.W.2d 41, 49 (Tex. 1998) (cited by *SWAPA*, 716 S.W.3d at 150 & n.19).

This Court established in *Lingle* that this sort of comparison does not create RLA preemption:

> . . . collective-bargaining agreement may, of course, contain information such as rate of pay and other economic benefits that might be helpful in determining the damages to which a worker prevailing in a state-law suit is entitled. . . . In such a case, federal law would govern the interpretation of the agreement, but the separate state-law analysis would not be thereby pre-empted.

486 U.S. at 412 n.12; *see also Livada*, 512 U.S. at 124 ("*Lingle* makes plain . . . that when liability is governed by independent state law, the mere need to 'look to' the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by [section] 301.").

* * *

Boeing's arguments about the 2006 CBA have nothing to do with the causation, damages, or any other elements of the claims that SWAPA is actually asserting. The Texas Supreme Court's rejection of

those arguments is well supported by settled precedent from this Court.

II. *SWAPA* Creates No Conflict That Could Warrant This Court's Review

Boeing makes two arguments about conflicts: (1) that the Texas Supreme Court's *SWAPA* opinion conflicts with other courts in how it applied the *Lingle /Norris* preemption test; and (2) while expressly not addressed in *SWAPA*, the Texas courts' collective handling of this case nevertheless created a conflict about the proper scope of the RLA. Neither point withstands scrutiny.

A. *SWAPA* Does Not Conflict with Any Other Court's Application of *Lingle/Norris* Preemption

SWAPA does not conflict with any other jurisdiction's application of the *Lingle/Norris* preemption test. Boeing's highly selective citations systematically ignore the relevant cases from those jurisdictions, while overstating isolated language from opinions that involve distinguishable facts or wholly distinct preemption doctrines.

Fifth Circuit. Start with the Fifth Circuit, where Texas is located. Boeing does not cite *Wells v. General Motors Corp.*, in which the plaintiffs claimed that GM fraudulently induced them into a collectively bargained severance agreement that barred their rehire. The court noted the lack of dispute about what the agreement meant, and that the alleged inducement involved "an extraneous promise" by GM during negotiations. 881 F.2d 166 (5th Cir. 1989). *Wells* held, just like *SWAPA*, that the RLA/LMRA did not preempt a claim

that was not substantially dependent upon analysis of a CBA's terms.[2]

Because *Wells* predates any Fifth Circuit's case cited by Boeing, it controls under the Fifth Circuit's "rule of orderliness." *See, e.g.*, *Barrientos-Romero v. Bondi*, No. No. 25-60285, 2025 WL 3772151, *1 (5th Cir. Dec. 31, 2025). That priority alone defeats any claim of a conflict with that Circuit's authority. But Boeing's cited cases are, in fact, fully consistent with *Wells* and *SWAPA*.

In *Kollar v. United Transportation Union*, several railroad employees sued their union for fraud, arguing that it misrepresented the seniority that they would receive if they took positions with Amtrak. The employees' seniority was defined by their CBA, which also set a process for complaints about seniority. 83 F.3d 124, 126 (5th Cir. 1996). Because the employees' claim would require a state court to rewrite terms of the CBA, outside of the process specified by the CBA, that claim was preempted. *Id.* at 126.

Those facts are opposite from this case. Unlike the *Kollar* plaintiffs, SWAPA does not argue that Boeing said something different from what any CBA says. The end of the 2006 CBA was inevitable after 2016, and no party disputes that the 2016 CBA requires pilots

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[2] *See also Carmona v. Southwest Airlines Co.*, 536 F.3d 344, 348 (5th Cir. (2008) (holding that because the "distinguishing feature'" of a minor dispute "is that [it] may be conclusively resolved by interpreting the existing [collective bargaining] agreement," a flight attendant's discrimination suit was not preempted"); *Umphrey v. Fina Oil & Chem. Co.*, 882 F.Supp. 585, 588-89 (E.D. Tex. 1995) (citing *Wells*, holding that state law claims about statements made about topics not addressed by a CBA are not preempted).

to fly the MAX. *See* 716 S.W.3d at 150-51. SWAPA complains about representations made by Boeing about the MAX's safety—a topic that the Texas court correctly said were "purely factual" and did not require CBA interpretation. *See id. at* 151.

The other Fifth Circuit cases cited by Boeing are equally irrelevant. *Palova v. United Airlines* helps SWAPA, because it found no preemption of a flight attendant's discrimination suit from its "mere reference" to a CBA. 161 F.4th 350, 355-56 & n.5 (5th Cir. 2025) (expressly distinguishing *Kollar*). *Baker v. Farmers Elec. Coop*.—unsurprisingly, and correctly—held that a claim about a manager overstepping his authority under a CBA was preempted. 34 F.3d 274, 279–83 (5th Cir. 1994). Such CBA-intertwined disputes are absent from *SWAPA*.

And *Kaufman v. Allied Pilots Ass'n* is not a *Lingle /Norris* case at all, as it applied a wholly different preemption doctrine about the federally guaranteed right to strike. 274 F.3d 197, 200-01 (5th Cir. 2001) (applying *San Diego Bldg. Trade Council v. Garmon*, 359 U.S. 236 (1959)); *see generally Wolfson v. Am. Airlines, Inc.*, 170 F.Supp.2d 87,91-92, 93 (D. Mass. 2001) (illustrating the separate tests used for *Garmon* and *Lingle/Norris* preemption).

Texas and the Fifth Circuit are not in conflict about *Lingle/Norris* preemption. And neither jurisdiction is in conflict with any other Circuit identified by Boeing, as follows.

Second Circuit. Applying Second Circuit precedent, the Southern District of New York held that a fraudulent-inducement claim about a new job was not preempted, because the CBA's terms were "irrelevant to

the kinds of claims Plaintiff is asserting here," which —just like this case—required proof that the defendant knowingly committed fraud and caused harm. *Barbanti v. MTA Metro N. Commuter R.R.*, 387 F.Supp.2d 333, 338 (S.D. N.Y. 2005) (applying *Shafii v. British Airways, PLC*, 83 F.3d 566, 569–70 (2d Cir.1996) (not cited by Boeing)).

The cases cited by Boeing from the Second Circuit are irrelevant. *Baylis v. Marriott Corp*. involved a claim for tortious interference with the employees' CBA. 906 F.2d 874 (2d Cir. 1990). SWAPA is not making such a claim—it disclaims any tortious-interference claim about the 2006 CBA, and with respect to negotiation of the 2016 CBA, seeks recovery for interference with prospective business relations—not the 2016 CBA. *See SWAPA*, 716 S.W.3d at 150-51 & n.20. The *Baylis* claim also did not involve any allegation of fraud, so none of the authority cited by SWAPA in this section about the RLA not preempting fraudulent-inducement claims was relevant.

Anderson v. Aset Corp. is a three-paragraph *per curiam* opinion that applies *Baylis* to another tortious-interference claim that (1) was about the employee's CBA and (2) did not involve fraud. 416 F.3d 170 (2d Cir. 2005). And *Pruter v. Local 210's Pension Trust Fund* —again—involves the irrelevant issue of *Garmon* pre-emption of a claim about a union's representation. 858 F.3d 753 (2d Cir. 2017).

Third Circuit. Boeing does not cite *Stouffer v. Union R.R. Co., LLC*, 85 F.4th 139 (3d Cir. 2023), which held that an age-discrimination claim was not pre-empted by the RLA, because the asserted right did not arise from the CBA, and the plaintiff was not disputing the meaning of any CBA term. The court

held: "It is not enough to point to sections of the CBA that may be relevant. Most of the Railroad's argument boils down to asserting that its actions were permitted by the CBA. But a claim is not barred simply because 'the action challenged by the plaintiff is 'arguably justified' by the terms of the CBA." *Id.* at 146.

The Third Circuit case cited by Boeing, *Bensel v. Allied Pilots Ass'n*, 387 F.3d 298 (3d Cir. 2004), again involves an irrelevant issue about *Garmon* preemption of a claim about fair representation, and Gilenot RLA preemption.

Fourth Circuit. Boeing does not cite *Giles v. Nat'l R.R. Passenger Corp.*, which applied *Norris* to a discrimination claim, and found no preemption when the relevant issues were what the employer did and not what the CBA said. 59 F.4th 696 (4th Cir. 2023).

In contrast, Boeing cites *Int'l Union, United Mine Workers of Am. v. Covenant Coal Corp.*, which is another irrelevant case about a tortious-interference claim that—unlike SWAPA's—was based on the employees' CBA, and where no allegation of fraud was made. 977 F.2d 895 (4th Cir. 1992).

Sixth Circuit. Boeing does not cite *CNH Am. LLC v. Int'l Union, U.A.W.*, finding no preemption of a fraud claim, stating: "We break no new ground in holding that a tort claim that turns entirely on extra-contractual or pre-contractual conduct is not preempted even when damages are calculated by looking to a collective bargaining agreement." 645 F.3d 785, 791 (6th Cir. 2011).

In contrast, *Beard v. Carrollton R.R.*, 893 F.2d 117 (6th Cir. 1989) is yet another tortious interference claim about the parties' active CBA, and *Odell v. Kalitta*

Air, LLC, 107 F.4th 523 (6th Cir. 2024), involved a remedy for discrimination that would have required revising the CBA in several ways. Neither is analogous to this case.

Seventh Circuit. Boeing cites *Kimbro v. Pepsico, Inc.*, 215 F.3d 723 (7th Cir. 2000) and *Healy v. Metropolitan Pier & Exposition Auth.*, 804 F.3d 836 (7th Cir. 2015), both of which found RLA preemption of "tortious interference" claims that were actually challenges to an employee's termination in accordance with a CBA. Here, in contrast, SWAPA's tortious-interference claim does not involve any term of a CBA.

Eighth Circuit. Boeing does not cite *Sturge v. Northwest Airlines, Inc.*, a discrimination case, in which the plaintiff sought to compare his case for benefits to that of another, similarly situated employee (just as SWAPA plans to compare what it received to what it should have received). The court held that this comparison of factual matters did not require CBA interpretation. 658 F.3d 832, 838-39 (8th Cir. 2011); *see also Ratfield v. Delta Air Lines, Inc.*, 686 F.Supp.3d 780 (D. Minn. 2023) (applying Eighth Circuit precedent and holding: "Although terms of the CBA likely will be relevant to the Court's inquiry in evaluating . . . retaliation claims, consulting the CBA does not 'conclusively resolve[ ]' whether the adverse actions . . . were motivated by a desire to retaliate").

By contrast, the case cited by Boeing involves an easily distinguishable tortious-interference claim, which depended on proof of an "expectancy" that could have been foreclosed by the relevant CBA, *Brotherhood Ry. Carmen of U.S. & Canada v. Mo. Pac. R.R. Co.*, 944 F.2d 1422, 1429-30 (8th Cir. 1991). As shown previously, SWAPA does not make such a claim in this case.

Ninth Circuit. Boeing does not cite *Operating Eng'rs Pension Trust v. Wilson*, which held that a fraudulent inducement claim was not preempted because proof of that claim's elements did not require construing any term of the collective bargaining agreement. 915 F.2d 535, 538-39 (9th Cir. 1990); *see also Hernandez v. Creative Concepts, Inc.*, 862 F.Supp.2d 1073 (D. Nev. 2012) (applying Ninth Circuit precedent to hold that "fraudulent inducement claims typically are not LMRA preempted" because their proof does not usually require CBA interpretation).

In contrast, the case cited by Boeing, *Milne Employees Ass'n v. Sun Carriers*, actually held that a fraud claim similar to SWAPA's was not preempted, while also finding preemption of a tortious interference claim with the present CBA. 960 F.2d 1401 (9th Cir. 1991), *amended on reh'g* (May 4, 1992). As explained earlier, that is not SWAPA's claim.

Extra-precedential issues. Boeing describes this claimed conflict as one about the appropriate depth of analysis. Specifically, it faults the Texas court for a "blinkered" analytical process, that only "recited" the elements of SWAPA's claims, while not performing a deeper review of "actual circumstances." Whatever that means—those words are Boeing's, not a court's—it is not a valid criticism, much less the source of a conflict warranting this Court's attention. The Texas Supreme Court knows its own state's tort law, and the depth of its analysis is easily comparable to this Court's in *Lingle* and *Norris*. *Compare SWAPA*, 716 S.W.3d at 150-52, *with Lingle*, 486 U.S. at 407-09; *Norris*, 512 U.S. at 250-52. Boeing's real complaint is that the Texas court did not accept its contrived argu-

ments about the 2006 CBA—but more review will not cure the fatal defects that *SWAPA* identified.

Three final matters. Boeing cites *dicta* from the federal district court about its improper removal. As the Texas Supreme Court accurately noted—and Boeing does not dispute—that court denied removal based on the absence of "complete preemption," holding that the question whether SWAPA's state-law claims require CBA interpretation was irrelevant to that matter. *See* 613 F.Supp.3d at 981-82. *SWAPA* correctly gave no weight to that *dicta*.

Boeing also cites the dissent to the intermediate-court opinion in this case, which argued that construction of the 2016 CBA was relevant to the question of damages. Eleven other Texas judges correctly rejected that argument, based on this Court's specific rejection of it in *Lingle* and later cases. *See, e.g.*, *Livada*, 512 U.S. at 124 ("*Lingle* makes plain . . . that when liability is governed by independent state law, the mere need to 'look to' the collective-bargaining agreement for damages computation is no reason to hold the state-law claim defeated by [section] 301."). Consulting a CBA to calculate damages for a state-law claim does not create RLA preemption.

And Boeing cites an amicus brief submitted by the U.S. Chamber of Commerce early in the Texas Supreme Court proceedings, never updated. That brief does not address that court's application of the *Lingle/Norris* preemption test, and thus provides no insight on the issue that the Texas Supreme Court actually addressed in *SWAPA*.

* * *

SWAPA does not conflict with any other jurisdiction's application of the *Lingle/Norris* test for RLA preemption.

B. This Litigation Creates No Conflict About the Scope of the RLA

Boeing also argues that this litigation creates a conflict about the scope of the RLA. The source of that conflict is far from clear—at various points in Boeing's argument, it is (1) the intermediate-court opinion in this case and footnote 18 in the Texas Supreme Court's opinion, or (2) the general policy goals of the RLA, or (3) a smattering of lower court cases, or (4) cases about the Labor Management Relations Act. And none of those claimed conflicts matter if, as shown in the previous section, the RLA does not in fact preempt SWAPA's claims.

In any event, Boeing's "scope-conflict" argument ultimately shows that *SWAPA*'s holding about RLA preemption aligns with the RLA's text and uniform precedent about its scope—and that the specific fact pattern of this case (a dispute between a non-airline and a non-employee of an airline) is rare. Nothing about that argument calls for this Court's review, as set out below.

Intermediate-court opinion and footnote 18. To start with, the Texas Supreme Court held that *Lingle/Norris* preemption did not apply to SWAPA's claims. It expressly declined to address the basis of the intermediate court's decision, which was that the RLA did not apply to the case at all. *SWAPA*, 716 S.W.3d at 149 n.18 ("We need not resolve this issue to decide this case, however, because we do not agree that the resolution of SWAPA's state-law claims against

Boeing requires interpretation of the parties' CBA."). So the RLA's scope is not a live issue because it did not inform the Texas Supreme Court's decision.

On the RLA's scope, the intermediate court focused on the text of the RLA, which repeatedly refers to disputes between "a carrier by air" and its "employees," noting that Boeing was not an airline and SWAPA was not its employee. *SWAPA* (*interm.*), 704 S.W.3d at 839. To the extent that Boeing's conflict argument about the scope of the RLA is based on that holding, Boeing is wrong as a matter of precedent, and the merits, for the following reasons.

First, precedent. Texas has fifteen intermediate courts. The one involved in this case creates binding precedent for five North Texas counties. *See* Tex. Gov't Code § 22.201(f). Even there, after the state supreme court expressly declined to endorse its opinion, that precedential effect is shaky. *See generally Univ. of Tex. Med. Branch at Galveston v. York*, 871 S.W.2d 175, 176-77 (Tex. 1994) (addressing the precedential value of decisions with no clear consensus on the rationale). This is not the stuff of national "havoc," Pet. at 29.

Citations confirm this. Since release in March 2022, the intermediate-court opinion has been cited three times outside this litigation: twice, about contractual assignments, and once, about the relevant time to determine standing. *See Kasaine v. Opoku*, No. 3:23-CV-00914, 2025 WL 3252709, at *4 (W.D. La. Nov. 21, 2025); *Tisdale v. Enhanced Recovery Co.*, No. 4:22-CV-00286, 2023 WL 1810413, *5 (E.D. Tex. Jan. 17, 2023) (assignments); *Blanton v. Red Desert Enter., LLC*, No. 02-23-00191-CV, 2024 WL 1925140, at *7 (Tex. App. May 23, 2024) (standing). The supreme court's opinion—once, about the elements of fraud. *Coyle v. Rozell*, No.

06-25-00035-CV, 2025 WL 2962030, at *4 (Tex. App. Oct. 21, 2025). Those courts' analysis of the RLA has attracted no interest at all, much less destabilized aviation.

Further showing that the Texas intermediate courts' analysis of the RLA is not a subject of national fascination, the Texas intermediate court of appeals for Texarkana has held since 1989 that the RLA does not preempt an intentional tort (libel) that has only an incidental relationship to a CBA. *Cotton Belt R.R. v. Hendrick*s, 768 S.W.2d 865, 868 (Tex. App. 1989). That opinion has caused no "havoc" for the last 34 years.

Why? Aside from the obscurity of both the intermediate-court opinion and its precedential value, its conclusion is clearly consistent with the RLA's text, and such case authority as there is about the highly atypical subject of a dispute between a non-airline and a non-airline employee.

Begin with the text. When Congress amended the RLA in 1936, it used precise terminology to extend it from railroads to "carriers by air"—not aviation generally:

> All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common *carrier by air* engaged in interstate or foreign commerce, and every *carrier by air* transporting mail for or under contract with the United States Government . . . .
>
> Congress used similarly precise language to include the employees of "carriers by air":

> . . . and every air pilot or other person who performs any work as *an employee or subordinate official of such carrier* or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service . . . .

and to define the rights and duties that those parties now had under the RLA:

> The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of subchapter I of this chapter . . . *shall apply to said carriers by air and their employees* in the same manner and to the same extent as though *such carriers and their employees* were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

45 U.S.C. §§ 181, 182 (all emphasis added).

From there, the RLA makes clear that the amended scope of adjustment-board provisions only extends to air carriers and their employees. Those provisions about dispute resolution start with twelve paragraphs that detail "the duty of all *carriers*, their officers, agents, and *employees*" in resolving "[a]ll disputes between a *carrier* or carriers and *its or their employees*." 45 U.S.C. § 152 ¶¶ 1, 2 (emphasis added).

After several sections about procedural matters, a provision explains how adjustment boards will resolve "disputes between *carriers* by air, or any of them, and its or their *employees* . . . . " 45 U.S.C. §§ 182, 184 (emphasis added); *see also id.* at 185 (describing a national adjustment board "to provide for the prompt and orderly

settlement of disputes between said carriers by air, or any of them, and its or their employees").

Notably, Boeing cites no case in which RLA pre-emption was found when (A) a non-employee of an airline sued (B) a non-airline defendant. And it ignores *Fell v. Continental Airlines*, in which the District of Colorado reviewed an airline's third-party claim for breach of contract against a pilots' union, when that union was "acting on its own behalf" and not in its representative capacity. The court concluded, as the intermediate court did here, that the plain terms of the RLA did not apply to that dispute. 990 F.Supp. 1265, 1273-74 (D. Colo. 1998)

The foregoing discussion makes clear that the RLA only applies to "carriers" and their employees. That statute is irrelevant because Boeing is not an airline, and SWAPA is not an employee of any airline, as correctly held by the intermediate state appellate court.

General RLA policy goals. Boeing relies upon language from an introductory provision in the RLA that identifies five general goals for that statute's arbitration system. Read in full, that provision says that "[t]he purposes of the chapter are:"

> (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein;
>
> (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization;

> (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter;
>
> (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;
>
> (5) to provide for the prompt and orderly settlement of all disputes growing 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 (spacing added).

Boeing argues that Goal #5 is the statutory basis for RLA preemption, and notes that Goal #5 does not say "air carrier" and "employee." But Goal #5 is only part of a longer sentence. And that entire sentence describes "[t]he purposes of *this chapter*." As just shown, "this chapter" plainly—and exclusively—addresses arbitration of certain disputes between air carriers and their employees.

If the goals in this introductory provision are read more broadly than that—without reference to the RLA's other seventeen sections that define how its arbitration mechanism works—then the RLA would quickly become a boundless source of vast authority over "commerce" and "freedom of association." Congress plainly did not intend that result. There is nothing destabilizing about concluding that RLA preemption does not apply to a dispute between a non-airline (Boeing) and a non-airline employee (SWAPA), given the plain terms and structure of that statute.

This Court's precedent agrees. When this Court applied RLA preemption in its 1994 *Norris* opinion, it began by distinguishing the cases cited by the employer as saying "nothing about the threshold question whether the dispute was subject to the RLA in the first place." 512 U.S. at 248-49; *see also id.* at 266 (reminding that "[t]he Court's inquiry into the scope of minor disputes begins, of course, with the text of the statute"). *Norris* characterized the issue as whether the mechanic had to "seek redress only through the RLA's arbitral mechanism." *Id.* at 248.

Ultimately, nothing in *Norris* supports reading the RLA to disconnect Goal #5 from the statute's other seventeen sections about dispute resolution. *Norris*, and the preemption test that it establishes, stands for faithful application of the entire statutory text, which expressly limits the RLA's scope to disputes between carriers and their employees. *See generally Building Trades*, 755 F.Supp.3d 1108, 1114 (E.D. Wisc. 2024) ("Section 301 does not establish an impenetrable wall around collective bargaining agreements.").

Lower-court cases. Boeing then pivots its scope-conflict argument to a smattering of lower-court cases.

That case-based reasoning begins with two Circuit-level RLA cases, described below.

In *Brotherhood Railway*, a union sued four railroads to enforce their CBAs (along with a railcar company formed by those railroads to facilitate the claimed breach). While the plaintiff union was not an employee, no party disputed that the RLA applied, so the Eighth Circuit moved directly to the issue of the RLA's preemptive effect. 944 F.2d at 1426-28, 1430.

Nothing about that opinion is inconsistent with this matter.

The other circuit-court decision cited by Boeing about the RLA is *Baylis*, from the Second Circuit in 1990, and which is unhelpful for two reasons.

First, it is outdated—decided five years before *Norris* and its reminder that analysis of RLA pre-emption "begins, of course, with the text of the statute." 512 U.S. at 253. The Second Circuit has acknowledged that "[o]ur expansive view of [RLA] preemption in *Baylis* [] has been called into question by the Supreme Court's decision in *Norris*." *Gay v. Carlson*, 60 F.3d 83, 87 (2d Cir. 1995).

Second, the claims in *Baylis* were materially different from the ones in this case. The plaintiffs sued their airline employer, Pan Am, for breaching their CBA after they were fired from various catering jobs. They also sued Marriott, who Pan Am hired to run the new catering business that replaced them. 900 F.2d at 875. The employees sued an airline and its delegate—here, SWAPA has not sued Southwest, and Boeing is not in any relationship with Southwest that resembles Marriott's relationship with Pan Am.

Boeing separately references the district-court opinions of *Mohammed v. America West*, in which a former employee of America West sued for wrongful termination, and joined an investigator who gave information to the airline about him, 361 F.Supp. 2d 982 (D. Minn. 2005), and *Sears v. Newkirk*, which ultimately held that the RLA did not preempt a defamation claim by an airline employee against his supervisor (who was acting on behalf of the relevant airline). No. 2:09 CV 241, 2010 WL 3522578 (N.D.

Ind. Sept. 2, 2010). Neither case undermines the Texas Supreme Court holding at issue.

In sum, none of Boeing's lower-court cases support its argument that the dispute with SWAPA falls within the RLA's scope.

The Labor Management Relations Act. Boeing finally pins its scope-conflict argument on cases about the Labor Management Relations Act, correctly noting that the LMRA uses a preemption test essentially the same as the RLA's—when the LMRA applies. That said, Section 301 of the LMRA creates a statutory cause of action—an additional, material feature that the RLA does not have. *See* 29 U.S.C. § 185(a) (codifying § 301 of the LMRA and describing "[s]uits for violation of contracts between an employer and a labor organization . . . . ").

That additional feature makes Boeing's LMRA cases of little relevance in demonstrating a great conflict with this matter. In *Covenant Coal*, a union asked the Fourth Circuit "to utilize [its] 'judicial inventiveness' to authorize a federal cause of action . . . for tortious interference with a collective bargaining agreement." The court rejected that request because "the explicit statutory language" of Section 301 foreclosed any state-law version of that statutory cause of action. 977 F.2d at 896-97.

Two other LMRA cases cited by Boeing involve essentially the same issue as *Covenant Coal*, and are thus equally irrelevant. In *Kimbro v. Pepsico, Inc.*, the Seventh Circuit cited *Covenant Coal* to reject the same kind of tortious-interference claim, further holding that the joinder of a company's agents as defendants did not materially change the applicability of Section

301's exclusive-remedy provision. 215 F.3d at 726-27. And in *Healy*, the Seventh Circuit cited *Kimbro* in a similar procedural setting. 804 F.3d at 842-44. The balance of Boeing's LMRA cases were fully discussed in the previous section.

* * *

Boeing repeatedly makes overwrought claims about instability and the importance of uniformity. The relevant law is, in fact, uniform and simple: do not lie about the safety of a commercial airliner. The RLA does not provide immunity for sloppy aircraft design.

III. This Case Is a Poor Vehicle for Any Broad Review of RLA Preemption

For four distinct but mutually reinforcing reasons, this case is a poor vehicle to review any issue about RLA preemption.

First, the posture is factually atypical in ways that make it a bad platform for any general analysis of RLA preemption. This case appears to be the only recent decision addressing RLA preemption in the context of negotiating a new CBA after the predecessor became "amendable."

That singularity is unsurprising: the status of an "amendable" CBA is notoriously nuanced and case-specific, raising potentially complicated questions about the parties' status-quo obligations. *See, e.g.*, *In re Northwest Airlines Corp.*, 349 B.R. 338, 348 n.4 (Bankr. S.D. N.Y. 2006) (observing that "[o]n the record before this Court, it is unclear whether such agreement existed by reason of the contract itself or by reason of the invocation of the RLA's status quo

provisions," citing cases about uncertainties created by amendable contracts).

The unusual party alignment compounds the problem. As discussed at length above, only a handful of cases even tangentially discuss RLA preemption in a dispute between two non-signatories to the relevant CBA, further signaling that the subject matter of this case does not present any recurring, systemic issue for this Court's review.

Second, Boeing's predictions about litigation "havoc" is speculation untethered to reality. If this case truly presented a widespread and pressing problem, some meaningful track record would be visible by now; yet in the last forty years that Texas law has stood in its current form, there has been no sign of any litigation wave. The more plausible explanation is simpler: the *Lingle/Norris* issue in this case is routine, and the party configuration surfaces rarely. The limited interest in the decision below confirms that conclusion.

Third, state law pervades Boeing's arguments. Boeing insists that the Texas Supreme Court misapplied Texas tort law in evaluating SWAPA's claims, while also criticizing that court's rejection of its state-law challenges to the validity of the individual pilots' assignments to SWAPA. Boeing's continuing references to these topics show that its position is inextricably tied to issues of state law—issues that are plainly not proper subjects for this Court's review.

Fourth, nothing about Boeing's arguments compels this Court's intervention now because Boeing remains free to litigate preemption in the ordinary course. The Texas Supreme Court held that Boeing did not conclu-

sively establish its preemption defense on this pretrial record under state procedure. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004) (describing Texas procedure about a "plea to the jurisdiction"—that state's vehicle to raise preemption before trial). If Boeing later believes it has developed a stronger record, it can seek summary judgment or judgment as a matter of law, and appellate review can proceed on that fuller record. Nothing about this case requires this Court to step in at this stage.

In sum, this case is an exceptionally unattractive vehicle for a general review of RLA preemption. It presents a routine issue about the *Lingle/Norris* preemption test, heavily colored by the specific facts of the case and SWAPA's specific state-law claims, with a party configuration that rarely occurs.

CONCLUSION

The Texas Supreme Court applied the RLA's preemption framework exactly as this Court has instructed, by asking whether state-law tort claims require interpretation of a CBAs. Concluding they do not, the court allowed SWAPA's state-law tort claims to proceed. That fact-bound application of settled law does not conflict with any decision of this Court, the Fifth Circuit, any other court, or the terms of the RLA. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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