No.

IN THE

Supreme Court of the United States

UNITED AIR LINES, INC.,

Petitioner,

v.

CONSTANCE HUGHES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Tom A. Jerman
Counsel of Record
Aparna B. Joshi
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
(202) 879-3939
tjerman@jonesday.com

Counsel for Petitioner

MAY 9, 2011

QUESTION PRESENTED

Whether a state-law claim requiring interpretation of a collective bargaining agreement governed by the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, is completely preempted by federal law, thereby allowing such a claim to be removed to federal court under 28 U.S.C. § 1441(b).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The only parties in the court below are listed in the caption to the petition.

Petitioner United Air Lines, Inc., is a wholly owned subsidiary of United Continental Holdings, Inc., a Delaware corporation. No publicly held company owns 10% or more of the stock of United Continental Holdings, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner United Air Lines, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 634 F.3d 391 (7th Cir. 2011). Pet. App. 1a. The opinion of the district court is reported at 675 F. Supp. 2d 907 (N.D. Ill. 2009). Pet. App. 9a.

JURISDICTION

The judgment of the court of appeals sought to be reviewed was entered on February 8, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant jurisdictional provisions, 28 U.S.C. §§ 1331, 1337 and 1441, are reprinted at Pet. App. 21a-23a. The Railway Labor Act, 45 U.S.C. §§ 151-63 and 181-84, is reprinted at Pet. App. 24a. Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, is reprinted at Pet. App. 75a.

STATEMENT OF THE CASE

A. Statement of Facts.

Petitioner United Air Lines, Inc. ("United") is a "common carrier by air" subject to Title II of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 181-84. The Association of Flight Attendants ("AFA") is the certified collective bargaining representative of flight attendants employed by United. United and AFA are parties to a collective bargaining agreement (the

"United-AFA Agreement") that provides, in accordance with Section 204 of the RLA, that the parties have established a System Board of Adjustment for final and binding resolution of all grievances arising out of the CBA or disputes over interpretation or application of the agreement. Pet. App. 14a.

Respondent Constance Hughes ("Hughes") was employed by United as a flight attendant subject to the United-AFA Agreement. In January 2003, Hughes requested and obtained a "voluntary furlough." When the voluntary furlough ended in October 2004, Hughes asserted that she was unable to work for medical reasons, and therefore was placed on a medical leave of absence.

The United-AFA Agreement provides that a flight attendant on medical leave of absence "shall retain" seniority for "a period not to exceed" three years. Shortly before her medical leave was scheduled to expire, Hughes sought to return to work. While in requalification training, Hughes injured herself at United's training facility, and was unable to work her first scheduled flight following training. United therefore terminated her employment effective December 22, 2007, because she exceeded the three-year medical leave of absence permitted by the CBA. Pet. App. 11a.

B. Course of Proceedings and Disposition Below.

In September 2009, Hughes sued United in the Circuit Court of Cook County, Illinois, alleging retaliatory discharge under Illinois workers' compensation law. The complaint alleged that United's stated reason for terminating Hughes' employment was pretextual, and the pretext

allegation was explicitly based on a dispute over the proper interpretation of the medical leave provisions of the United-AFA Agreement.

United removed the action to the United States District Court for the Northern District of Illinois and moved to dismiss on the basis that Hughes' purported state-law claim was completely preempted by the RLA, which requires that Hughes' dispute with United be decided by the United-AFA System Board of Adjustment. Hughes filed a motion to remand to state court. Pet. App. 11a.

The district court denied Hughes' motion to remand and granted United's motion to dismiss. *Hughes v. United Air Lines, Inc.*, 675 F. Supp. 2d 907 (N.D. Ill. 2009) (reprinted at Pet. App. 9a). As the district court explained, "[u]nder 28 U.S.C. § 1441, a defendant may remove a case to federal court if the case contains a basis for federal subject-matter jurisdiction." Pet. App. 11a-12a. "[W]here 'federal law *completely* preempts a plaintiff's state-law claim,'" any such "preempted state-law claim is considered, from its inception, a federal claim, and therefore arises under federal law.'" *Id.* at 12a (citations omitted). Applying a series of Seventh Circuit decisions beginning with *Graf v. Elgin, Joliet & Eastern Railway Co.*, 790 F.2d 1341, 1344-46 (7th Cir. 1986), the district court held that Hughes' putative state-law claims were dependent on interpretation of the United-AFA Agreement, and therefore were completely preempted by the RLA. Pet. App. at 13a-14a. Because "the RLA requires that Hughes' suit be submitted to a board of adjustment for arbitration," the district court also granted United's motion to dismiss. *Id.* at 14a.

The Seventh Circuit reversed, holding that federal law does not completely preempt state-law claims requiring interpretation of agreements governed by the RLA, and that removal therefore was improper. *Hughes v. United Air Lines, Inc.*, 634 F.3d 391 (7th Cir. 2011) (reprinted in Pet. App. at 1a). Without disagreement over the district court's application of existing Seventh Circuit precedent, the court overruled *Graf* and subsequent decisions based on *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), because, in the panel's view, *Lingle* adopted a standard of "normal preemption – that is, a defense to be asserted in the original forum" rather than "complete preemption," where a state-law claim required interpretation of a collective bargaining agreement. Although *Lingle* arose under section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185 ("Section 301"), the court concluded that there was no "material difference" between the preemption standards under Section 301 and the RLA because the Court in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), adopted the *Lingle* standard under the RLA.

In support of its conclusion that removal was improper, the Seventh Circuit cited decisions from three other circuits "since *Hawaiian Airlines*" that had rejected application of the complete preemption doctrine under the RLA. *See Hughes*, Pet. App. at 7a (*citing Geddes v. Am. Airlines, Inc.*, 321 F.3d 1349, 1357 (11th Cir. 2003); *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 276 (2d Cir. 2005); and *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1246 (9th Cir. 2009)). The court emphasized, however, that it agreed with those circuits only in result, not in rationale. The court stated "complete preemption

does not depend on the ability of the federal courts to supply a remedy. But it is unnecessary to agree or disagree with all of the reasons given in [the three other circuits]; *Lingle* and *Hawaiian Airlines* show that the results of those decisions are correct." Pet. App. at 7a.

The court distinguished other Seventh Circuit decisions that applied the complete preemption doctrine under the RLA following *Lingle* and *Hawaiian Airlines* on the basis that they were decided based on *Graf*. Pet. App. at 6a (*citing Monroe v. Missouri Pac. R.R.*, 115 F.3d 514 (7th Cir. 1997)). The court did not cite any of the other circuit decisions that continued to hold, following *Lingle* and *Hawaiian Airlines*, that complete preemption applied under the RLA. *E.g.*, *Adames v. Exec. Airlines, Inc.*, 258 F.3d 7 (1st Cir. 2001); *Shafi v. British Airways, PLC*, 83 F.3d 566 (2d Cir. 1996); *Kollar v. United Transp. Union*, 83 F.3d 124 (5th Cir. 1996); *Beard v. Carrollton R.R.*, 893 F.2d 117 (6th Cir. 1989); *Gore v. Trans World Airlines, Inc.*, 210 F.3d 944 (8th Cir. 2000); *Evermann v. BNSF Ry. Co.*, 608 F.3d 364 (8th Cir. 2010); *Grote v. Trans World Airlines, Inc.*, 905 F.2d 1307 (9th Cir. 1990).[1] Finally, the court did not cite the Court's most recent discussion of the complete preemption doctrine, *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003), and acknowledges the rationale of that decision only indirectly through its assertion that *Geddes*, *Sullivan*, and *Moore-Thomas* incorrectly concluded that

[1] The cases in the Second, Sixth, and Ninth Circuits were overruled by the cases cited in *Hughes*, based on the Eleventh Circuit's *Geddes* decision and this Court's analysis in *Beneficial* -- not *Lingle* or *Hawaiian Airlines*.

existence of a judicial remedy in federal court was necessary for complete preemption.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT REVIEW TO RESOLVE A DEEP AND IMPORTANT CIRCUIT SPLIT ON WHETHER THE COMPLETE PREEMPTION DOCTRINE APPLIES UNDER THE RLA.

The courts of appeals are deeply divided in both results and rationale as to whether state-law claims that require interpretation of collective bargaining agreements governed by the RLA are completely preempted, and therefore removable to federal court. This Court's immediate review is warranted to resolve this deep, recurring, and significant circuit split.

The complete preemption doctrine creates an exception to the "well pleaded complaint" rule, under which a well-pleaded state-law cause of action normally cannot be removed to federal court based on a federal defense. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003). "When the federal statute *completely* pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law is then removable" under 28 U.S.C. § 1441(b), which "authorizes any claim that 'arises under' federal law to be removed to federal court." *Id.* The focus in determining whether the doctrine applies is "whether Congress intended the federal cause of action to be exclusive rather than on whether Congress intended that the cause of action be removable." *Id.* at 9 n.5.

The complete preemption doctrine was first applied under Section 301 of the LMRA in *Avco Corp. v. International Association of Machinists*, 390 U.S. 557 (1968), and the doctrine has been applied consistently since then under Section 301 to allow defendants to remove actions filed in state court where the putative state-law claim requires interpretation of a CBA that requires arbitration of the contractual claim. This Court has never expressly addressed whether the complete preemption doctrine likewise applies to state-law claims requiring interpretation of agreements governed by the RLA, and that question has sharply divided the courts of appeal. *See generally* "Complete Preemption Under the Railway Labor Act: Protecting Congressionally Created Grievance Arbitration Procedures," 36 Transp. L.J. 261, 269 (2009) ("Federal courts, however, are split on the question of whether the RLA gives rise to complete preemption."); "Switching Tracks: Complete Preemption Removal and the Railway Labor Act," 2007 U. Ill. L. Rev. 1107, 1109-10 (2007) (noting that "most federal circuits have considered whether the RLA creates complete preemption removal, and they are divided," and suggesting that the issue requires Supreme Court review).

The First, Fifth, Eighth, and Tenth Circuits have all held that the complete preemption doctrine articulated in *Avco* also applies under the RLA, and that state-law claims requiring interpretation of an RLA agreement therefore are removable to federal court. *See O'Brien v. Consol. Rail Corp.*, 972 F.2d 1, 3 (1st Cir. 1992) (finding that "the RLA evinces a congressional intent to occupy the field of railroad labor relations," and adopting complete preemption

principles under Section 301); *Anderson v. Am. Airlines, Inc.*, 2 F.3d 590, 596 (5th Cir. 1993) ("[W]e concur with the Tenth Circuit's conclusion that the distinctions between RLA pre-emption and LMRA pre-emption are irrelevant to the pre-emption inquiry in this case: whether [plaintiff's] state law claim requires an interpretation of the CBA."); *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1085 (8th Cir. 1989) (noting that the RLA "'pervasively occupies' the field of railroad labor disputes, completely preempting state law claims arising out of collective bargaining agreements."); *Ertle v. Cont'l Airlines, Inc.*, 136 F.3d 690 (10th Cir. 1998) (affirming removal and dismissal of state law claims "inextricably intertwined" with CBA); *see also Abrogast v. CSX Corp.*, 831 F.3d 290 (unpublished table decision), 1987 WL 38662 (full decision) (4th Cir. 1987) (noting that the courts of appeals have "overwhelmingly endorsed the view that claims falling within the scope of the Act's minor dispute provisions convert a state law claim into a federal claim for purposes of removal jurisdiction").

These circuits have extended *Avco*'s complete preemption doctrine to the RLA based on this Court's decisions equating Section 301 of the LMRA and the RLA for preemption purposes. *See Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994) (noting "the common purposes of the two statutes, the parallel development of RLA and LMRA pre-emption law, and the desirability of having a uniform common law of labor law pre-emption."); *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 323 (1972) (stating that agreements governed by the RLA, "like the Labor Management Relations Act § 301 contract," are

"governed and enforceable by federal law, in the federal courts.").

On the other hand, before the decision below, five courts of appeal – the Second, Third, Sixth, Ninth, and Eleventh Circuits – held that complete preemption does *not* apply to enforcement of agreements under the RLA. These circuits distinguish between the LMRA and the RLA because the RLA does not contain any provision similar to Section 301 giving the federal courts jurisdiction over claims for breach of a labor contract. Rather, the courts note, disputes over interpretation or application of agreements under the RLA must be arbitrated before an adjustment board. *See Sullivan*, 424 F.3d at 276 ("Minor disputes under the RLA cannot be filed in the first instance in federal court; they are therefore not removable to federal court."); *Ry. Labor Execs. Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936 (3d Cir. 1988) ("The defendants have pointed to no federal cause of action created by the RLA."); *Roddy v. Grand Trunk W. R.R. Inc.*, 395 F.3d 318, 325 (6th Cir. 2005) ("[T]he RLA does not create a federal cause of action for the resolution of disputes"); *Moore-Thomas*, 553 F.3d at 1245 ("[T]he RLA does not provide an exclusive federal cause of action" because adjustment boards have exclusive jurisdiction over minor disputes); *Geddes*, 321 F.3d at 1357 (noting that "minor disputes under the RLA must be sent to arbitration and may not be heard by a court, in contrast to disputes under the LMRA."). The practical effect of these decisions is that a defendant may not remove an action filed in state court even if the action explicitly asserts claims under an RLA agreement. *E.g.*, *Air Line Pilots Ass'n, Int'l v. UAL Corp.*, 718 F.

Supp. 2d 330 (S.D.N.Y. 2010) (finding the district court bound under *Sullivan* to remand action filed by union in state court alleging breach of RLA agreement).

The court below charted a third course. It agreed with the five circuits that hold that the complete preemption doctrine does not apply to the RLA, but disagreed with their reasoning. Indeed, the Seventh Circuit questioned the premise of these circuits that a federal remedy is a necessary predicate to complete preemption. Moreover, like the circuits that apply complete preemption to the RLA, the Seventh Circuit found no material difference between preemption principles under Section 301 and the RLA. Nevertheless, the Seventh Circuit concluded that *Lingle* abandoned the complete preemption doctrine for state-law claims requiring interpretation of CBA's governed by the LMRA—and, by extension, those governed by the RLA as well. Thus, the circuits are divided almost equally on the questions presented by this petition, and are even further divided on the rationales for their conclusions. This Court's immediate review is needed to correct the disarray in the lower courts.

II. THE DECISION BELOW AND OTHERS HOLDING THAT THE COMPLETE PREEMPTION DOCTRINE DOES NOT APPLY UNDER THE RLA CONTRAVENE THIS COURT'S PRECEDENTS.

A. The Principles of Federal Labor Law That Underlie the *Avco* Decision Are Equally Applicable Under the RLA.

The principles underlying the complete preemption doctrine adopted in *Avco* under Section

301 apply in full force to the RLA. The decisions of those circuits refusing to apply the complete preemption doctrine to the RLA, including the court below, cannot be squared with this Court's precedents.

First, this Court early on recognized Congress's intent that the interpretation of labor agreements under Section 301 be governed exclusively by federal law. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *Int'l Bhd. of Teamsters v. Lucas Flour Co.,* 369 U.S. 95 (1962). In *Lincoln Mills*, the Court concluded that the Congressional purpose in enacting Section 301 was to minimize the potential for labor conflicts by enforcing agreements to arbitrate labor disputes. To achieve this policy, the Court held, "the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from . . . our national labor laws." *Id.* at 456. In *Lucas Flour*, the Court extended the principles of *Lincoln Mills* by holding that the application of state law to enforcement of collective bargaining agreements was preempted by Section 301.

Second, in *Avco*, the Court applied the principles of *Lincoln Mills* and *Lucas Flour* in concluding that a lawsuit filed in state court to enjoin a union from striking in violation of a no-strike clause could be removed to federal court because "[r]emoval is but one aspect of the primacy of the federal judiciary in deciding questions of federal law." *Avco*, 390 U.S. at 560 (internal citation omitted). This Court reaffirmed the continuing validity of *Avco* only eight years ago in *Beneficial National Bank v. Anderson*, 539 U.S. 1, 8 (2003).

Third, and critically, this Court has consistently recognized that the same federal labor policies apply to the RLA. In *International Association of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963), the Court held that an agreement to arbitrate disputes before an adjustment board governed by Title II of the RLA, "like the Labor Management Relations Act § 301 contract, is a federal contract and is therefore governed and enforceable by federal law, in the federal courts." *Id.* at 692

The *Central Airlines* decision arose out of differences between Title II of the RLA, which was enacted in 1936 to extend coverage of the RLA to airlines, and Title I as enacted in 1926 and amended in 1934. When Congress enacted Title II, it elected not to create an administrative agency such as the National Railroad Adjustment Board ("NRAB") for resolution of contractual disputes. Rather, Congress provided in Section 204, 45 U.S.C. § 184, that air carriers and employee representatives were obligated to establish adjustment boards *by agreement of the parties*. As a result of Section 204, the consistent practice in the airline industry is to create a "system board of adjustment," and to define the procedures and jurisdiction of that board for final and binding resolution of contractual disputes as part of the labor agreement. Thus, enforcement of the obligation to submit disputes to an adjustment board under Title II necessarily entails enforcement of the labor agreement itself.

In Title I of the RLA, Congress also included within Section 3 express provisions for district court review and enforcement of NRAB decisions. 45 U.S.C. § 153 (o), (p), (q). In Title II, however, Congress did

not include any provision allowing enforcement of airline industry system board decisions by the federal courts. As a result of this distinction, the issue in *Central Airlines* was "whether a suit to enforce an award of an airline system board of adjustment is a suit arising under the laws of the United States under 28 U.S.C. § 1331 or a suit arising under a law regulating commerce under 28 U.S.C. § 1337." *See* 372 U.S. at 684-85. The Court had concluded in prior cases that the district courts had federal question jurisdiction to enforce the statutory commands of the RLA generally, and "the absence of a specific statute conferring jurisdiction" other than 28 U.S.C. §§ 1331 and 1337 "was of no moment in such cases." 372 U.S. at 691 n.13. *See, e.g., Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515 (1937). In *Central Airlines*, however, the court of appeals had concluded that without a specific statutory grant of jurisdiction similar to Section 301 of the LMRA or Section 3 of the RLA, the federal courts had no jurisdiction to enforce arbitration agreements or awards governed by Title II.

This Court reversed, holding that enforcement of agreements under Title II of the RLA is governed *exclusively* by federal law and that the district courts have original jurisdiction under 28 U.S.C. §§ 1331 and 1337 to enforce obligations under the RLA as necessary to the Congress's intent. Because Section 204 of the RLA required the parties to establish an adjustment board, the Court concluded, the federal courts must "determine whether the contractual arrangements made by the parties are sufficient to discharge the mandate of § 204 and are consistent with the Act and its purposes." *Central Airlines*, 372 U.S. at 691. Adopting the rationale and much of the

language of *Lincoln Mills* and *Lucas Flour*, the Court stated:

> It is federal law which would determine whether a § 204 contract is valid and enforceable according to its terms. If these contracts are to serve this function under § 204, their validity, interpretation, and enforceability cannot be left to the laws of the many States, for it would be fatal to the goals of the Act if a contractual provision contrary to the federal command were nevertheless enforced under state law or if a contract were struck down even though in furtherance of the federal scheme. The needs of the subject matter manifestly call for uniformity.

Id. at 691-92.

The *Central Airlines* decision is a landmark of RLA jurisprudence, establishing both the exclusivity of federal law to enforcement of RLA agreements in the same manner as Section 301 and the original jurisdiction of federal courts to enforce the obligation to arbitrate disputes. Indeed, under Title II of the RLA enforcement of the obligation to arbitrate disputes in the airline industry is *analytically indistinguishable* from enforcement of an agreement to arbitrate in other industries under Section 301. Remarkably, none of the circuits holding that complete preemption does not apply under the RLA even cites, much less acknowledges the import of, *Central Airlines*.

Fourth, in *Andrews v. Louisville & Nashville Railroad Co.*, 406 U.S. 320 (1972), the Supreme Court

fully incorporated into the RLA the federal labor policy enunciated in *Lincoln Mills*, *Lucas Flour*, and *Central Airlines*, explicitly holding that the RLA displaces entirely the application of state law with regard to enforcement of RLA agreements. 406 U.S. at 323. In reaching this conclusion, the Court reaffirmed that labor contracts governed by the RLA, "like the Labor Management Relations Act § 301 contract," are "governed and enforceable by federal law, in the federal courts," and state law could not be applied in seeking enforcement of such agreements. *Id.* (internal citation omitted)

Given these decisions, the logic behind applying the removal principles of *Avco* to the RLA is clear and inescapable. As a matter of federal court jurisdiction, *Central Airlines* establishes that the district courts have original jurisdiction over such cases under 28 U.S.C. §§ 1331 and 1337, allowing such cases to be removed under 28 U.S.C. § 1441(b). As a matter of Congressional intent, *Central Airlines* and *Andrews* establish that the rationale of permitting removal under *Avco* applies equally to the RLA. Under both Section 301 and the RLA, it is federal law, and only federal law, that controls the outcome.

B. The *Lingle* Decision Did Not Alter the Principle That State-Law Claims Dependent on Interpretation of a Labor Agreement Are Completely Preempted, and Thus Removable, Under *Avco*.

The Seventh Circuit's contrary conclusion is untenable. The court below read *Lingle* to convert the *Avco* principle of complete preemption into one of "normal preemption." But this conclusion is directly contrary to both *Lingle* itself, which affirms

application of the complete preemption doctrine to claims dependent on interpretation of a labor agreement, and *Beneficial*, which affirms the continuing validity of *Avco*.

In *Lingle*, the Court revisited the scope of labor law preemption as articulated in *Lincoln Mills* and *Lucas Flour* to address whether the preemption doctrine barred claims by employees who were subject to a collective bargaining agreement but sought to rely solely on independent rights under state statutes or common law principles. The unremarkable holding of *Lingle* was that a state-law claim was not preempted by Section 301 if the claim was based on state-law rights that existed independently of a labor agreement, and interpretation of the agreement was not necessary to resolve the state-law claims. This Court emphasized that it was *not* altering "the principle of § 301 preemption developed in *Lucas Flour:* if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted and federal labor-law principles – necessarily uniform throughout the nation – must be employed to resolve the dispute." *Lingle*, 486 U.S. at 399.

In holding that *Lingle* adopted a standard of "normal preemption" rather than "complete preemption," the court below confused the effect of complete preemption (which is only to permit removal of a putative state-law claim) with the scope of claims preempted (which is defined by the scope of the federal statute that displaces state law). Removal is permitted where a federal statute "completely pre-empts the state-law cause of action"

so that any claim "which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Beneficial*, 539 U.S. at 8. The precise scope of claims preempted by a statute says nothing about whether complete preemption applies to claims *within the scope* of the statute.

Accordingly, even if the Seventh Circuit were correct that *Lingle* narrowed the scope of claims preempted by Section 301 – rather than, as this Court stated, merely reaffirmed the scope of state-law claims preempted under *Lucas Flour* – that would not alter the fact that claims actually preempted by Section 301 are still removable. The Court in *Lingle* explicitly reaffirmed that *Avco* applies in determining "whether a state-law claim brought in state court was properly removed to federal court." 486 U.S. at 406 n.5. In *Avco*, the *Lingle* Court observed, plaintiff's claim were removable because they "required construing the collective-bargaining agreement in question" whereas in *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987), the claim could not be removed because "plaintiffs' claim did not turn on any collective-bargaining agreement interpretation." *Id.* Thus, the Seventh Circuit's conclusion that *Lingle* eliminated the complete preemption doctrine is wrong.

In *Hawaiian Airlines*, the Court concluded based on "the common purposes of the two statutes, the parallel development of RLA and LMRA pre-emption law, and the desirability of having a uniform common law of labor law pre-emption," the standard adopted under Section 301 was the "appropriate framework

for addressing pre-emption under the RLA."[2] 512 U.S. at 263 & n.9. Because *Lingle* did not alter *Avco*, the Court's adoption of the *Lingle* standard in *Hawaiian Airlines* as the test for determining preemption of claims based on breach of a CBA under the RLA simply cannot be construed to preclude application of the *Avco* decision under the RLA. In other words, if *Avco* is still good law under Section 301 the same conclusion must apply to the RLA because the preemptive effect of the statutes is the same.

Any doubt about the continuing validity of *Avco* was put to rest in *Beneficial*, where the Court not only affirmed the complete preemption doctrine under Section 301, but extended the doctrine to the National Bank Act. Thus, the *Hughes* decision is

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[2] Some of the court of appeals decisions finding no complete preemption under the RLA emphasize that *Hawaiian Airlines* did not involve removal, and the analogy to Section 301 preemption principles therefore cannot be construed include removal of such cases under *Avco*. *E.g., Geddes*, 321 F.3d at 1355. In fact, the complaint at issue in *Hawaiian Airlines* was originally filed in state court and removed to federal court. The federal court dismissed the plaintiff's action for breach of collective bargaining agreement on the ground that it was preempted, and remanded the remaining state claims to state court (from which the case reached the Supreme Court). In explaining the Court's holding, the Court noted that interpretation of a CBA was required "with regard to respondent's separate allegation of discharge in violation of the CBA [but] the District Court dismissed that count as pre-empted by the RLA, and respondent does not challenge that dismissal." 512 U.S. at 266. If the Court questioned whether removal was improper, it presumably would have said something to avoid any misimpression about the propriety of removal under the RLA.

directly contrary to both *Lingle* and *Beneficial*, and should not be allowed to stand.

C. The Decisions Rejecting the Complete Preemption Doctrine Because Federal Courts Have "No Jurisdiction Over Minor Disputes" Are Also Wrong.

The decisions of the Second, Sixth, Ninth and Eleventh Circuits holding that complete preemption does not apply to the RLA acknowledge that the complete preemption doctrine under *Avco* remains good law under Section 301, but hold that a different result is required under the RLA because, they assert, there is no "federal cause of action" for enforcement of collective bargaining agreements under the RLA. Though the rationale of these circuits is fundamentally different from *Hughes*, the conclusions are equally erroneous.

The genesis of these cases is the Eleventh Circuit's decision in *Geddes*. There, the court rejected application of the complete preemption doctrine to the RLA on the basis that circuit precedent required evidence of "clear congressional intent to permit removal," and the court could not find such an intent under the RLA. *Geddes*, 321 F.3d at 1356. While the court acknowledged that there was "some language in *Hawaiian Airlines* that might lead one to conclude that the analogy between the LMRA and the RLA should extend to application of the doctrine of complete preemption," *id.* at 1355, the court concluded that the statutory requirement of arbitration under the RLA created a sufficient difference between the two statutes that the court of appeals was prohibited by circuit precedent from "extending" the complete preemption doctrine to the

RLA without an explicit showing of Congressional intent to permit removal. *Id.*

However, the circuit precedent that *Geddes* found binding, *Anderson v. H&R Block, Inc.,* 287 F.3d 1038 (11th Cir. 2002), *rev'd sub nom. Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1 (2003), was the appellate decision reversed by this Court in *Beneficial*. In *Beneficial*, the Court extended the complete preemption doctrine from Section 301 and the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* ("ERISA") to certain provisions of the National Bank Act, 12 U.S.C. §§ 85, 86. In doing so, the Court rejected the test applied by the Eleventh Circuit, holding that "the proper inquiry focuses on whether Congress intended the federal cause of action to be exclusive rather than on whether Congress intended that the cause of action be removable." 539 U.S. at 9 n.5. Thus, *Beneficial* eliminated the primary rationale for the *Geddes* decision.

The only other reason offered by *Geddes* was that the "uniformity rationale" articulated in *Lincoln Mills* for application of federal law under Section 301 "fails" under the RLA "because minor disputes under the RLA must be sent to arbitration and may not be heard by a court, *in contrast to disputes under the LMRA*." *Geddes*, 321 F.3d at 1356 (emphasis added). The history and purpose of Section 301 is clear, however, that the "uniformity rationale" under Section 301 is to enforce on a uniform basis the federal labor policy that *contract disputes should be resolved by arbitration*. *See Lincoln Mills*, 353 U.S. at 455. As illustrated by *Lingle* and *Hawaiian Airlines*, most of the preemption cases under Section

301 and the RLA involve exactly the same question of federal law – that is, whether the putative state-law claims are subject to arbitration under the labor contract or may be pursued on independent grounds in state court. The need for uniform application of federal law plainly applies under both statutes.

Despite the discredited pedigree of *Geddes*, the Second, Sixth and Ninth Circuits adopted the same holding following *Beneficial*. The *Beneficial* decision held that the dispositive question in whether the complete preemption doctrine applies was whether federal law completely displaces the potential application of state law to the subject matter, and Congress indisputably intended that the RLA constitute the exclusive source of law governing negotiation and enforcement of labor contract in the railroad and airline industries. Nonetheless, the *Roddy*, *Sullivan* and *Moore-Thomas* decisions conclude that the RLA does not completely preempt enforcement of labor agreements because, unlike Section 301, the RLA does not create a "federal cause of action" for breach of a labor agreement.[3] Because the RLA gives adjustment boards "exclusive jurisdiction" to resolve contractual disputes, the

[3] Two of the decisions rely heavily on the Court's statement that it had found only *two* statutes, Section 301 and ERISA, in which the doctrine of complete preemption applies, concluding that the doctrine must not apply to the RLA or the Court would have identified three categories of cases. *See, e.g.*, *Roddy*, 395 F.3d at 323; *Sullivan*, 424 F.3d at 275. The obvious flaw in this analysis is that if the Court actually meant there are *only* two federal statutes where the doctrine applies – as opposed to two statutes in which the Court had previously found the doctrine applicable – the Court would have rejected the doctrine under the National Bank Act.

courts conclude, the federal courts do not have jurisdiction to decide the case.

In fact, Congress created a "federal cause of action" for enforcement of collective bargaining agreements in the railroad industry when it enacted the RLA in 1926, and Congress extended that cause of action to the airline industry when it enacted Title II of the RLA in 1936. Without question, Congress also intended that the federal cause of action was exclusive, and that state law could not be invoked with regard to RLA agreements. Moreover, the conclusion of these circuits that federal courts do not have original jurisdiction to enforce agreements under the RLA – and, thus, could not have removal jurisdiction under 28 U.S.C. § 1441(b) – is directly contrary to *Central Airlines*. There, the Court addressed exactly the same type of argument based on the absence of a provision similar to Section 301 under the RLA, and explicitly held the district courts have original jurisdiction under 28 U.S.C. §§ 1331 and 1337 to enforce agreements to arbitrate disputes under Section 204 of the RLA, 45 U.S.C. § 184.

The assumption in the Second, Sixth and Ninth Circuit decisions that removal is improper because the federal court must then dismiss the case on the ground that the adjustment board has "exclusive jurisdiction" to interpret the collective bargaining agreement is equally flawed. *See Sullivan*, 424 F.3d at 276 ("Because such disputes cannot be brought in federal court in the first instance, federal courts may not take jurisdiction over them simply to dismiss them on the basis that they are defensively preempted and belong before arbitral panels."). In this regard, the decisions fail to distinguish between

a federal court's original jurisdiction under the laws of the United States for purposes of removal and the remedies available under the applicable statute as a matter of substantive law. That distinction is clearly explained in both *Avco* and *Caterpillar*, and the explanation makes clear that the legal principle under the RLA that contractual disputes must be decided by an adjustment board does not mean the courts lack jurisdiction to enforce the statute. Thus, when a federal court asserts jurisdiction over a putative state-law claim requiring interpretation of an RLA agreement, it is not impinging on the exclusive jurisdiction of the adjustment board to interpret or apply the agreement. To the contrary, it is exercising its original jurisdiction to enforce the statutory requirement under the RLA that only an adjustment board can do so.

In *Avco*, the Court held that an action under Section 301 is a claim "arising under the 'laws of the United States'" within the "original jurisdiction" of the district courts for purposes of 28 U.S.C. § 1441(b) by virtue of 28 U.S.C. § 1337 – not Section 301 itself. *Avco*, 390 U.S. at 561-62 (citations omitted). The Court held that the fact that the district court did not have authority to grant the relief sought because the Norris La-Guardia Act barred the district courts from issuing injunctive relief in labor disputes – a restriction on federal court authority that the Court had previously described as a "lack of jurisdiction" – had no effect on the district court's original jurisdiction under 28 U.S.C. § 1337 to decide the case. *Id.* The Court stated:

> The nature of the relief available after jurisdiction attaches is, of course,

> different from the question whether there is jurisdiction to adjudicate the controversy. The relief in § 301 cases varies – from specific performance of the promise to arbitrate, to enforcement or annulment of an arbitration award, to an award of compensatory damages, and the like. But the breadth or narrowness of the relief which may be granted under federal law in § 301 cases is a distinct question from whether the court has jurisdiction over the parties and the subject matter. Any error in granting or designing relief "does not go to the jurisdiction of the court."

Id. at 562 (internal citations omitted).

In *Avco*, the district court did exactly what *Sullivan* says is impermissible – allowing removal of the action under federal law only to deny the relief sought on the ground that it was unavailable as a matter of federal law. Similarly, in *Caterpillar,* although the Court ultimately found that the individual employment claims at issue there were not removable because they were not based on the collective bargaining agreement, the Court went out of its way to reject the court of appeals' analysis "that a case may not be removed to the federal court on the ground that it is completely pre-empted unless the federal cause of action relied upon provides the plaintiff with a remedy." 482 U.S. at 391 n.4. The facts and analysis in the *Avco* decision, the Court held, plainly precluded such an argument.

The conclusion that the courts do not have original jurisdiction over claims under the RLA

because the RLA provides that adjustment boards have "exclusive jurisdiction" to decide "minor disputes" is also contrary to a long line of Supreme Court decisions finding that the federal courts have jurisdiction to enforce compliance with the mandatory system for "prompt and orderly settlement" of contractual disputes under the RLA. The term "minor dispute" is judicial short-hand for an entire category of disputes and obligations that may arise under an existing agreement – in contrast to "major disputes" involving efforts to negotiate new agreements. *See Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 723-24 (1945). Despite the generalization that adjustment boards have "exclusive jurisdiction over minor disputes," *Consol. Rail Corp. v. Ry. Labor Execs. Ass'n*, 491 U.S. 299, 304 (1989), the relevant principle of law, correctly stated, is that adjustment boards have exclusive jurisdiction *to interpret or apply agreements* under the RLA.[4] *See* 45 U.S.C. §§ 151a, 153(i), 184; *see also Hawaiian Airlines,* 512 U.S. at 256. Although the adjustment boards have the task of interpreting or applying agreements, the federal courts indisputably have jurisdiction "over minor disputes" to enforce compliance with the mandatory system for resolution of such disputes under the RLA.

The case law in which the Court has held that the federal courts have such jurisdiction dates back

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[4] Even the principle that adjustment boards have exclusive jurisdiction to interpret and apply RLA agreements is subject to exceptions where the grievance procedure has been repudiated by the carrier or tainted by the union's breach of its duty of fair representation. *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324 (1969).

almost seven decades. To achieve the Congressional intent that disputes over interpretation of agreements be resolved in a "prompt and orderly manner" through the adjustment boards, the Court has held that the federal courts have jurisdiction to order parties to submit a dispute to the adjustment board, *W. Airlines, Inc. v. Int'l Bhd. of Teamsters*, 480 U.S. 1301 (1987) (O'Connor, C. J.); to order an adjustment board to resolve a dispute within its jurisdiction; *California v. Taylor*, 353 U.S. 553 (1957); to order an adjustment board to resolve a dispute involving two unions in one proceeding, *Transp.-Commc'n Employees Union v. Union Pac. R.R. Co.*, 385 U.S. 157 (1966); to enforce an award made by an adjustment board issued under Title II of the RLA, *Central Airlines,* 372 U.S. at 392; to enjoin a union from exercising self-help over a dispute subject to adjustment board jurisdiction, *Bhd. of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30 (1957); to enjoin a union from striking to enforce an adjustment board decision, *Bhd. of Locomotive Eng'rs v. Louisville & Nashville R.R. Co.*, 373 U.S. 33 (1963); to determine whether a carrier's contractual interpretation is "frivolous or obviously insubstantial" for purposes of enforcing the obligation to give notice of a proposed change in agreements, *Consol. Rail Corp.*, 491 U.S. at 306-07; to enjoin a carrier from taking unilateral actions when necessary to preserve the jurisdiction of an adjustment board to decide the dispute, *Bhd. of Locomotive Eng'rs v. Missouri-Kansas-Texas R.R. Co.*, 363 U.S. 528 (1960); to determine "the validity of the contract, not its meaning," *Bhd. of R.R. Trainmen v. Howard*, 343 U.S. 768 (1952); and to restrain unions from discriminating against members in the enforcement

of rights under the adjustment board process, *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944).

As the *Andrews* decision itself demonstrates, dismissal of state court claims removed to federal court is not an extra-jurisdictional act that intrudes on the exclusive jurisdiction of adjustment boards to interpret or apply agreements but, rather, is an exercise of the court's original jurisdiction to enforce the RLA and protect the jurisdiction of the adjustment boards by requiring that such claims be submitted to an adjustment board rather than decided by a state court.

III. THE DECISION BELOW, IF ALLOWED TO STAND, WILL IRREPARABLY UNDERMINE THE RLA'S MANDATORY SYSTEM FOR RESOLUTION OF CONTRACT DISPUTES THROUGH ARBITRATION.

This Court should grant review on the question presented because the inability of carriers to remove claims based on RLA agreements from state court will significantly undermine the RLA's mandatory system for resolution of contractual disputes through arbitration before the boards of adjustment, eliminating 75 years of jurisprudence designed to ensure that contract interpretation disputes under the RLA are resolved through a uniform system of arbitration in accordance with Congressional intent.

This Court itself has explained the importance of this policy in numerous preemption cases discussed in this petition. *See Lincoln Mills*, 353 U.S. at 455-56; *Lucas Flour*, 369 U.S. at 104; *Central Airlines*, 372 U.S. at 691-92; *Andrews*, 406 U.S. at 323. Most recently, in *Lingle*, the Court stated:

> [T]he need to preserve the effectiveness of arbitration was one of the central reasons that underlay the Court's holding in *Lucas Flour*. . . . A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, . . . as well as eviscerate a central tenet of federal labor contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance. . . . Today's decision should make clear that interpretation of collective-bargaining agreements remains firmly in the arbitral realm; judges can determine questions of state law involving labor-management relations only if such questions do not require construing collective bargaining agreements.

Lingle, 486 U.S. at 411 (internal citations omitted).

Moreover, this Court has previously recognized that the reasons for exclusive application of federal law to disputes over the interpretation of labor agreements are even *stronger* under the RLA than under Section 301 because (1) the interstate nature of railroads and airlines makes application of any one state's law debatable and problematic, *see Central Airlines*, 372 U.S. at 691 n.15; (2) "the compulsory character of the administrative remedy provided by the [RLA] for disputes . . . stems not from any contractual undertaking between the parties but from the Act itself, [and] the case for insisting on resort to those remedies is if anything stronger in

cases arising under that Act than it is . . . under . . . the LMRA," *Andrews*, 406 U.S. at 323; and (3) state courts have no jurisdiction to enforce CBAs under the RLA, *Order of Railway Conductors v. Southern Railway Co.*, 339 U.S. 255 (1950), whereas state courts have concurrent jurisdiction to enforce CBAs under Section 301, *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).

The Court in *Hawaiian Airlines* considered these distinctions but concluded that it was desirable to have a consistent principle of labor law preemption. The appellate court decisions rejecting the application of *Avco* under the RLA turn this holding on its head. Indeed, the extraordinary incongruity of the lower court decisions rejecting application of the *Avco* principle under the RLA is that federal courts would remain available to enforce private agreements to arbitrate under Section 301 but would *not* be able to protect the mandatory labor arbitration process required by Congress under the RLA. This is flatly inconsistent with Congressional intent.

What the Court in *Avco* understood with regard to Section 301 – and what the court of appeals decisions rejecting application of *Avco* to the RLA overlook – is that the federal law requiring submission of labor contract disputes to arbitration is not a typical "federal defense" to a state law claim. Under Section 301 and the RLA, federal law governs *forum selection* for disputes arising under labor agreements. To have the effect that Congress intended, the federal rule on forum selection must be applied to determine the proper forum in the first instance rather than presented as a "defense" in a forum that has no jurisdiction under federal law.

Thus, while the Court has explained the basis for permitting removal under Section 301 as the "extraordinarily powerful" preemptive effect of the statute, the more direct explanation is that the normal procedural rule under which the plaintiff, as "master of his own complaint," can choose to rely purely on state law simply does not apply where federal law controls selection of the forum and law applicable to such claims. Regardless of the normal procedural rules that would apply, in this situation the RLA says the plaintiff cannot be the "master of his complaint."

If these cases cannot be removed to federal courts, the federal law requiring submission of contractual claims to an adjustment board will quickly become an historical relic. The Court already has recognized that delegating enforcement of the federal law to 50 separate states would be "fatal to the goals" of the RLA. Even if one assumes that state court judges – who generally are elected and face different pressures from their constituencies than federal court judges – will apply federal law without bias in favor of state law, the practical effect will be to invalidate the policy of uniform application of the RLA principle requiring contractual disputes to be resolved by adjustment boards. This is not an indictment of the ability of state court judges to apply federal law but the practical reality, demonstrated by multiple decisions of this Court on the issue, that drawing such lines is not as cut and dried as these courts apparently believe. *See Geddes*, 321 F.3d at 1355 (the "uniformity rationale" under Section 301 case law does not apply to the RLA "because minor disputes under the RLA must be sent to arbitration"). It would be impossible for the courts of 50 states to

apply federal law on when arbitration is the exclusive remedy, and when it is not, in a uniform manner.

Moreover, the effect of these decisions is not limited to what would typically be called "employment litigation" rather than "labor litigation." The rationale of *Geddes* also precludes removal even when the complaint *expressly* alleges violation of an RLA agreement. *See Air Line Pilots Ass'n, Int'l v. UAL Corp.*, 718 F. Supp. 2d 330 (S.D.N.Y. 2010) (holding that the district court was bound under *Sullivan* to remand action filed by ALPA in New York state court under state law seeking $44 million in damages for alleged breach of a letter of agreement between ALPA and United even though the agreement was explicitly governed by the RLA and the state-law claim was clearly preempted). If these decisions stand, and such claims cannot be removed to federal court, it is inevitable that carriers and unions will resort to state court in order to obtain some perceived procedural or substantive advantage over the adjustment board process – and some have done so already in the circuits where such claims cannot be removed. While some of these efforts will be dismissed, the expense and time consumed by litigating issues in state court creates enormous opportunity for gamesmanship – or intentional mischief – by litigants. It is also inevitable that at least some of these cases will succeed, creating precedents for yet further exceptions to the exclusivity of the adjustment boards.

Finally, this case presents an ideal vehicle for the Court to consider this important question that has divided the circuits. Because district court decisions to remand a case like this one are not reviewable by

the courts of appeals, the number of potential opportunities for the Court to review the rejection of the complete preemption doctrine as applied to the RLA is limited to one per circuit. Meanwhile, the Court may not be presented with future petitions for certiorari arising from decisions applying the complete preemption doctrine because the petition would have to be filed by an individual employee whose state-law claim was removed and dismissed on preemption grounds, and such plaintiffs often lack the resources or incentive to seek certiorari. This is the time, and this is the case, for the Court to resolve the issue.

CONCLUSION

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

Respectfully submitted,

Tom A. Jerman
Counsel of Record
Aparna B. Joshi
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939
tjerman@jonesday.com

Counsel for Petitioner

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