No. 18-579

IN THE

Supreme Court of the United States

ALASKA AIRLINES, INC.,
Petitioner,

v.

JUDY SCHURKE, ET AL.,
Respondents.

On Petition For Writ of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF ASSOCIATION OF AMERICAN RAILROADS AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Do federal courts lack authority to inquire into the nature and scope of an alleged state-law claim in determining whether resolution of the claim would involve interpretation or application of a collective bargaining agreement governed by the Railway Labor Act and thus trigger preemption?

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INTEREST OF *AMICI CURIAE*

The Association of American Railroads ("AAR") is a trade association whose membership includes freight railroads that operate about 77 percent of the rail industry's line haul mileage, produce 97 percent of its freight revenues, and employ 94 percent of all railroad employees. AAR's members also include passenger railroads that operate intercity passenger trains and provide commuter rail service. AAR frequently appears before Congress, the courts, and administrative agencies on issues of national concern to the railroad industry.*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters be-fore Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

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* In accordance with Supreme Court Rule 37.6, *amici* state that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amici*, their members, and their counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received notice of the filing of this brief in compliance with Supreme Court Rule 37.2, and each has consented in writing to the filing of this brief.

Amici and their members have a substantial interest in this case because it has the potential to dramatically affect the scope and effectiveness of federal preemption doctrines that all of the nation's railroads, airlines, and unionized employers rely upon to protect the stability of their collective bargaining agreements, and also (more broadly) to help maintain a seamless and efficient national transportation system.

SUMMARY OF ARGUMENT

This case is about preemption of state-law claims that involve the "interpretation or application" of collective bargaining agreements governed by the Railway Labor Act ("RLA"). 45 U.S.C. §§ 153(i), 184. *Amici* agree with petitioner that the Ninth Circuit's decision conflicts with the decisions of other circuits, and that the Ninth Circuit's decision is incorrect. This brief does not repeat those arguments, but instead seeks to underscore why this case is significant and worthy of the Court's attention.

To start, RLA preemption is exceptionally important for American railroads. Railroads, which operate across many states, generally depend on preemption to secure the interstate uniformity that is essential to their efficient operation. And railroads—a heavily unionized industry—particularly depend on RLA preemption to manage the tension between their extensive collective bargaining agreements and expanding state regulation of employment, by ensuring that issues raised by state-law claims involving interpretation or application of collective bargaining agreements are channeled into mandatory arbitration. Railroads also rely on RLA preemption to ensure that their highly specialized, technical agreements are interpreted and applied by expert adjudicators appointed in accordance with the Act.

RLA preemption is likewise important to the Nation's airlines. Like railroads, airlines require uniformity in the interpretation and application of collective bargaining agreements to operate efficiently across multiple states. Like railroads, they depend on RLA preemption to secure that uniformity.

Finally, RLA preemption matters to the business community as a whole. The scope of RLA preemption parallels the scope of preemption under § 301 of the Labor Management Relations Act, a provision that regulates a wide range of businesses with collective bargaining agreements. In addition, thousands of American businesses rely on railroads and airlines to transport their goods; these businesses, too, have an interest in the efficient operation of the rail and air network.

The Ninth Circuit's decision subverts these interests. Under the Ninth Circuit's rule, a federal court is effectively disabled from even conducting the RLA preemption inquiry so long as the plaintiff's pleading can be read to raise any question of state law. This approach allows a plaintiff to avoid the preemptive effect of the RLA in most, if not all, cases. The Ninth Circuit's rule therefore vitiates the important interests that RLA preemption is meant to secure, causing immediate disruption to affected businesses. This Court's review is urgently needed to protect and uphold those interests.

ARGUMENT

I. Railroads have a strong interest in RLA preemption.

The Railway Labor Act, 45 U.S.C. §§ 151–63, preempts state-law claims that involve the "interpretation or application" of railroad (and airline) collective bargaining agreements. 45 U.S.C. §§ 153(i), 184. The scope and effectiveness of this preemption provision are exceptionally important for American railroads.

A. Railroads have a strong interest in preemption because it promotes uniformity.

The very nature of the railroad industry "manifestly call[s] for uniformity" in regulation in general and in the interpretation and application of collective bargaining agreements in particular. *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 381 (1969). To start, "varied state regulation" of railroads leads to "confusion and difficulty." *S. Pac. Co. v. Arizona*, 325 U.S. 761, 774 (1945). Railroads, after all, are interstate businesses; the largest rail networks cross dozens of states. If each state—or, for that matter, each county or city—could interpret or embellish a railroad's collective bargaining agreement in its own way, railroads would have to apply different rules to different trains within a unified national system. Worse yet, because members of a train's crew often hail from different states, a railroad may have to apply different rules to different employees on the same train. And even worse than that, because a train may travel through different states on the same journey, a railroad may have to apply different rules to the very same employee at different times. For instance, a train traveling along one of the oldest transcontinental routes would have to apply one set of rules when getting underway in Omaha, Nebraska; another when crossing the Platte River valley in Wyoming; a third when pulling into Promontory Summit, Utah; and a fourth when arriving in Oakland, California. That is an absurd result.

Separately, lack of uniformity also undermines harmonious labor relations. "[N]othing is a greater spur to conflicts, and eventually conflicts resulting in

strikes, than different pay for the same work or unfair differentials." *Penn. R.R. Co. v. Day*, 360 U.S. 548, 553 (1959). "[D]ifferentiations for workers in the same craft … have always been among the most fertile provocations to friction, strife, and strike in the railroad world." *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 759 (1945) (Frankfurter, J., dissenting) (*Burley I*). "To permit juries and courts to make varying findings and give varying constructions to an agreement" introduces "dislocating differentiations" and "multipl[ies] these seeds of strife." *Id.*

Congress has acknowledged the importance of uniformity in the RLA. A "central purpose" of the Act is to "secure uniformity" in the interpretation and application of collective bargaining agreements. *Day*, 360 U.S. at 553. To that end, railroad employees (unlike their counterparts in many other industries) are required to organize on a nationwide basis, rather than locality-by-locality. *See, e.g., Summit Airlines, Inc. v. Teamsters*, 628 F.2d 787, 795 (2d Cir. 1980); *In re Aircraft Serv. Int'l Grp.*, 31 NMB 508, 515 (2004). The Act also establishes a single, unified system of arbitration for the "centralized determination" of questions relating to a railroad's collective bargaining agreement. *Day*, 360 U.S. at 553; *see* 45 U.S.C. § 153; *see also* 45 U.S.C. § 151(a) (providing for "the prompt and orderly settlement of all disputes" involving collective bargaining agreements). Railroads rely on federal preemption to maintain this uniformity.

B. Railroads have a strong interest in preemption because they rely on collective-bargaining agreements to a greater extent than many other industries.

For many years, railroads and other industries shared a common characteristic: Their workers relied on collective bargaining to establish workplace protections. The Railway Labor Act of 1926 guaranteed railway employees "the right to organize and bargain collectively through representatives of their own choosing." 45 U.S.C. § 152, Fourth. The National Labor Relations Act, enacted in 1935, likewise guaranteed workers "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. To be sure, the RLA was tailored to "the special situation in the railroad industry, where strong unions and management had become used to dealing with each other," while the National Labor Relations Act addressed "businesses of every size and description, many with a history of strong anti-union bias and with ample opportunity for strong-arm tactics." *Ruby v. American Airlines, Inc.*, 323 F.2d 248, 256 (2d Cir. 1963) (Friendly, J.). Still, the enactment of these statutes "usher[ed] in an era of collective rights for workers" in both the railroad industry and elsewhere. Carrie Menkel-Meadow, *The NLRA's Legacy: Collective or Individual Dispute Resolution or Not?*, 26 ABA J. Lab. & Emp. L. 249, 252 (2011).

During this era of collective workplace rights, states generally refrained from imposing their own

substantive work rules. It was thought that "collective bargaining would render individual employment rights superfluous by adequately protecting whatever rights workers believed warranted negotiation." Richard A. Bales, *A New Direction for American Labor Law: Individual Autonomy and The Compulsory Arbitration of Individual Employment Rights*, 30 Hous. L. Rev. 1863, 1874 (1994). "Externally-imposed terms of employment were anathematized because they distorted the bargaining process and destroyed the vision of industrial autonomy." *Id.* at 1875. The laws that States did enact were "aimed at the margins of economic life, setting only minimum standards for the wage contract, and not otherwise interfering with its terms." Katherine Van Wezel Stone, *The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and The New Deal Collective Bargaining System*, 59 U. Chi. L. Rev. 575, 591 (1992).

Starting in the 1950s, however, the paths of railroads and other industries began to diverge. Private-sector unions in general went into "steady decline" starting in the mid-1950s. Richard A. Bales, *The Discord Between Collective Bargaining and Individual Employment Rights: Theoretical Origins and a Proposed Reconciliation*, 77 B.U. L. Rev. 687, 696 (1997). "In the 1950s, unions represented one-third of all waged and salaried workers." Marion Crain & Ken Matheny, *Labor's Identity Crisis*, 89 Cal. L. Rev. 1767, 1768 n.3 (2001). In the private sector, unionization is now below 7 percent. *See* Bureau of Labor Statistics News Release, "Union Members—2017" (Jan. 19, 2018), https://www.bls.gov/news.release/pdf/union2.pdf. At the same time, by contrast, railroad un-

ions have remained as strong as ever. Among the railroads that are members of *amicus* American Association of Railroads, the percentage of eligible workers represented by a union is almost 100 percent.

"As collective labor rights have declined, … states have sought to compensate by strengthening individual employee rights." Stone, 59 U. Chi. L. Rev. at 635. For example, states have increasingly protected workers "against wrongful dismissal," granted "legislative protection for whistle-blowers," regulated "the administration of employment-related lie detector tests," restricted "the use of drug testing in the workplace," and safeguarded employees "in the event of corporate takeovers." *Id.* at 592. So too, they have passed "[a] multitude of state leave laws," regulating everything from sick leave to family leave to vacation. Marianne DelPo Kulow, *Legislating a Family-Friendly Workplace: Should It Be Done in The United States?*, 7 N.W. J.L. & Soc. Pol'y 88, 95 (2012). The upshot is a "fundamental transition in labor relations" to a "model [that] focuses on universal, externally-imposed legislative and judicial work rules as opposed to the collective power of workers to protect themselves." Bales, 30 Hous. L. Rev. at 1867, 1874.

States have applied these new rules across the board—even to railroads, where collective bargaining is still going strong, and where there is no need to "compensate" for the "declin[e]" of "collective labor rights." Stone, 59 U. Chi. L. Rev. at 635. These state-imposed terms threaten to distort the bargaining process that the RLA enshrines and that American railroads have relied on for almost a century. From the perspective of management, state regulation forces the railroad to incur burdens even when a strong and

active union has declined to bargain for the kinds of protections imposed by the states, or has traded those protections in return for other benefits during the give-and-take of negotiations. And from the perspective of labor, state regulation may make state-ordained workplace benefits compulsory, depriving union negotiators of the opportunity to trade those benefits for other protections that the railroad workers may value more highly.

As state regulation grows, vigorous enforcement of RLA preemption is increasingly important to the industry. As a practical matter, RLA preemption applies to a wide range of claims, nominally pled under state law, that attempt to evade or modify bargained-for terms in a railroad's collective bargaining agreement. This includes, for example, claims for breach of an implied covenant of good faith, wrongful discharge, defamation, infliction of emotional distress, negligent misrepresentation, interference with contractual relations, state law wage and hour violations, meal and rest breaks, false arrest, invasion of privacy, and many others.[1]

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[1] *See, e.g., Ertle v. Continental Airlines*, 136 F.3d 690 (10th Cir. 1998) (claim of breach of implied covenant); *Monroe v. Missouri Pac. R.R.*, 115 F.3d 514, 518-19 (7th Cir. 1997) (wrongful discharge); *Carmack v. Amtrak*, 486 F. Supp. 2d 58, 77 (D. Mass. 2007) (defamation); *Saridakis v. United Airlines, Inc.*, 166 F.3d 1272, 1278–79 (9th Cir. 1999) (emotional distress); *Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 322–23 (3d Cir. 2004) (negligent misrepresentation); *Griffin v. Air Line Pilots Ass'n*, 32 F.3d 1079 (7th Cir. 1994) (interference with contractual relations); *Adames v. Executive Airlines Inc.*, 258 F.3d 7 (1st Cir. 2001) (wage and hour); *Blackwell v. SkyWest Airlines*, No. 06cv0307, 2008 U.S. Dist. LEXIS 97955 at *38–42 (S.D. Cal. Dec. 3, 2008) (meal and

Cases like *Evermann v. BNSF Ry.*, 608 F.3d 364 (8th Cir. 2010), show the practical impact of RLA preemption. A railroad employee brought a claim under a Nebraska state law that prohibits employers from withholding any pay that an employee would have otherwise earned while serving jury duty. The employee argued that the railroad had failed to pay "productivity fund" shares, which, he said, was compensation that he otherwise would have earned but for his jury service. The Eighth Circuit acknowledged that the plaintiff sought "to enforce an independent *right* to payments under state law," but still held that the claim was preempted because "the specific *claim* for reimbursement asserted in his complaint 'depends on an interpretation of the [collective bargaining agreement].'" *Id.* at 368 (emphasis in original) (quoting *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 261 (1994)). In this fashion, RLA preemption prevents the application of all-purpose state work regulations that fail to account for "[t]he special situation in the railroad industry." *Ruby*, 323 F.2d at 256.

To be sure, RLA preemption does not mean that railroads are wholly exempt from state regulation. For the most part, railroads and airlines must comply with both their agreements and state laws. But RLA preemption reduces the friction between the two regimes by ensuring that any issues raised by the state-law claim that implicate interpretation or application of labor agreements will be resolved by arbitration,

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rest breaks); *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000) (false arrest); *Aikens v. Norfolk S. Corp.*, 149 LRRM 2120 (N.D. Ala. 1994) (invasion of privacy).

the exclusive and mandatory forum for resolving such disputes. *Norris*, 512 U.S. at 252.

C. Railroads have a strong interest in preemption because the interpretation of railroad collective bargaining agreements requires special expertise.

"[P]rovisions in railroad collective bargaining agreements are of a specialized technical nature calling for specialized technical knowledge in ascertaining their meaning and application." *Day*, 360 U.S. at 553. "The railroad world is like a state within a state. Its population … has its own customs and its own vocabulary, and lives according to rules of its own making." *Whitehouse v. Illinois Cent. R. Co.*, 349 U.S. 366, 371 (1955) (quoting Lloyd K. Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency*, 46 Yale L. J. 567, 568–69 (1937)). Its collective bargaining agreements are "inevitably couched in words or phrases reflecting the habits, usage and understanding of the railroad industry." *Burley I*, 325 U.S. at 759 (Frankfurter, J., dissenting).

In addition, railroad collective bargaining agreements turn on the parties' course of performance to an extent that most contracts do not. An agreement under the RLA remains in effect until the parties amend it; unlike a typical collective bargaining agreement, it typically does not automatically terminate on a fixed date. *See* 45 U.S.C. § 156. As a result, collective bargaining agreements in the railroad industry often remain in place—and acquire settled meanings—over the course of decades. Properly interpreting or applying these rules requires familiarity with those decades of practice and with the evolution of the industry.

Congress tailored its legislation to the special needs and characteristics of the railroad industry. It set up a "specialized agency," the Adjustment Board, that is "acquainted with established procedures, customs and usages in the railway labor world." *Elgin, J. & E. Ry. Co. v. Burley*, 327 U.S. 661, 664 (1946) (*Burley II*). Railroads depend on preemption under the Act to ensure that railroad arbitrators retain the authority to interpret and apply collective bargaining agreements in practice and not just in theory. By reducing the scope of this preemption, courts encourage litigants "to bypass the Board specially constituted for hearing railroad disputes" and to turn to "judges and juries" who lack the "specialized technical knowledge" necessary to apply "railroad collective bargaining agreements." *Day*, 360 U.S. at 553.

II. The business community more broadly has a strong interest in RLA preemption.

Businesses apart from railroads likewise have an interest in the scope of RLA preemption.

First, and most obviously, the scope of RLA preemption also affects airlines. Congress extended the RLA to cover the airline industry in 1936. *See* 45 U.S.C. § 181. As a result, the preemption framework that applies to railroads also applies to airlines. *See, e.g.*, *Norris*, 512 U.S. at 252–53.

Airlines share the railroad industry's interest in the uniform interpretation and application of collective bargaining agreements. Airlines are "in their nature national," and "imperatively deman[d] a single uniform rule, operating equally" throughout the United States. *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 625 (1973). "Local exactions and

barriers to free transit in the air would neutralize its indifference to space and its conquest of time." *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring). An airline could hardly operate efficiently if the collective bargaining agreement governing the employment of a plane's crew meant one thing during takeoff, another during flight, and a third during landing. In short, just as the uniformity secured by RLA preemption is vital to railroads, so too is it vital to airlines.

Airlines also share the railroad industry's interest in ensuring that collective bargaining agreements are interpreted and applied by expert adjudicators. "In the airline industry, … a minor dispute is resolved by an adjustment board established by the airline and the unions." *Consol. Rail Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299, 304 n.4 (1989) (citing 45 U.S.C. § 184). The adjudicators on these boards are "experts in the common law of the particular industry." *Id.* at 310. This "system of governmentally compelled arbitration" is, moreover, "essential to industrial peace" and to the "stability and continuity [of] interstate air commerce." *Machinists v. Cent. Airlines, Inc.*, 372 U.S. 682, 691 n.15 (1963). RLA preemption helps ensure that cases involving the interpretation and application of collective bargaining agreements remain in this "system of governmentally compelled arbitration." *Id.*

Second, other businesses that have collective bargaining agreements and that are accordingly covered by § 301 of the Labor Management Relations Act also have an interest in the scope of RLA preemption. Section 301 of the LMRA "authorizes federal courts to fashion a body of federal law for the enforcement of …

collective bargaining agreements." *Norris*, 512 U.S. at 260 & nn. 7, 9. In light of "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 pre-emption," this Court has frequently applied "virtually identical" preemption standards in RLA and LMRA cases. *Id.* at 260, 263 n.9. As a result, the framework, rules, and standards that govern RLA preemption have a heavy influence on preemption doctrine applicable to all businesses that have collective bargaining agreements.

Uniformity matters in cases under section 301 of the LMRA, just as it does in cases under the RLA. "The subject matter of § 301(a) is peculiarly one that calls for uniform law." *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). That is so because "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Id.* After all, if "neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract." *Id.* In addition, "the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes." *Id.* at 104. The "principle of § 301 preemption" promotes these "federal labor-law principles" by ensuring that the meaning of collective bargaining

agreements remains "uniform throughout the Nation." *Lingle v. Norge Div.*, 486 U.S. 399, 406 (1988).

Finally, the business community—and, for that matter, the general public—has a strong interest in the efficient operation of the railroad and airline systems. Every day, the United States rail network "delivers an average of 5 million tons of goods." International Trade Administration, Logistics and Transportation Spotlight: The Logistics and Transportation Industry of the United States, https://www.selectusa.gov/logistics-and-transportation-industry-united-states. Every year, "freight rail moves more than 70 percent of the nation's coal, about 58 percent of its raw metal ores, 1.6 million carloads of wheat, corn, and other agricultural products, and 13.7 million intermodal containers and trailers that transport consumer goods." *Id.* Similarly, "air and express delivery services" constitute an "$87 billion industry in the United States"—a figure that is "grow[ing]" because of "the expansion of electronic commerce." *Id.* A disruption in the railroad or airline industry thus inevitably has ripple effects through American business as a whole. Indeed, in the RLA itself, Congress declared that breakdowns in labor-management relations in the transportation industry have:

> the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of

> employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

29 U.S.C. § 151.

III. The decision below threatens the interests that preemption serves to protect.

The RLA preempts state-law claims that involve "the interpretation or application of agreements [under the Act]." 45 U.S.C. §§ 153(i), 184. Yet the Ninth Circuit held that a claim is preempted only if *the plaintiff's theory of recovery* involves interpretation or application of a collective bargaining agreement, not if a *state law* does so. In the Ninth Circuit's view, so long as "*a plaintiff contends* that an employer's actions violated a state-law obligation, wholly independent of its obligations under the [collective bargaining agreement], there is no preemption." Pet. App. 23a. In addition, the Ninth Circuit's new rule would prohibit federal courts from even reaching the issue of RLA preemption so long as any question of state law is intertwined with the preemption test. In such cases, the Ninth Circuit says, the question must be decided by the state courts. Pet. App. 38a.

The Ninth Circuit's approach threatens each of the interests that RLA preemption serves to promote. First, the Ninth Circuit's rule undermines uniformity in the interpretation and application of collective-bargaining agreements. The Ninth Circuit's approach would allow courts to decide state-law claims that require the interpretation or application of collective-bargaining agreements, simply because the plaintiff's

pleading disclaims any such an interpretation or application. Different judges in different states could then interpret or apply the same collective-bargaining agreement in different ways—defeating one of the central purposes of RLA preemption (and LMRA preemption). Even worse, the interpretation and application of the same agreement could vary, not just state to state, but plaintiff to plaintiff and pleading to pleading. Two workers from the same state alleging the same facts and raising the same state-law claim could nonetheless secure two different results, simply because they frame the relationship between state law and their contracts in two different ways. This kind of inconsistency immediately disrupts the efficient operation of railroads, the efficient operation of airlines, and the bargaining processes of businesses covered by § 301 of the LMRA.

Second, the Ninth Circuit's approach undercuts employers' ability to use preemption to manage the tension between collective bargaining and state regulation. As Judge Ikuta explained, the Ninth Circuit's approach allows a plaintiff to "avoid the RLA's preemptive effect based on artful pleading." Pet. App. 72a. "[A] gifted lawyer can readily reformulate a minor dispute as a state cause of action"—and, by doing so, eliminate the employer's ability to raise a preemption defense. Pet. App. 73a. In this Court's words, "there is a danger in leaving the characterization of the dispute solely in the hands of one party"; "protection of the proper functioning of the statutory scheme requires the court to substitute its characterization for that of the claimant." *Consol. Rail Corp.*, 491 U.S. at 306.

Third, the Ninth Circuit's rule reroutes railroad and airline cases from arbitrators appointed specifically on account of their experience and expertise. As Judge Ikuta explained, the Ninth Circuit's approach would cause the RLA's dispute-resolution mechanism "to lose most of its effectiveness," enabling a litigant "to sidestep available grievance procedures"—Congress' preferred method of resolving railroad disputes—through clever pleading." Pet. App. 72a–73a. This is hardly a speculative fear; petitioner has shown that other plaintiffs have already started following this roadmap for avoiding RLA and LMRA procedures. *See* Pet. 29–31.

* * *

In sum, the scope of preemption under the RLA is exceptionally important to railroads in particular and the business community in general. Preemption protects railroads, airlines, and other businesses from state regulation that would alter or intrude into the meaning of collective bargaining agreements, guarantees carriers the uniformity that is essential to their operations, and ensures that the interpretation and application of technical agreements is reserved to adjudicators with the appropriate expertise. The decision below improperly narrows the scope of preemption and threatens these vital objectives—resulting in immediate disruption in affected industries. The question presented urgently calls out for this Court's review.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted,

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