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SUPREME COURT OF TEXAS
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NO. 22-0631

IN THE SUPREME COURT OF TEXAS

THE BOEING COMPANY,

Petitioner,

v.

SOUTHWEST AIRLINES PILOTS ASSOCIATION (SWAPA) ON BEHALF OF ITSELF AND ITS MEMBERS,

Respondent,

On Petition for Review from the Fifth Court of Appeals, Dallas, Texas
Cause No. 05-20-01067-CV

BRIEF OF THE CHAMBER OF COMMERCE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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October 26, 2022

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INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 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 before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

As one of the largest representatives of employers in the United States, the Chamber has a vital interest in ensuring that rules and procedures for interpreting collective bargaining agreements ("CBAs") are uniform across the nation. To the Chamber's knowledge, the decision below is the first in the nation that would allow a state court to interpret a CBA between an airline and its employees, jeopardizing the uniformity that the federal Railway Labor Act ("RLA") was enacted to ensure. If the decision is allowed to stand, it would jeopardize the norms around resolution of disputes over CBAs, make Texas a magnet for litigation seeking to evade Congress's carefully crafted scheme for interpreting such agreements, and ultimately harm Texas businesses. The Chamber writes to urge this Court to grant review to address the important issues raised in the petition.

No counsel for a party in this case authored this brief in whole or in part. No person or entity—other than amicus, its members, or its counsel—made any monetary contributions intended for the preparation or submission of this brief.

BACKGROUND

An important purpose of Congress in enacting the RLA was to ensure uniformity in the interpretation of CBAs and to prevent parties from being subject to inconsistent obligations based on different courts' interpretations of the same agreement. *See Int'l Ass'n of Machinists v. Cent. Airlines, Inc.*, 372 U.S. 682, 691–92 (1963) ("The needs of the subject matter manifestly call for uniformity."). In this lawsuit, Respondent Southwest Airlines Pilots Association ("SWAPA") asks Texas courts to become the only courts in the nation to interpret CBAs between airlines and their employees.

The theory underlying SWAPA's claims against The Boeing Company ("Boeing") is that Boeing made misrepresentations that induced SWAPA's members to agree to fly the 737 MAX in their 2016 CBA. But the success of that theory turns on whether the pilots were, in fact, obligated to fly the 737 MAX under an earlier CBA entered into in 2006. As the petition for review makes clear, for SWAPA's claims to proceed, a Texas state court would need to interpret the 2006 CBA—an action inconsistent with the RLA and its express purposes.

Southwest Airlines, the party with which SWAPA actually agreed to the CBAs, is not a party in this lawsuit. Southwest Airlines also alleged that it was damaged by issues related to the 737 MAX fleet being grounded, representing that

it suffered losses of $435 million from March through the end of September 2019.[1] Southwest then reached a confidential settlement with Boeing and, in December 2019, announced that approximately $125 million of the settlement would be shared with its employees, which would include its pilots.[2]

But despite the pilots receiving compensation through Southwest's settlement with Boeing, SWAPA nonetheless continued to pursue the underlying lawsuit, suing Boeing directly.[3] SWAPA's statement on the settlement acknowledged that its suit seeks damages "incurred as a result of the grounding of the 737 MAX,"[4] for which it was already receiving compensation in the form of profit-sharing from Southwest's settlement with Boeing.

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[1] *Southwest Airlines reaches confidential settlement with Boeing for some of its 737 Max losses*, Aratani, L., THE WASHINGTON POST (Dec. 13, 2019) available at https://www.washingtonpost.com/transportation/2019/12/13/southwest-airlines-reaches-confidential-settlement-with-boeing-some-its-max-losses/ (last visited Oct. 26, 2022).

[2] *Id.*

[3] *Southwest reaches partial settlement with Boeing over projected 737 MAX damages*, Rucinski, T. & Shepardson, D., REUTERS (Dec. 12, 2019) available at https://www.reuters.com/article/us-southwest-boeing-compensation/southwest-reaches-partial-settlement-with-boeing-over-projected-737-max-damages-idUSKBN1YG19U (last visited Oct. 26, 2022).

[4] *Southwest Airlines will give employees $125 million from Boeing 737 Max settlement*, Arnold, K. THE DALLAS MORNING NEWS (Dec. 12, 2019) https://www.dallasnews.com/business/airlines/2019/12/12/southwest-airlines-reaches-deal-with-boeing-over-737-max-and-will-give-125-million-to-employees/ (last visited Oct. 26, 2022).

Boeing removed the lawsuit to federal court on the grounds that the RLA completely preempted the lawsuit. The federal district court remanded because it held there was not complete preemption giving rise to federal jurisdiction. *Sw. Airlines Pilots Ass'n v. Boeing Co.*, — F. Supp. 3d —, 2020 WL 2549748, at *5 (N.D. Tex. Apr. 29, 2020).[5] In reaching that conclusion, the federal district court noted that SWAPA's claims would require the court "to determine whether the 2006 CBA required SWAPA pilots to fly the 737 MAX," and so SWAPA's claims "will require interpretation of the CBA." *Id.* at *4–5.

On remand in state court, Boeing filed a plea to jurisdiction asserting: (1) SWAPA did not have standing to pursue the claims of its members; and (2) SWAPA's state-law claims are preempted by the RLA. The trial court granted the plea and dismissed SWAPA's claims. SWAPA then appealed, and the Fifth Court of Appeals reversed, (1) suggesting that SWAPA might have standing; and (2) holding that the RLA is not implicated because it does not apply to disputes between an aircraft manufacturer and a pilot union.

[5] Although the federal district court determined there was not "complete preemption" transforming a state common law claim into a federal claim, the workings of ordinary preemption (such as conflict preemption) still apply in state court. 2020 WL 2549748, at *3.

Amicus urges this Court to grant review to address the RLA preemption issue and reject the Court of Appeals's interpretation, which would jeopardize Congress's protections for the uniform interpretation of CBAs nationwide.

ARGUMENT

I. This Court Should Grant Review to Hold that Ordinary Principles of Conflict Preemption Bar SWAPA's Lawsuit.

This case presents an important question that touches on core issues of federal sovereignty. The Fifth Court of Appeals's holding threatens Congress's decision to "minimiz[e] interruptions in the Nation's transportation services" through the RLA. *Cent. Airlines*, 372 U.S. at 687. And the holding will impact not only the transportation industry but the entire body of labor-management relations law. This Court should grant review to ensure stability in the law, uphold the important federal interests at play, and preserve the interests of employers and employees alike in clarity regarding the meaning of their CBAs.

The Fifth Court of Appeals adopted an erroneously narrow view of RLA preemption. Although the RLA contains certain jurisdiction-stripping provisions that require "minor disputes" between airlines and their employees to be resolved by adjustment boards and not the state courts, the preemptive reach of the RLA extends beyond the specific jurisdiction of the adjustment board. Allowing this lawsuit to proceed would interfere with the express purpose of the RLA, which is to maintain uniformity in the interpretation of CBAs, and conflict with the RLA's full preemptive reach.

"A fundamental principle of the Constitution is that Congress has the power to preempt state law." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372

(2000). Even where Congress has not expressly adopted a provision preempting state law or occupied the field, "state law is naturally preempted to the extent of any conflict with a federal statute." *Id.* With federal labor law, "the question whether a certain state action is pre-empted by federal law is one of congressional intent." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985).

Under conflict preemption principles, state law is preempted when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399–400 (2012). These purposes and objectives are based on the text of the federal statute: Determining whether state law would stand as a sufficient obstacle is "informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby*, 530 U.S. at 373. In considering "the entire scheme of the statute," the courts must bear in mind that what "must be implied is of no less force than that which is expressed." *Id.* "If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress." *Id.*

"Congress'[s] purpose in passing the RLA was to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). Congress

expressly set forth that one purpose of the RLA was "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 (emphasis added).

Through the RLA, Congress intended to "minimiz[e] interruptions in the Nation's transportation services" and resolve labor disputes. *Cent. Airlines*, 372 U.S. at 687. If CBAs "are to serve this function under [the RLA], their validity, interpretation, and enforceability cannot be left to the laws of the many States." *Id.* at 961. "[I]t 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." *Id.* at 961-62. "The needs of the subject matter manifestly call for uniformity." *Id.* at 692 (citing *Lucas Flour Co.*, 369 U.S. at 103); *see also id.* n.16 ("The lack of uniformity created by dividing everything by 50 . . . would multiply the burden [on commerce] by a substantial factor and aggravate the problem to an intolerable degree.").

In discussing the Labor Management Relations Act ("LMRA"), the Supreme Court has explained why such uniformity is necessary and why state law cannot be allowed to interfere with Congress's intentions:

> The 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. Because 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. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 404 n.3 (1988) (quoting *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962)).[6]

With respect to CBAs subject to the RLA, like those subject to the LMRA, if "a State . . . create[d] a remedy that, although nonnegotiable, nonetheless turned on an interpretation of a collective-bargaining agreement for its application," then "[s]uch a remedy would be pre-empted." *Lingle*, 486 U.S. at 407 n.7; *Allis-Chalmers Corp.*, 471 U.S. at 210–11, 217–18; *see also Norris*, 512 U.S. at 263. 263 n.9 (concluding "that *Lingle* provides an appropriate framework for addressing pre-emption under the RLA").

[6] Although these are Section 301 LMRA cases, because the RLA and LMRA Section 301 preemption standards are "virtually identical" in purpose and function, they are, for the most part, analyzed under a single test and a single, cohesive body of case law. *Norris*, 512 U.S. at 260, 262–63 & n.9 (1994) (noting "the common purposes of the two statutes" and "the parallel development of RLA and LMRA pre-emption law").

The petition for review raises an important question regarding whether the Fifth Court of Appeals correctly applied conflict preemption in determining that the suit could proceed. The Fifth Court of Appeals broke new ground by limiting the RLA's preemptive effect to those cases between a union and a carrier that must go before an adjustment board and by holding that preemption does not apply to any other dispute that "turns on the interpretation or application of a CBA." *Sw. Airlines Pilots Ass'n v. Boeing Co.*, No. 05-20-01067-CV, 2022 WL 951027, at *13 (Tex. App.—Dallas Mar. 30, 2022).

That decision by the Fifth Court of Appeals is unprecedented and violates ordinary rules of conflict preemption. There is no question that, as the Fifth Court of Appeals recognized, where the adjustment board has jurisdiction (over a minor dispute between a union and a carrier), a state claim is preempted. *See, e.g.*, *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 273 (2d Cir. 2005) ("[S]tate-law claims that are disguised minor disputes are therefore preempted by the RLA."). But the Fifth Court of Appeals did not consider whether interpretation of a CBA outside the RLA's adjudicatory scheme, even in a claim that could not be brought before an arbitral panel, conflicts with the scheme established by Congress. *Cf. Lingle*, 486 U.S. at 407 n.7 (even "if a law applied to all state workers but required, at least in certain instances, collective-bargaining agreement interpretation, the application of the law in those instances would be preempted").

Instead of undertaking an ordinary conflict-preemption analysis, the court focused solely on whether Boeing was a "common carrier by air" or sufficiently controlled by one for purposes of the RLA's adjudicatory scheme. *Sw. Airlines Pilots Ass'n,* 2022 WL 951027, at *11. Because the parties to this matter did not fall within that adjudicatory scheme, the court refused to consider any broader preemptive effect, as it believed "[s]uch a suit does not implicate the statutory purpose of facilitating stability in labor-management relations, nor does it have the potential to affect national commerce." *Id.* at *12–13. But by focusing solely on the reach of the RLA adjustment boards' jurisdiction and not on whether state claims here would be an obstacle to Congress's expressed purpose, the court below erroneously truncated its analysis.

To *Amicus*'s knowledge, no other state court has allowed an RLA suit to proceed where it requires *interpreting* CBA terms. Some courts have allowed state-law claims to proceed when they merely reference undisputed terms of the CBA, as "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 v. Bradshaw*, 512 U.S. 107, 124 (1994)*; see also Alaska Airlines Inc. v. Schurke*, 898 F.3d 904, 916 (9th Cir. 2018) (en banc). But courts have also held that where the interpretation of the CBA "is made necessary," even if the dispute does not involve a labor-management relations dispute but instead discrimination claims by

the individual employee, such claims are preempted. *See Reece v. Houston Lighting & Power Co.*, 79 F.3d 485, 487 (5th Cir. 1996); *see also Lingle*, 486 U.S. at 407 n.7. In other words, state courts lack jurisdiction to adjudicate claims that turn on interpretation of a CBA. *Cf. Gorman v. Life Ins. Co. of N. Am.*, 811 S.W.2d 542, 545 (Tex. 1991) (explaining that the preemptive effect of federal statutes may deprive state courts of jurisdiction); *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 391 (1986) (same).

The federal district court has already determined that SWAPA's claims do not merely reference a CBA but require interpretation of the CBA. They are preempted as a result. Allowing the trial court to make a definitive interpretation of the CBA here would infringe upon the authority of the adjustment board in other cases, leading to potentially inconsistent interpretations or undue influence upon the adjustment board to avoid such inconsistent interpretations. The Fifth Court of Appeals's decision therefore sets a dangerous precedent that Congress intended to prevent: "[t]he possibility that individual contract terms might have different meanings under state and federal law [which] would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Lingle*, 486 U.S. at 404 n.3; *Lucas Flour Co.*, 369 U.S. at 103–04. No matter how the dispute that gave rise to a potentially conflicting interpretation came about, allowing the state court to interpose itself would disrupt the statutory scheme.

Indeed, the potential for inconsistent interpretations of a CBA is only heightened by the absence of the employer from this suit. Because SWAPA has sued only Boeing, a non-party to the CBA, it is asking for a state court to interpret its CBA in the absence of the other party to the contract. That poses risks not only of an incomplete presentation of the issues, but also difficult questions about the effect of the interpretation on the employer going forward. And it would certainly frustrate Congress's purpose in adopting the RLA. *Crosby*, 530 U.S. at 373. SWAPA's claims must yield.

II. If The Decision Stands, Texas Would Stand as an Outlier and Risks Creating Inconsistent Obligations for Both Employers and Employees Under CBAs.

The decision below would make Texas an outlier in its interpretation of the RLA. SWAPA and the Fifth Court of Appeals have not identified a single other case that has been allowed to proceed in state court where it turned on interpreting a CBA subject to the RLA. The lower court's innovation should not be countenanced in Texas or elsewhere. Employer and employees alike depend on having a clear understanding of their respective rights and obligations.

The RLA plays a critical role in ensuring the health of our national economy by promoting stability in the nation's air and rail labor forces and "minimizing interruptions in the . . . transportation service." *Cent. Airlines*, 372 U.S. at 687. The practical consequences are significant: The recent threat of a railway shutdown by

striking labor unions was estimated to potentially cost $2 billion per day to the nation's economy.[7]

Nor will the holding be confined to CBAs governed by the RLA. Preemption under the LMRA, which governs a broader swath of CBAs, is generally interpreted in lockstep with the RLA, and courts treat the two statutes as giving rise to a cohesive body of case law. *See Norris*, 512 U.S. at 260, 262–63 & n.9 (1994). This ruling opens the door to all lawyers forum shopping for a different interpretation of a CBA than the one they could obtain through the processes established by Congress.

If this Court allows this precedent to stay in place, nothing prevents courts in other jurisdictions from adopting their own interpretations of CBAs. Soon, rather than CBAs being exclusively interpreted through the RLA's or LMRA's mechanisms, state courts across the country, not only in Texas but also in California and New York, will get in the game. The risk of different jurisdictions offering conflicting interpretations is only compounded by different jurisdictions having vastly different public policy views of employer–employee relationships.

Chaos would reign for both employers and employees—the very scenario the RLA and the LMRA were designed to avoid. In the same way that federal law

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[7] *Deadline to avoid a national rail strike which could cost economy $2 billion a day is near*, LaRocca, L, CNBC (Sept. 8, 2022) available at https://www.cnbc.com/2022/09/08/deadline-for-rail-strike-which-could-cost-2-billion-a-day-nears.html (last visited Oct. 26, 2022).

should be uniform across the country, a CBA between a national employer and its employees—which forms the "law of the shop," *e.g.*, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984)—should be uniform across the country and not subject to varying interpretations from state to state.

Under the decision below, over 80 employers in Texas[8] with CBAs are now subject to a risk they could have never anticipated when they engaged in the collective bargaining process—the prospect of disparate state interpretations of their CBAs. And this all could occur in a dispute between their employees and a third party, where the employer is not even involved in the litigation. This uncertainty calls out for this Court to grant the petition and respect the uniformity that Congress intended in enacting the RLA.

[8] The federal Department of Labor has an online database of CBAs on file that is searchable by geography. A search for "TX" yields 82 results. Available at https://olmsapps.dol.gov/olpdr/?&_ga=2.128309320.559407878.1666123766-235905118.1666123766#CBA%20Search/CBA%20Search/ (last visited Oct. 26, 2022).

CONCLUSION & PRAYER FOR RELIEF

This Court should grant review to ensure Congress's purposes in enacting the RLA are upheld and to prevent Texas from becoming a jurisprudential outlier that upsets Congress's carefully crafted scheme.

Dated: October 27, 2022

Respectfully submitted,

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