NO. 10-1395

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the Seventh Circuit correct in holding that the Railway Labor Act does not divest state courts of jurisdiction over retaliatory-discharge claims under the Illinois Workers' Compensation Act?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

The Seventh Circuit below held that the Railway Labor Act (RLA) "does not completely preempt retaliatory-discharge suits," and thus that the Illinois state courts have jurisdiction to decide respondent Constant Hughes's claim under the Illinois Workers' Compensation Act. Pet. App. 7a-8a. Petitioner United Airlines argues that the Seventh Circuit's decision conflicts with the decisions of other circuits holding similar claims to be completely preempted. Had United made that argument two decades ago, it would have had a point. As the Seventh Circuit recognized, however, this Court resolved the division among the circuits in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), and *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994). Pet. App. 4a-5a. Together, *Lingle* and *Hawaiian Airlines* "pull[ed] the rug out from under" those cases holding that the RLA completely preempts retaliatory-discharge claims. *Id.* at 4a. There is no disagreement among the circuits on that point. To the contrary, every court of appeals to address the issue following *Lingle* and *Hawaiian Airlines* has held that state retaliatory-discharge claims are not completely preempted by the RLA.

In the absence of a split on the narrow issue decided by the Seventh Circuit, United attempts to draw the decision into a larger question about the scope of complete preemption under the RLA. United points to recent decisions that—relying on *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003)—have held that preemption under the RLA is only of the ordinary, rather than complete, variety. These cases reflect an emerging consensus among the courts of appeals that the RLA lacks the extraordinary preemptive force necessary to create federal removal jurisdiction, and that, if an ordinary preemption defense is available in a particular case, state courts are as competent as federal courts to apply it. The rationale

of these decisions—although inconsistent with a few pre-*Beneficial National Bank* cases finding complete preemption under the RLA—was neither adopted nor rejected by the Seventh Circuit and is not relevant to the outcome of this case. Even the cases on which United relies in support of its position hold that state-law claims are completely preempted only when they are "intertwined" with a collective-bargaining agreement. If *Lingle* stands for anything, it is that Illinois Workers' Compensation Act claims are not so intertwined. Thus, regardless of the resolution of the question United identifies, this case would not be completely preempted.

STATEMENT

Before the events giving rise to this case, Hughes worked as a flight attendant for United. Pet. App. 10a. After returning from an extended furlough, Hughes injured herself during requalification training at United's training facility and filed a workers' compensation claim based on her injuries. Pet. App. 1a-2a, 10a-11a. Shortly thereafter, United fired her. *Id.* Although Hughes had completed her training and fulfilled all written requirements to return to work, United informed her that her injury prevented her from fulfilling an additional, undisclosed requirement that she complete her first scheduled flight assignment following training. *Id.* at 1a-2a, 11a, 17a-18a. United claimed that she had thus exceeded the maximum amount of leave allowable under the collective-bargaining agreement between United and the flight attendants' union. *Id.* at 1a-2a, 11a.

Hughes sued United in Illinois state court under the Illinois Workers' Compensation Act, claiming that United's explanation for her discharge was a pretext, and that she was actually fired in retaliation for filing her workers' compensation claim. *Id.* at 2a, 9a, 11a, 17a; *see* 820 ILCS 305/4(h) (prohibiting employers from "dis-

charg[ing] … an employee because of the exercise of his or her rights or remedies granted to him or her by this Act"). United responded by removing the case to the United States District Court for the Northern District of Illinois on the basis of complete preemption, and moving to dismiss on the theory that the RLA preempts Hughes's claim. Pet. App. 2a, 11a. Hughes opposed United's motion and moved to remand to state court. *Id.* at 11a.

Complete preemption is a narrow exception to the "'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Ordinarily, preemption is "a federal defense to the plaintiff's suit," and thus neither "appear[s] on the face of a well-pleaded complaint" nor "authorize[s] removal to federal court." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). In contrast, a claim is "completely preempted," so as to provide a basis for removal, when "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim." *Caterpillar*, 482 U.S. at 393 (internal quotation marks omitted). This Court has rarely accepted claims of complete preemption, applying the doctrine to only three statutes: § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185; the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a); and the National Bank Act, 12 U.S.C. §§ 85-86. *See Beneficial Nat'l Bank*, 539 U.S. at 6-7, 10-11; *id.* at 13 (Scalia, J., dissenting).

The district court agreed with United that the RLA is a fourth statute that completely preempts state-law claims. Pet. App. 11a-14a. Although the court found "no basis for federal jurisdiction … discernable from the face of [Hughes's] complaint," it considered itself bound by

the Seventh Circuit's decision in *Graf v. Elgin, Joliet & E. Ry. Co.*, 790 F.2d 1341 (7th Cir. 1986), to hold that "the RLA completely preempts claims such as Hughes's." Pet. App. 12a-13a, 14a. The court acknowledged a trend among the federal courts away from holding that the RLA completely preempts state-law claims, but concluded that "*Graf* remains good law in this Circuit." *Id.* at 13a-14a. The court thus denied Hughes's motion to remand.

The court then granted United's motion to dismiss on the ground that the RLA preempts Hughes's workers' compensation claim. *Id.* at 14a. The RLA provides that so-called "minor disputes"—disputes that "grow[] out of … the interpretation or application of existing labor agreements"—must be heard by a "board of adjustment" established by the Act rather than by a court. 45 U.S.C. § 184. Hughes's complaint did not base any claims on an alleged violation of her collective-bargaining agreement, but the court concluded that in assessing United's claimed reason for the discharge—that Hughes had exceeded the maximum amount of medical leave allowable under the agreement—it would "undoubtedly be necessary to interpret the [agreement's] requirements." Pet. App. 18a.

The Seventh Circuit reversed, holding that the RLA does not completely preempt Hughes's claim and thus that the district court lacked jurisdiction over the case. *Id.* at 7a-8a. The court agreed that *Graf* would have dictated the district court's conclusion on complete preemption, but concluded that *Graf*'s holding was inconsistent with this Court's subsequent decisions in *Lingle*, 486 U.S. 399, and *Hawaiian Airlines*, 512 U.S. 246. Pet. App. 3a-5a, 7a. In *Lingle*, this Court reversed a Seventh Circuit decision that relied on *Graf* to conclude that the Labor-Management Relations Act (LMRA) preempted a retaliatory-discharge claim under the Illinois Workers'

Compensation Act. *See Lingle v. Norge Div. of Magic Chef, Inc.*, 823 F.2d 1031, 1044-47 (7th Cir. 1987), *reversed by* 486 U.S. 399. *Hawaiian Airlines*, in turn, applied *Lingle* in concluding that the RLA did not preempt a wrongful-discharge claim under Hawaii law. 512 U.S. at 250, 262-63. Recognizing that *Lingle* and *Hawaiian Airlines* left its precedent "without support," the Seventh Circuit below overruled "*Graf*'s holding that the RLA does not completely preempt retaliatory-discharge suits" under state law. Pet. App. 3a, 5a, 7a. Accordingly, the Seventh Circuit vacated the district court's decision and remanded with instructions to remand the case to state court. *Id.* at 8a.

In reaching that conclusion, the court noted that its holding was consistent with the decisions of every other federal court of appeals to have considered post-*Hawaiian Airlines* whether the RLA completely preempts retaliatory-discharge claims. Pet. App. 6a-7a (citing *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009); *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 277 (2d Cir. 2005); *Geddes v. Am. Airlines, Inc.*, 321 F.3d 1349 (11th Cir. 2003)). The courts of appeals in those cases went further than the decision below, holding that the RLA does not completely preempt *any* state law claims. *See Moore-Thomas*, 553 F.3d at 1244-46. The Seventh Circuit observed that it was "unnecessary to agree or disagree with all of the reasons given in *Geddes*, *Sullivan*, and *Moore-Thomas*" because "*Lingle* and *Hawaiian Airlines* show that the results of those decisions are correct." Pet. App. 7a.

REASONS FOR DENYING THE WRIT

I. There Is No Circuit Split on the Narrow Issue Decided by the Seventh Circuit Below.

The Seventh Circuit held that state-law claims for retaliatory discharge—such as Hughes's claim under the

Illinois Workers' Compensation Act—are not completely preempted by the RLA. Pet. App. 5a, 7a. That narrow holding is compelled by this Court's decisions in *Lingle* and *Hawaiian Airlines*, and the decision below brought the Seventh Circuit's law into conformity with those decisions. *Id.* There is no disagreement among the circuits on the issue. Like the decision below, every federal court of appeals to "have considered this subject since *Hawaiian Airlines* ha[s] concluded that the RLA does not completely preempt retaliatory-discharge claims under state law." *Id.* at 6a.

Lingle overruled a Seventh Circuit decision holding a retaliatory-discharge claim under the Illinois Workers' Compensation Act to be preempted by the LMRA. 823 F.2d 1031. The employer in *Lingle* argued that the discharge was justified by a provision of its collective-bargaining agreement permitting dismissal for "just cause." *Id.* at 1041. Because a retaliatory-discharge claim requires a court to decide "if the employee would have been discharged absent the state-law-proscribed motive," the Seventh Circuit reasoned that resolution of the claim necessarily would require the court to decide whether the employer had "just cause" for the termination under the agreement. *Id.* at 1046. The court held that the plaintiff's claim was "inextricably intertwined" with the collective-bargaining agreement because it "implicate[d] the same analysis of the facts as would an inquiry under the just cause provisions." *Id.* It concluded that "a claim of retaliatory discharge by a worker covered under a collective bargaining agreement with a 'just cause' provision states a claim under the collective bargaining agreement," and that such claims "necessarily arise under federal law." *Id.* at 1041.

This Court disagreed, holding that retaliatory-discharge claims under state law originate from rights "independent" of a collective-bargaining agreement and

outside the scope of the LMRA. *Lingle*, 486 U.S. at 407. The Court rejected the Seventh Circuit's conclusion that application of the agreement's "just cause" provision was sufficient to preempt state-law claims. *Id.* at 408. That "state-law analysis might well involve attention to the same factual considerations as the contractual determination of whether [the employee] was fired for just cause," the Court held, does not "render[] the state-law analysis dependent upon the contractual analysis." *Id.*

Although *Lingle* involved the LMRA rather than the RLA, this Court in *Hawaiian Airlines* concluded that preemption under the RLA is governed by a "virtually identical" standard. 512 U.S. at 260. *Hawaiian Airlines* held that the RLA did not preempt a claim for wrongful discharge under Hawaii's Whistleblower Protection Act. *Id.* at 266. As in *Lingle*, the court rejected the employer's argument that the necessity of applying a contractual "just cause" provision meant that the claim was preempted. *Id.* at 265-66. The Court held that the RLA, like the LMRA, preempts only claims "that are grounded in" a collective bargaining agreement, and that the RLA's procedures do "not pre-empt causes of action to enforce rights that are independent of" the agreement. *Id.* at 256. Thus, "substantive protections provided by state law, independent of whatever labor agreement might govern, are not pre-empted under the RLA." *Id.* at 265-66.

United's argument here is identical to the arguments rejected in *Lingle* and *Hawaiian Airlines*. As in those cases, this case involves a wrongful-discharge claim under state law. Indeed, the state statute at issue here is the same Illinois statute that *Lingle* held was not preempted. Moreover, United's argument that a court must construe the collective-bargaining agreement to determine whether it authorized Hughes's termination is indistinguishable from the argument in *Lingle* and *Hawai-*

ian Airlines that resolving the employees' claims in those cases required interpretation of contractual "just cause" provisions. As *Hawaiian Airlines* stated, such arguments are foreclosed by *Lingle's* holding that an employer's purported justification for the termination is a "purely factual question" that does not render a state-law claim dependent on the contract's terms. *Hawaiian Airlines*, 512 U.S. at 266.

To be sure, *Lingle* and *Hawaiian Airlines* involved claims of ordinary, rather than complete, preemption. Nevertheless, this Court's holding that the Illinois Workers' Compensation Act creates a cause of action entirely "independent" of the RLA runs headlong into United's assertion that Hughes's claim under the Act "is in reality based on federal law." Pet. 6 (quoting *Beneficial Nat'l Bank*, 539 U.S. at 8). *Lingle* and *Hawaiian Airlines* stand for the principle that wrongful-discharge claims "involve[] rights and obligations that exist independent of" a collective-bargaining agreement and thus do not implicate federal law. *Hawaiian Airlines*, 512 U.S. at 260. As the Seventh Circuit stated below, *Lingle* "pull[ed] the rug out from under" decisions holding retaliatory-discharge claims to be "inextricably intertwined" with, and thus completely preempted by, the RLA. Pet. App. 4a-5a.

Since *Lingle* and *Hawaiian Airlines*, *no* court of appeals has held that the RLA completely preempts a retaliatory-discharge claim. *See, e.g.*, *Moore-Thomas*, 553 F.3d at 1244; *Sullivan*, 424 F.3d at 277; *Roddy v. Grand Trunk W. R.R. Inc.*, 395 F.3d 318, 326 (6th Cir. 2005); *Geddes*, 321 F.3d at 1353-57. Even the cases that United urges this Court to follow are consistent with the Seventh Circuit's decision. For example, the Fifth Circuit in *Anderson v. American Airlines, Inc.* relied on *Lingle* to hold that an employee's workers' compensation claim did not require interpretation of a collective-bargaining

agreement and was thus not completely preempted by the RLA. 2 F.3d 590, 595-97 (5th Cir. 1993); *see Adames v. Exec. Airlines, Inc.*, 258 F.3d 7, 12 (1st Cir. 2001) (citing wrongful discharge as a state substantive protection that is independent of a collective-bargaining agreement and thus not preempted under the RLA); *Davies v. Am. Airlines, Inc.*, 971 F.2d 463, 465-67 (10th Cir. 1992) (holding that the RLA did not preempt a retaliatory-discharge claim under Oklahoma law despite a contractual "just cause" provision). Thus, there is no circuit split on the issue decided by the Seventh Circuit.

II. This Case Does Not Present the Question Whether the RLA Completely Preempts State-Law Claims in Other Circumstances.

A. Given the agreement among the courts of appeals that the RLA does not completely preempt retaliatory-discharge claims, United attempts to tie the decision below to a larger question not decided by the Seventh Circuit. United points to recent decisions interpreting the scope of complete preemption under the RLA that, while reaching the same result as the decision below, did so on the broader ground that "the RLA does not completely preempt state-law claims." *Sullivan*, 424 F.3d at 277; *see Moore-Thomas,* 553 F.3d at 1244; *Geddes*, 321 F.3d at 1353-57. These courts concluded that the RLA lacks the "extraordinary preemptive force necessary to create federal removal jurisdiction" and that, when a defense is available under ordinary preemption principles, state courts are competent to apply it. *See Geddes*, 321 F.3d at 1353, 1357. United argues that such decisions are inconsistent with older cases holding that the RLA completely preempts state-law claims when the claims require interpretation or application of a collective-bargaining agreement. *See Kollar v. United Transp. Union*, 83 F.3d

124 (5th Cir. 1996); *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080 (8th Cir. 1989).

The decision below, however, did not pass on the question United asks this Court to review. Although expressing skepticism about the proposition that the RLA never preempts state-law causes of action, the court found it "unnecessary to agree or disagree" with the courts adopting that rationale. Pet. App. 7a. As the court explained, *Lingle* and *Hawaiian Airlines* are sufficient to "show that the results of those decisions are correct." *Id.*

Moreover, this case does not present an opportunity to question the broader holdings of decisions in other circuits because resolution of the broader issue can have no effect on the outcome here. Even the decisions on which United relies hold that the RLA completely preempts a state-law claim only when the claim is intertwined with, rather than independent of, the terms of a collective-bargaining agreement. *See Evermann v. BNSF Ry. Co.*, 608 F.3d 364, 366-67 (8th Cir. 2010); *Adames*, 258 F.3d at 12; *Anderson*, 2 F.3d at 595. *Lingle*, however, held that the elements of a retaliatory-discharge claim under the Illinois Workers' Compensation Act are *not* so intertwined. 486 U.S. at 407. If there are any state-law rights that are independent of collective bargaining agreements and therefore not completely preempted by the RLA, *Lingle* establishes that Hughes's claim is one of them. Thus, even if this Court were to adopt the reasoning of the cases on which United relies, the claim at issue in this case would not be completely preempted.

United nevertheless argues that the decision below warrants this Court's review because it diverges from other circuits in its "rationale" for holding Hughes's claim not completely preempted. Pet. 6, 10. That the de-

cision below reached the same result as other circuits on more modest grounds, however, does not justify this Court's intervention. *See California v. Rooney*, 483 U. S. 307, 311 (1987) (per curiam) ("This Court reviews judgments, not statements in opinions." (internal quotation marks omitted)).

B. Even if the question United poses were at issue in this case, it would not warrant review by this Court. First, United overstates the divergence of authority. Some decisions United identifies as having applied complete preemption under the RLA involved only *ordinary* preemption. *Ertle v. Cont'l Airlines, Inc.*, 136 F.3d 690 (10th Cir. 1998); *O'Brien v. Consol. Rail Corp.*, 972 F.2d 1 (1st Cir. 1992).[1] No court has questioned the conclusion—mandated by *Hawaiian Airlines*—that the RLA preempts some state-law claims under ordinary preemption principles. *See, e.g.*, *Sullivan*, 424 F.3d at 273 ("Ordinary preemption is plainly a viable defense under the RLA … ."). The availability of a preemption defense, however, does not mean that a plaintiff's claims arise under federal law or that complete preemption requires those claims to be heard in federal court. *See Caterpillar*, 482 U.S. at 393 ("[I]t is now settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and

[1] The First Circuit in *O'Brien* did not need to reach the complete-preemption issue because the defendant there based its removal in part on diversity jurisdiction. 972 F.2d at 2. In *Ertle*, the Tenth Circuit noted that the case had been removed without explaining whether the removal was based on complete preemption or diversity. 136 F.3d at 693. An issue passed over without discussion has not been decided by a court, even if the issue is jurisdictional. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998).

even if both parties concede that the federal defense is the only question truly at issue.").

Moreover, all but one of the decisions on which United relies were decided before this Court in *Beneficial National Bank*, 539 U.S. 1, clarified the standard for complete preemption of state-law claims. Based on *Beneficial National Bank*, several circuits have overruled their prior decisions finding complete preemption under the RLA. *See Moore-Thomas*, 553 F.3d at 1246 (overruling *Grote v. Trans World Airlines, Inc.*, 905 F.2d 1307 (9th Cir. 1990)); *Sullivan*, 424 F.3d at 274 (overruling *Shafi v. British Airways, PLC*, 83 F.3d 566 (2d Cir. 1996)); *Roddy*, 395 F.3d at 324 (overruling *Beard v. Carrollton R.R.*, 893 F.2d 117 (6th Cir. 1989)). These cases reflect an "emerging trend" among the federal courts of appeals that, "even if state-law claims qualify as minor disputes under the RLA, the RLA does not completely preempt those claims and therefore does not provide federal courts with original jurisdiction over them." *Sullivan*, 424 F.3d at 269, 277; *see US Airways Master Exec., Council v. Am. W. Master Exec., Council*, 525 F. Supp. 2d 127, 134 (D.D.C. 2007) (noting "emerging trend"); *see also Geddes*, 321 F.3d at 1357; *Ry. Labor Execs. Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936, 942-43 (3d Cir. 1988).

Following *Beneficial National Bank*, only one decision by a federal court of appeals has held a claim to be completely preempted under the RLA. In *Evermann*, the Eighth Circuit applied its pre-*Beneficial National Bank* decisions without acknowledging the recent consensus among the other circuits against complete preemption. 608 F.3d 364. Neither the plaintiff's brief nor the decision in *Evermann* cited *Beneficial National Bank* or discussed whether it required the court to overrule its prior decisions. When the Eighth Circuit does grapple with that question, this Court will have the op-

portunity to review the court's decision under circumstances where the issue has been decided by the lower court and is relevant to the outcome of the case. Those circumstances, however, are not present here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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