No. 128338

IN THE SUPREME COURT OF ILLINOIS

WILLIAM WALTON, Individually and on Behalf of Others Similarly Situated, Plaintiff-Petitioner, v. ROOSEVELT UNIVERSITY, Defendant-Respondent.	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-21-0011 There on Appeal from the Circuit Court of Cook County, Circuit Court No. 19-CH-04176; Circuit Court Judge: Anna H. Demacopoulos, Judge, presiding

BRIEF *AMICI CURIAE* OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE RESTAURANT LAW CENTER, THE ILLINOIS RESTAURANT ASSOCIATION, AND THE NATIONAL RETAIL FEDERATION IN SUPPORT OF DEFENDANT-RESPONDENT ROOSEVELT UNIVERSITY

Nicole C. Henning
Efrat Schulman
David Sandefer
JONES DAY
110 N. Wacker Drive
Suite 4800
Chicago, IL 60606
(312) 782-3939
nhenning@jonesday.com
eschulman@jonesday.com
dsandefer@jonesday.com
Counsel for *Amici Curiae*
The Chamber of Commerce of the United States of America, The Restaurant Law Center, The National Retail Federation, and The Illinois Restaurant Association

November 16, 2022

E-FILED
11/22/2022 3:30 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS OF AUTHORITY

TABLE OF CONTENTS AND POINTS OF AUTHORITY
(continued)

TABLE OF CONTENTS AND POINTS OF AUTHORITY
(continued)

TABLE OF CONTENTS AND POINTS OF AUTHORITY
(continued)

STATEMENT OF INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three 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. Indeed, the Chamber has participated as an *amicus curiae* in other matters before the Court involving the Illinois Biometric Information Privacy Act ("BIPA"). *See, e.g.*, *Cothron v. White Castle Sys., Inc.*, No. 128004 (Ill.).

The Restaurant Law Center ("Law Center") is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor-intensive industry is comprised of over one million restaurants and other foodservice outlets employing nearly 16 million people—approximately 10 percent of the U.S. workforce. Restaurants and other foodservice providers are the second largest private sector employers in the United States. Through *amicus* participation, the Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Law Center's *amicus* briefs have been cited favorably by state and federal courts.

The National Retail Federation ("NRF") is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry

partners from the United States and more than 45 countries abroad. In the United States, the NRF represents the breadth and diversity of an industry that is the nation's largest sector employer with more than 52 million employees and contributes $3.9 trillion annually to GDP. The NRF has filed many amicus briefs over the decades to support the legal environment in which retailers of all sizes operate.

The Illinois Restaurant Association is a non-profit trade organization founded over one hundred years ago to promote, educate, and improve the restaurant industry in Illinois. Headquartered in Chicago, the Association has nearly 8,000 members statewide—including restaurant operators, food service professionals, suppliers, and related industry professionals—and represents the Illinois restaurant industry, which includes more than 25,000 owners and operators, and employs hundreds of thousands across the state. The Illinois Restaurant Association supports the restaurant industry by promoting local tourism, providing food service education and training programs, providing analysis on topics of the day, providing networking opportunities, hosting culinary events, and advocating for members' interests.

The Chamber, Law Center, NRF, and the Illinois Restaurant Association (collectively, "*Amici*"), along with those they represent, have a strong interest in the outcome of this case. The well-reasoned decision below follows decades of federal labor law and protects the settled interest of countless nationwide collective bargaining agreements carefully negotiated between businesses and unions. If this Court rejects the lower court's opinion, it would inject significant unpredictability into the enforcement of those past collective bargaining agreements. That, in turn, would hobble employers' ability to successfully negotiate similar agreements with unions in the future.

Unpredictability in enforcement impairs the ability of all parties to confidently predict an agreement's risks and benefits.

These concerns would not end at the borders of Illinois. Many collective bargaining agreements are national in scope. Should this Court depart from decades of well-reasoned federal precedent, the repercussions of that decision will be felt by workers and employers across the country. The *Amici*—and the business community at large—have a strong interest in maintaining predictability and cooperation in union-management relations. Accordingly, the *Amici* submit this *amici curiae* brief to assist the Court in its understanding of federal labor law and the implications of its ruling on the broader business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the aftermath of World War II, massive and widespread strikes affected nearly every industry in the United States. These strikes involved 4.6 million workers and remain the largest strikes in American history. *See* Jeremy Brecher, *Strike!* 246 (revised and updated ed., 1997). Labor relationships deteriorated to such an extent that President Truman referred to the strikes as a "rebellion against the government" and, within a six-month period, seized railroads, coal mines, and half of the nation's refineries. *Id.* at 246–47.

Within this historical context, in 1947, Congress passed the Labor Management Relations Act ("LMRA"), also referred to as the Taft-Hartley Act. In passing the LMRA, Congress sought "to stabilize industrial relations," which had declined to an all-time low. S. Rep. No. 80-105, at 16 (1947). The LMRA contained several provisions that now form the bedrock of modern labor law. One of the most critical provisions was Section 301, which gave federal courts the jurisdiction to enforce collective bargaining

agreements. *See* 29 U.S.C. § 185(a) ("Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties[.]"). By shifting the enforcement of collective bargaining agreements to federal courts, unions and employers could negotiate collective bargaining agreements under uniform federal common law. Court enforcement of negotiated provisions in collective bargaining agreements became more predictable.

For decades, increased predictability in the enforcement of collective bargaining agreements has maximized efficiencies in negotiating and executing those agreements. This Court is now asked to determine whether, when passing BIPA, the Illinois legislature intended *sub silentio* to upend such long-settled LMRA precedent. Specifically, this Court must interpret broad management rights clauses in binding collective bargaining agreements with respect to disputes relating to biometric timekeeping.

The Court should conclude that the LMRA preempts timeclock-related BIPA claims that are governed by a collective bargaining agreement with a broad management-rights clause. To support this conclusion, the *Amici* first set out the development of LMRA preemption case law. That precedent explains the policy reasons why the LMRA preemption doctrine is critical to industrial peace in the United States.

Second, the *Amici* explain why these policy goals can be served only if federal common law consistently governs disputes about whether an employer's timekeeping methods violate an applicable collective bargaining agreement. The alternative would, in the long term, benefit neither the business community, labor unions, nor the employees

those unions represent. Negotiations between business owners and unions regarding important conditions of employment would, in the best case, be rendered significantly more complicated and inefficient, and in the worst case, become altogether impossible. Moreover, inconsistent application of the LMRA preemption doctrine would deal a serious blow to decades of deliberately-crafted federal LMRA precedent. This would, in turn, threaten the industrial peace and efficiency that LMRA preemption has fostered in post-war America. The *Amici* ask the Court to avoid such results and hold—as every federal court to review the issue has held—that federal law preempts BIPA for employment matters falling within the scope of collective bargaining agreements between businesses and labor unions.

I. THE SUPREME COURT HAS REPEATEDLY HELD THAT STATE LAW CLAIMS THAT IMPLICATE COLLECTIVE BARGAINING AGREEMENTS ARE PREEMPTED UNDER THE LMRA

Over the past three-quarters of a century, federal courts have consistently held that federal enforcement of LMRA provisions is critical to maintaining consistency in labor law, and that federal law preempts state law claims where the dispute falls within the scope of a collective bargaining agreement. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (stating that the LMRA's preemptive force "is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim'" (quoting *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987))). The appellate court's opinion in this matter faithfully follows this line of well-established precedent, and it should be affirmed.

A. Early LMRA Precedent

After Congress passed the LMRA, the Supreme Court issued several seminal decisions on the nature and scope of the statute. *Textile Workers Union of Am. v. Lincoln*

Mills of Ala., 353 U.S. 448 (1957) ("*Lincoln Mills*") was among the first. Relying on the LMRA's legislative history, the Court in *Lincoln Mills* determined that the LMRA not only "confer[s] jurisdiction in the federal courts over labor organizations[,] [i]t [also] expresses a federal policy that federal courts should enforce [collective bargaining] agreements." *Id. at* 455. The Court focused on Congress's concern that if collective bargaining agreements could be broken with "relative impunity, then such agreements [would] not tend to stabilize industrial relations." *Id.* at 454 (quoting S. Rep. No. 80-105, at 16). In other words, "[t]he execution of an agreement does not by itself promote industrial peace[,]" so industrial peace would depend on whether collective bargaining agreements were reliably "enforceable in the Federal courts." *Id.* Only through consistent federal enforcement of these agreements would "industrial peace . . . be best obtained." *Id.*

The Supreme Court revisited the LMRA's nature and scope five years later. In *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962) ("*Lucas Flour*"), the Court granted certiorari to determine whether Section 301 of the LMRA preempted state courts from "applying principles of state law" to a suit involving a union strike over a collective bargaining agreement. *Id.* at 98–99. The Washington Supreme Court had applied Washington contract law to hold that the union breached the collective bargaining agreement by "attempt[ing] to coerce the employer to forego his contractual right[s]." *Id.* at 98. Although the Supreme Court affirmed the trial court's judgment, it did so only after applying federal law, not state law. The Court held that, under federal law, the collective bargaining agreement's arbitration provisions required arbitration of the dispute even if the agreement did not contain a

"clause . . . explicitly covering the subject of the dispute." *Id*. at 104–05. Thus, the Court concluded, the union violated the collective bargaining agreement by not submitting the dispute prompting the strike to arbitration.

Importantly, in so holding, the Court observed that to achieve a singular and uniform approach to labor disputes, "incompatible doctrines of local law must give way to principles of federal labor law." *Id.* at 102. It wrote:

> [T]he subject matter of § 301(a) 'is peculiarly one that calls for uniform law.' 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.

Id. at 103–04 (citations omitted). Moreover, if courts were to apply a patchwork of state laws to actions arising out of collective bargaining agreements, the mere existence of potentially conflicting legal concepts could "substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." *Id.* at 104. Echoing the language used in *Lincoln Mills*, the Court further acknowledged that applying these various state doctrines to collective bargaining disputes would "frustrate[] the effort of Congress" in passing the LMRA and impede the "process of free and voluntary collective bargaining [that] is the keystone of the federal scheme to promote industrial peace." *Id.*

B. LMRA Preemption Applies to State-Law Claims Filed in State Court

In 1968, the Supreme Court again revisited the LMRA in *Avco Corp. v. Aero Lodge No. 735, International Association of Machinists & Aerospace Workers*, 390 U.S. 557 (1968) ("*Avco Corp.*"). In *Avco Corp.*, a state court issued an *ex parte* injunction prohibiting a union from striking, holding that the strike was not in compliance with dispute mechanisms set forth in the parties' collective bargaining agreement. *Id.* at 558. The union removed the action to federal court, and the employer moved to remand based on lack of federal jurisdiction. *Id.* at 558–59. The district court found that it had original jurisdiction over the matter and dissolved the injunction pursuant to federal common law prohibiting injunctions against peaceful strikes. *Id.*

On review, the Supreme Court agreed that the district court had original jurisdiction. *Id.* at 560. Relevant here, the Court in *Avco Corp.* established that state law claims arising out of collective bargaining agreements are controlled by federal law—even if brought as state-law claims in state court. *Avco Corp.* thus expands *Lucas Flour*'s holding that "*incompatible* doctrines of local law must give way to principles of federal labor law." *Lucas Flour*, 369 U.S. at 102 (emphasis added). In other words, "the preemptive force of § 301 [of the LMRA] is so powerful as to displace entirely *any* state cause of action 'for violation of contracts between an employer and a labor organization.'" *Franchise Tax Bd. of State of Cal. v. Constr. Labs. Vacation Tr. for S. Cal.*, 463 U.S. 1, 23 (1983) (quoting 29 U.S.C. § 185) (emphasis added).

C. Modern LMRA Preemption Doctrine

At the end of the 1980's, the Supreme Court expanded LMRA preemption even further, repeatedly stating that the LMRA preempts all labor claims "substantially dependent on analysis of a collective-bargaining agreement." *Caterpillar Inc.*, 482 U.S.

at 394 (quoting *Int'l Bhd. of Elec. Workers, AFL-CIO v. Hechler*, 481 U.S. 851, 859 n.3 (1987)). That is, "[i]f the resolution of a state law claim depends on the meaning of, or requires the interpretation of, a collective bargaining agreement, the application of state law is preempted and federal labor law principles must be employed to resolve the dispute." *Atchley v. Heritage Cable Vision Assocs.*, 101 F.3d 495, 499 (7th Cir. 1996). This rule applies "[e]ven if explicit terms of the collective bargaining agreement may not be on point[.]" *Id.*; *see also Crosby v. Cooper B-Line, Inc.*, 725 F.3d 795, 797 (7th Cir. 2013) (stating that Section 301 "covers not only obvious disputes over labor contracts, but also any claim masquerading as a state-law claim that nevertheless is deemed 'really' to be a claim under a labor contract"). This rule is designed to "ensure [the] uniform interpretation of collective bargaining agreements" necessary for effective and efficient negotiation and execution of those agreements. *Loewen Grp. Int'l, Inc. v. Haberichter*, 65 F.3d 1417, 1421 (7th Cir. 1995); *see also Lucas Flour Co.*, 369 U.S. at 104 ("[C]onflicting [state and federal] legal concepts might substantially impede the parties' willingness to agree to [collective bargaining] terms.").

Put simply, over the decades, federal courts have repeatedly ruled that the LMRA requires all disputes within the scope of collective bargaining agreements to be decided exclusively under federal law. And federal courts have explained the reasons for doing so: interpreting agreements under a patchwork of oftentimes inconsistent state laws would result in the negotiation and execution of collective bargaining agreements becoming less efficient at best, and completely unworkable at worst. That, in turn, would risk a marked decrease in industrial peace, to the detriment of businesses, workers, and, ultimately, consumers. If this Court makes an exception for Illinois's BIPA statute, it

will undermine and destabilize decades of this well-reasoned (and binding) precedent for little gain, and those ramifications will be felt nationwide.

II. IF ADOPTED, WALTON'S THEORY COULD INHIBIT COLLECTIVE BARGAINING AGREEMENT NEGOTIATION NATIONWIDE AND EFFECTIVELY PRECLUDE NEGOTIATION OF CONTRACTUAL AGREEMENTS REGARDING TIMEKEEPING

Collective bargaining agreements are the result of extensive and careful negotiations between employers and their workers. Common in collective bargaining agreements are timeclock and timekeeping provisions, as the manner in which employees clock in and out of work is an important employment condition. Allowing employees to file suit over biometric timekeeping despite the existence of a binding collective bargaining agreement that grants management broad rights to determine conditions of employment would depart from decades of federal precedent and would call into question the very purpose of collective bargaining agreements.

A. Plaintiff's Allegations in the Complaint Implicate a Core Aspect of Labor Negotiations

The LMRA preempts claims grounded on rights created by collective bargaining agreements and claims presenting "nonfrivolous argument" that the conduct is explicitly or implicitly authorized by a governing collective bargaining agreement. *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1179 (7th Cir. 1993) (finding claim preempted by LMRA where company had "nonfrivolous argument that the surveillance of which the plaintiffs complain is authorized, albeit implicitly, by the management-rights clause of the [governing collective-bargaining] agreement"); *Gray v. Univ. of Chi. Med. Ctr., Inc.*, No. 19-cv-04229, 2020 WL 1445608, at *2 (N.D. Ill. Mar. 25, 2020) (LMRA preempts, *inter alia*, "claims founded directly on rights created by collective-bargaining agreements") (quoting *Caterpillar Inc.*, 482 U.S. at 394). While "not every

employment dispute where a collective bargaining agreement is involved is automatically preempted by federal law[,]" *Walton v. Roosevelt Univ.*, 2022 IL App (1st) 210011, ¶ 17, "[i]f the resolution of a state law claim depends on the meaning of, or requires the interpretation of, a collective bargaining agreement, the application of state law is preempted and federal labor law principles must be employed to resolve the dispute." *Atchley*, 101 F.3d at 499.

Federal courts have repeatedly and consistently determined that the conditions surrounding how an employee clocks in and out of work meets that standard. *See, e.g.*, *Darty v. Columbia Rehab. & Nursing Ctr., LLC*, 468 F. Supp. 3d 992, 995 (N.D. Ill. 2020) ("[C]ourts in this district have consistently found federal preemption by Section 301 of the LMRA in similar [timeclock-related] BIPA cases."). This case is no exception. Plaintiff's union entered into a collective bargaining agreement with his employer. His union was legally authorized to represent him on matters relating to employment (like timekeeping), and as such is expressly authorized by BIPA to "consent to the collection of biometric information." *Miller v. Sw. Airlines Co.*, 926 F.3d 898, 903 (7th Cir. 2019) ("[A]n authorized agent may . . . consent to the collection of biometric information[.]" (citing 740 Ill. Comp. Stat. 14/15(b)); *see also* 740 Ill. Comp. Stat. 14/15(d)(1) (referring to whether a "legally authorized representative consents to the disclosure"). To determine whether the union gave management such consent, one must look to the parties' written agreement. In short, Plaintiff's claim "depends on the meaning of" the collective bargaining agreement, and as such it is not possible to resolve Plaintiff's claims without "interpretation of[] [the] collective bargaining agreement." *Atchley*, 101 F.3d at 499.

Here, the University argues (and *Amici* agree) that the collective bargaining agreement itself shows that the union consented to the university's control over timekeeping: the university is given wide latitude to set conditions of employment, including "the right to plan, direct, and control all operations performed in the building" and the right "to direct the working force[.]" *Walton*, 2022 IL App (1st) 210011, ¶ 9. Walton argues that this language does not grant the university the right to use biometric timekeeping. Opening Br. at 14, 20–24 (arguing university's interpretation of management rights clause is "frivolous" because "[n]othing in" the agreement "could plausibly be construed as providing informed consent" to using and storing biometric data). But the parties' dispute shows that Walton's BIPA claims cannot be resolved without interpreting the contract's broad management-rights clause and deciding whether it permits the employer's actions. *See In re Amoco Petroleum Additives Co.*, 964 F.2d 706, 709–10 (7th Cir. 1992) (holding that LMRA preempted state law suit for invasion of privacy based on employer placing a video camera outside of women's locker room because dispute required determining the meaning of management-rights clause, noting that privacy is a "'condition' of employment" and agreements that "do not mention surveillance expressly may deal with the subject by implication"); *Gray*, 2020 WL 1445608, at *4 (stating, in similar circumstances, "the Seventh Circuit's guidance makes clear that [Walton's] claims require interpretation of the CBA—at the very least its management rights clause"). Under similar logic, whether a collective bargaining agreement's arbitration clause might be deemed to encompass disputes about biometric timekeeping must be decided under federal law. *See Lucas Flour*, 369 U.S. at 104–05.

Were this Court to rule otherwise, the repercussions will echo throughout the business community. The LMRA was designed to allow "the administration of collective bargaining contracts [to be] accomplished under a uniform body of federal law." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985) (quoting *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962)). As discussed *supra* in Section I, the Supreme Court has, over decades, correctly and repeatedly emphasized the importance of maintaining uniformity in interpretation of collective bargaining agreements throughout the country. *See, e.g.*, *Lincoln Mills*, 353 U.S. at 454-55; *Lucas Flour,* 369 U.S. at 103–04. Those principles are incompatible with Walton's contention that Illinois courts must look to state law to determine whether his collective bargaining agreement gave management the right to use biometric time clocks without his individual consent. *Miller*, 926 F.3d at 904 ("It is not possible even in principle to litigate a dispute about how an air carrier acquires and uses fingerprint information for its whole workforce without asking whether the union has consented on the employees' collective behalf."); *see also Gil v. True World Foods Chi., LLC*, No. 20 C 2362, 2020 WL 7027727, at *3 (N.D. Ill. Nov. 30, 2020).

There is a strong federal interest in ensuring that employers can negotiate with union employees *as a collective* regarding biometric timekeeping practices should they desire to do so. In fact, under the Railway Labor Act ("RLA")—which has similar policy goals as the LMRA—a company's timekeeping practices are a mandatory subject of bargaining between employers and unions. *See Miller*, 926 F.3d at 903 (determining that, under the Railway Labor Act, "[T]here can be no doubt that how workers clock in and out is a proper subject of negotiation between unions and employers—is, indeed, a mandatory subject of bargaining."); *Frisby v. Sky Chefs, Inc*., No. 19 C 7989, 2020 WL

4437805, at *4 (N.D. Ill. Aug. 3, 2020) (stating that under RLA "the mechanism through which workers clock in and out" is a "mandatory subject of collective bargaining"). In other words, if either the union or the employer requests to negotiate about that issue when entering into a collective bargaining agreement, the other party must negotiate in good faith. *See First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 676 (1981) (holding it is an unfair labor practice for an employer and union to fail to bargain in good faith over mandatory subjects of bargaining). That is significant because both the Seventh Circuit and the Illinois Appellate Court have determined that the preemption analysis for the RLA and LMRA are "nearly identical." *Soltysik v. Parsec, Inc.*, 2022 IL App (2d) 200563, ¶ 66 ("Thus, defendant is correct that 'the preemption analysis under the RLA and LMRA [is] nearly identical'"); *Fox v. Dakkota Integrated Sys., LLC*, 980 F.3d 1146, 1156 (7th Cir. 2020) (remanding for district court determine "in the first instance" whether LMRA preempted plaintiff's BIPA claim, noting "the answer appears to flow directly from *Miller*," which was decided under the RLA).

Walton cannot and does not explain how a union could possibly bargain about timekeeping on behalf of its members in good faith if each individual employee could later file suit demanding payment simply because the employer did as the contract permitted. Timekeeping is a core working condition that affects every employee. Timekeeping procedures are often, understandably, standardized throughout even the largest companies. There is thus a pragmatic need for collective negotiation regarding timekeeping, which is a critical distinguishing factor between timekeeping and individual rights that a union cannot negotiate away—such as the right to be free from discrimination based on race or sex.

Walton attempts to sidestep the issue by arguing that BIPA confers rights to control how biometric data is "collected" and "us[ed]" that are somehow distinct from timekeeping and not "subject to negotiation." Opening Br. at 16. But of course, a union cannot agree to biometric timekeeping without agreeing that employee biometric data will be "collected" and "us[ed]." *Id.* Moreover, BIPA itself confirms that individuals *can* negotiate about how their biometric information is used, including through "authorized representative[s]" like unions. *See* 740 Ill. Comp. Stat. 14/15(b); *see also* 740 Ill. Comp. Stat. 14/15(d)(1). *See also In re Amoco Petroleum Additives Co.*, 964 F.2d at 710 ("[p]rivacy in the workplace" is an "ordinary subject of bargaining").

LMRA preemption was designed for situations such as this. Federal courts have a strong interest in ensuring that unionized employees, like Walton, are not permitted to bypass the collective bargaining agreement entered into by their union. Society is best served when similar provisions in collective bargaining agreements are interpreted consistently and predictably nationwide. This dispute is a classic candidate for LMRA preemption.

B. Exempting Timeclock Provisions From LMRA Preemption Would Have Negative Consequences Nationwide

LMRA preemption of this dispute is not only required by binding case law, but is also good policy. Practically, if this Court were to reverse the Appellate Court's decision, negotiating and executing collective bargaining agreements would become more complicated for both businesses and unions.

In the last half a century, legal economists have written volumes on the transaction costs imposed on parties to a contract whenever goods or services are exchanged. *See, e.g.*, Douglas W. Allen, *Transaction Costs*, in 1 Encyclopedia of Law

and Economics: The History and Methodology of Law and Economics 896 (Boudewijn Bouckaert & Gerrit De Geest eds., 2000) (discussing the history, use, and significance of the term "transaction costs" in economics). Collective bargaining agreements are not immune from these transaction costs; negotiating these agreements often proves expensive and time-consuming.[1]

Companies and unions often seek to minimize these transaction costs and maximize efficiencies by entering into a "master agreement," which covers all unionized worksites in a specific industry, market, or company. By negotiating the terms of the master agreement only once, unions and employers are able to greatly decrease transaction costs and prevent localized deadlocks in negotiations. Many of these master agreements cross state lines, and can apply to thousands or hundreds of thousands of employees. *See, e.g.*, International Brotherhood of Teamsters, *Teamsters Launch Nationwide UPS Campaign to Win Strong Contract in 2023*, PR Newswire (Aug. 1, 2022), https://www.prnewswire.com/news-releases/teamsters-launch-nationwide-ups-campaign-to-win-strong-contract-in-2023-301597212.html (announcing campaign by the International Brotherhood of Teamsters in advance of master agreement negotiations affecting approximately 350,000 employees).

These master agreements, which are frequently negotiated at the national level, often contain provisions directed at timekeeping or the calculation of hours worked by

[1] Unions and businesses often spend over a year negotiating their first collective bargaining agreement. *See* Robert Combs, *ANALYSIS: How Long Does It Take Unions to Reach First Contracts?*, Bloomberg Law (June 1, 2021), https://news.bloomberglaw.com/daily-labor-report/analysis-how-long-does-it-take-unions-to-reach-first-contracts (determining, based on a review of 330 contracts, that the mean negotiation time to ratify the first collective bargaining agreement reached between a union and a business is 409 days).

employees. *See, e.g.*, National Master United Parcel Service Agreement: For The Period August 1, 2018 Through July 31, 2023, Arts. 12 and 17, *available at* https://teamster.org/wp-content/uploads/2018/12/ups18nationalmaster.pdf (containing provisions on the use of timeclocks and the method of calculating hours worked); The National Construction Agreement, § 12-2, *available at* https://d3ciwvs59ifrt8.cloudfront.net/d39ec2f3-a01b-47d5-b1a5-db1d4dd7647a/e6dee122-b49d-4ca2-81f2-2d36edc02dc7.pdf ("The Employer may utilize brassing, time clocks or other systems to check employees in and out."). Further, these master agreements frequently contain broad management-rights clauses similar to the clause entered into between Walton and his union. *See*, *e.g.*, The National Construction Agreement, *supra*, § 5-1 ("The Employer retains and shall exercise full and exclusive authority and responsibility for the management of its operations, except as expressly limited by the terms of this Agreement.").

If Walton's view of the law is correct, unionized employees covered by collective bargaining agreements must be permitted to file claims under Illinois state law if biometric time clocks are used unless consent is negotiated with every individual employee—whether or not their unions have consented to that manner of timekeeping. That would throw into disarray employers' ability to reap the benefit of their bargain with respect to the timekeeping provisions and management-rights clauses of these master agreements. To illustrate: One can easily imagine an employer who, for operational consistency and efficiency, desires to have consistent timekeeping procedures and systems throughout the United States. Decades of sound labor policy provide that

industrial peace would be best served if that employer could reach agreement with the union on a system.

Yet, if each state were to apply its own law to interpret collective bargaining agreements, this seemingly simple goal would be out of reach. A nationwide agreement could never predictably allow an employer to reliably negotiate with a union to implement consistent timekeeping systems nationwide. One state may prevent enforcement of certain contractual language absent specific language derived from that state's statutes. Another state may require different, perhaps contrary, language to be used instead. And, still another state may rule that no language is sufficient because only individual employees—not unions—can agree to certain timekeeping procedures. The result would be untenable. *See Lueck*, 471 U.S. at 211 ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.").

Not only would nationwide collective bargaining agreements fail at their very purpose—allowing parties to negotiate compromise to the extent they have differences of opinion about working conditions—but the negotiation of future agreements would become increasingly complicated. Even if, in practice, appropriate and nationally enforceable language *could* be fashioned, that does not mean it *would* be. As *Lucas Flour* warned, negotiations between employers and unions would become much more of a resource drain, and the benefits of expending those resources would reduce, as neither side would be confident of consistent enforcement. That would have a deleterious effect on both the negotiation and administration of these agreements. *See Lucas Flour*, 369

U.S. at 103 ("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."). As a result, employers and unions may decide to forego these agreements entirely. That is particularly problematic for employment conditions like timekeeping that occur every day and affect millions of employees nationwide.

Further, even if a union and management somehow overcame these obstacles and were able to contractually agree to a biometric timekeeping system, if the Court adopts Walton's position, the inevitable result is that individual employees would be permitted to demand that the employer change that procedure (and incur significant damages paid to the individual) by filing a BIPA lawsuit. That would create an immense burden on *both* employers and unions. Requiring employers to negotiate with individual union members about timeclock procedures, data retention procedures, and data destruction procedures to avoid liability under BIPA or a similar statute, would impose tremendous transaction costs—if it were even possible. Either path would render the union effectively unable to negotiate about an issue of employment that affects every single one of its members—and a subject that BIPA itself seems to contemplate would be within the union's control. *See* 740 Ill. Comp. Stat. 14/15(b). The union could not use timekeeping procedures as fodder for compromise on another issue, and employers would be effectively prevented from collectively negotiation about companywide timekeeping procedures even if they wanted to. Only through collective bargaining can employers and workers negotiate timekeeping disputes and efficiently create consistent, enforceable rules.

The Supreme Court was right. Creating a broad exception to the LMRA preemption rules that would otherwise apply to disputes about timekeeping would "stimulate and prolong disputes" as well as "substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." *Lucas Flour*, 369 U.S. at 104. And, as a consequence, the "stabliz[ation] [of] industrial relations" and the "promot[ion] [of] industrial peace" could be placed at risk in Illinois and beyond. *Lincoln Mills*, 353 U.S. at 454.

CONCLUSION

For the reasons set forth above, we ask this Court to hold that Walton's BIPA claims are preempted under Section 301 of the LMRA.

Dated: November 16, 2022

Respectfully submitted,

/s Nicole C. Henning

Nicole C. Henning
Efrat R. Schulman
David Sandefer
JONES DAY
110 N. Wacker Drive
Suite 4800
Chicago, IL 60606
(312) 782-3939
nhenning@jonesday.com
eschulman@jonesday.com
dsandefer@jonesday.com

Counsel for *Amici Curiae* Chamber of Commerce of the United States of America, The Restaurant Law Center, Illinois Restaurant Association, and National Retail Federation

SUPREME COURT RULE 341(c) COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

/s/ Nicole Henning
JONES DAY
110 N. Wacker
Drive Suite 4800
Chicago, IL 60606
(312) 782-3939
nhenning@jonesday.com

CERTIFICATE OF SERVICE

I, Nicole Henning, on behalf of the Chamber of Commerce of the United States of America, the Restaurant Law Center, the Illinois Restaurant Association, and the National Retail Federation, certify that I electronically filed, via LexisNexis File & Serve, a true and complete copy of the foregoing Brief *Amici Curiae* of Chamber of Commerce of the United States of America, the Restaurant Law Center, the Illinois Restaurant Association, and the National Retail Federation in Support of Defendant-Respondent Roosevelt University, which will, upon acceptance, electronically serve the following counsel of record at the email addresses provided to the Court:

David M. Schultz
John P. Ryan
Adam R. Vaught
Hinshaw & Culbertson LLP
151 N. Franklin Street, Suite 2500
Chicago, Illinois 60606
dschultz@hinshaw.com
jryan@hinshaw.com
avaught@hinshaw.com

Haley R. Jenkins
James B. Zouras
Ryan F. Stephan
Stephan Zouras, LLP
100 N. Riverside Plaza, Suite 2150
Chicago, Illinois 60606
hjenkins@stephanzouras.com
jzouras@stephanzouras.com
rstephan@stephanzouras.com

Catherine Simmons-Gill
Offices of Catherine Simmons-Gill, LLC
111 W. Washington Street, Suite 1110
Chicago, Illinois 60602
simmonsgill@gmail.com

Chiquita L. Hall-Jackson
Hall-Jackson & Associates, PC
180 W. Washington Street, Suite 820
Chicago, Illinois 60602
chj@hall-jacksonandassociates.com

David Fish
Robin Potter
Mara Baltabols
Fish Potter & Bolaños P.C.
200 E. 5th Avenue, Suite 123
Naperville, Illinois 60563
docketing@fishlawfirm.com

Under penalties by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this notice of filing and certificate are true and correct.

/s Nicole Henning
Nicole Henning