No. _____

In the Supreme Court of the United States

CATHERINE SHANNON, DIRECTOR OF THE ILLINOIS DEPARTMENT OF LABOR, *ET AL.*, PETITIONERS,

v.

520 SOUTH MICHIGAN AVENUE ASSOCIATES, LTD., RESPONDENT.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in conflict with other circuits and decisions of this Court, the court of appeals incorrectly held that a state statute cannot be a "minimum labor standard"—and therefore cannot survive preemption by the National Labor Relations Act, 29 U.S.C. §151 *et seq.*—if the law is tailored to account for occupational and regional differences or is "stringent" in its requirements.

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is sought to be reviewed is as follows:

Defendant-Appellee/Petitioner: Catherine Shannon, Director of the Illinois Department of Labor.

Intervenor-Appellee/Petitioner: UNITE HERE Local 1.

Plaintiff-Appellant/Respondent: 520 South Michigan Avenue Associates, Ltd., d/b/a The Congress Plaza Hotel & Convention Center.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Catherine Shannon, Director of the Illinois Department of Labor, and UNITE HERE Local 1, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, App. 1a-47a, is reported at 549 F.3d 1119 (7th Cir. 2008). The opinion of the district court, App. 48a-76a, is unreported.

JURISDICTION

The Seventh Circuit Court of Appeals entered judgment on December 15, 2008, App. 1a-47a, and denied rehearing en banc on January 28, 2009, App. 81a. On April 28, 2009, Justice Stevens extended the time within which to file a petition for writ of certiorari until June 27, 2009. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Supremacy Clause provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2. The Room Attendant Amendment to the Illinois One Day Rest in Seven Act ("Amendment"), 820 Ill. Comp. Stat. 140/3.1 (2008), is set forth at App. 82a-84a.

INTRODUCTION

In enacting the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151 *et seq.*, Congress did not "intend[] to disturb" the States' "'broad authority under their police powers to regulate the employment relationship to protect workers within'" their borders. *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) (quoting *DeCanas v. Bica*, 424 U.S. 351, 356 (1976)). Rather, "Congress developed the framework for self-organization and collective bargaining of the NLRA within the larger body of state law promoting public health and safety." *Ibid.* Accordingly, the NLRA does not preempt "minimum labor standard[s]" created by state law, *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 7 (1987), but instead "employers and employees come to the bargaining table with rights under state law that form a 'backdrop' for their negotiations," *id.* at 21 (quoting *Metro. Life*, 471 U.S. at 757). Applying these principles, this Court has repeatedly rejected claims that substantive workplace standards are preempted, see *Fort Halifax*, 482 U.S. at 19-23; *Metro. Life*, 471 U.S. at 748-758, and has similarly rejected a preemption challenge to suits to enforce such standards, see *Lividas v. Bradshaw*, 512 U.S. 107, 121-125 (1994).

The Court's serial rejection of preemption challenges to state minimum labor standards should have resulted in uniform precedent on the subject. But differences over the proper reading of certain key terms in the Court's decisions have bred mischief and confusion in the lower courts, as exemplified by the decision below. More than twenty years after the Court's seminal preemption decisions on the subject, the Seventh Circuit in this case bemoaned what it perceived as "sparse" "guidance" on what constitutes a "minimum labor standard," App. 22a, and identified discord among lower court decisions over the proper scope of the States' authority to enact workplace protection legislation without running afoul of federal law, App. 24a-26a. Adopting the approach it deemed the "better reasoned" among the competing lower court analyses, App. 26a, the Seventh Circuit held that an Illinois statute requiring hotel employers in Cook County to provide periodic rest breaks to their room attendants is preempted by the NLRA.

The court determined that the rest break law in question is not a minimum labor standard because the law's protections are tailored to account for occupational and regional differences and are, in the court's view, overly "stringent." But this view—that lowest-common-denominator laws setting the same minimum standards regardless of material differences are not preempted, but that better-tailored laws are—is not only illogical, but it conflicts with the decisions of other federal and state courts of appeal, is impossible to square with this Court's precedents, and threatens a myriad of existing state and local workplace laws. This Court should grant certiorari to provide state and local governments with essential guidance on the limits of their police power to regulate the workplace.

STATEMENT

1. The Amendment went into effect in 2005. It requires hotel employers to provide their room attendants with two fifteen-minute paid rest breaks and one thirty-minute unpaid meal period during each workday in which the room attendant works at least seven hours. See 820 Ill. Comp. Stat. 140/3.1(b), (c) (2008). Attendants who fail to receive the mandated break periods have a private cause of action for three times their regular hourly wage for each workday in which the breaks are not provided, and attendants are protected against retaliation for invoking their rights under the Amendment. See 820 Ill. Comp. Stat. 140/3.1(f), (g) (2008). The anti-retaliation provision creates a presumption of retaliation that the employer may rebut. See 820 Ill. Comp. Stat. 140/3.1(g) (2008).

2. As originally introduced in the Illinois legislature, the Amendment applied to all hotels in the State. See *Ill. Hotel & Lodging Ass'n v. Ludwig*, 869 N.E.2d 846 (Ill. App. Ct. 2007) ("*Ludwig*") (hereinafter, all citations to *Ludwig* are to the attached appendix). After "[l]egislators from downstate areas * * * stressed the different competitive pressures faced by hotels and

motels in their regions," a compromise bill was introduced that applied the law solely to hotels in Cook County, where Chicago is located. App. 92a. As adopted, the Amendment applies to all hotels and other transient occupancy establishments (union and nonunion alike) in Cook County. See 820 Ill. Comp. Stat. 140/3.1(b) (2008).

3. In 2007, the Illinois Appellate Court upheld the Amendment against a constitutional challenge brought by the Illinois Hotel and Lodging Association ("Association"), a statewide trade organization of hotels with members operating in Cook County. See App. 86a. The court rejected the Association's claims that the Amendment was preempted by the NLRA, as well as claims that the Amendment violated the Illinois Constitution's prohibition against special legislation and the federal and state Equal Protection Clauses. See App. 85a-86a.

The state appellate court determined that the Amendment "was introduced and passed to protect hotel room attendants from overwork." App. 87a. The evidence demonstrated that these "attendants essentially work on a piece-rate system," meaning that "[b]oth union and nonunion hotels require room attendants to clean a quota of rooms each work shift." App. 86a. Thus, "[a]lthough they are paid by the hour, room attendants are required to deliver a quantified amount of work during their shift and can be disciplined if they fail to do so." *Ibid.* The court found that many room attendants skip rest breaks to meet their quotas, contributing to physical injury. See App. 87a. And the risk of injury has only increased in recent years, as hotels have added heavier mattresses, more pillows, and additional amenities to compete for travelers' business, resulting in an increased number and intensity of tasks required to clean a room. See *ibid.*

The Illinois Appellate Court then rejected the Association's state law and federal equal protection claims, which were premised on the Amendment's application in Cook County alone, because the Illinois General Assembly's decision to treat hotels located in Cook County differently from hotels located elsewhere in the State was reasonable. See App. 93a-95a. As the court explained, "Cook County has more hotel room attendants than the rest of the State combined," and "the revenue per available room for all Chicago hotels * * * was higher than any other area of the State." App. 84a. "The legislature rationally could have concluded from such evidence that [the Amendment] would protect hotel room attendants from overwork in the jurisdiction where the majority of such employees would be impacted and in the jurisdiction best positioned to absorb the costs of [the] new regulations." App. 94a-95a.

The court further rejected the Association's claim that the Amendment is preempted under either the "*Garmon*," see *San Diego Bldg. Trades Council v.*

Garmon, 359 U.S. 236 (1959), or the "*Machinists,*" see *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Employment Relations Comm'n*, 427 U.S. 132 (1976), doctrine of NLRA preemption. See App. 95a-102a.[1] The court explained that because the Amendment "'affect[s] union and nonunion employees equally'" and "'neither encourage[s] nor discourage[s] the collective-bargaining processes that are the subject of the NLRA,'" it is "a minimum labor standard" and thus survives under this Court's labor preemption cases.

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[1] *Garmon* preemption precludes States from regulating activity arguably protected by section 7 of the NLRA (protecting employees' rights to self-organization, to bargain collectively, to form, join, or assist labor organizations, and to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as to refrain from these activities, 29 U.S.C. § 157) or prohibited by section 8 (prohibiting unfair labor practices by employers and labor organizations, see 29 U.S.C. § 158). See *Garmon*, 359 U.S. at 241-245. *Machinists* preemption bars state regulation of conduct that Congress neither protected through section 7 nor prohibited though section 8 but instead "left 'to be controlled by the free play of economic forces.'" *Machinists*, 427 U.S. at 140 (quoting *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971)). *Machinists* thus precludes States from enacting laws that interfere with the collective bargaining process, such as laws requiring employers to settle labor disputes to receive regulatory permits. See *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 615-616 (1986).

App. 101a (quoting *Metro. Life*, 471 U.S. at 755). The Supreme Court of Illinois declined the Association's request for leave to appeal. See *Ill. Hotel & Lodging Ass'n v. Ludwig*, 875 N.E.2d 1111 (Ill. 2007).

4. While *Ludwig* was pending in the Illinois courts, respondent, which is not a member of the Association, filed this action in federal court, raising claims similar to the ones that would fail in that case—that the Amendment violates due process, equal protection, and Illinois's prohibition against special legislation, and is preempted by the NLRA and the Labor Management Relations Act ("LMRA"). See App. 8a. On petitioners' motions to dismiss, the district court upheld the Amendment, finding the Illinois Appellate Court's opinion rejecting "almost identical" federal claims in *Ludwig* to be "well-reasoned" and "persuasive," and declining jurisdiction over the supplemental state-law claims. App. 50a, 76a.

5. On appeal, the Seventh Circuit rejected the result reached by the state appellate court, reversed the district court, and held that the Amendment is preempted by the NLRA under the *Machinists* doctrine. See App. 46a-47a. The court acknowledged that *Machinists* preemption "is concerned with the process and not the substantive terms of the bargain," whereas the Amendment "establishes a substantive requirement" rather than working a direct change to the process of bargaining and self-organization. App.

38a. And the court further recognized this Court's holdings that "minimum labor standards," which are not preempted by the NLRA, are defined as those that "'affect union and nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA.'" App. 22a-23a (quoting *Metro. Life*, 471 U.S. at 755). Finally, the court acknowledged that the Amendment both "facially affects union and nonunion employees equally," App. 23a, and in practice applies to both union and nonunion attendants because "not all room attendants in Cook County are unionized," App. 32a. The court nevertheless held that the Amendment did not qualify as a minimum labor standard.

The court reasoned that—although the Amendment applies to union and nonunion workers alike—it cannot set a "genuine minimum labor standard" because it "is not a statute of general application." App. 23a. According to the court, the Amendment's "narrow scope of application," to room attendants in Cook County hotels, "serves as a disincentive to collective bargaining," App. 30a, and thereby runs afoul of the NLRA. For this conclusion, the Seventh Circuit relied on *Chamber of Commerce v. Bragdon*, 64 F.3d 497 (9th Cir. 1995). The court acknowledged that the Ninth Circuit has since repudiated *Bragdon*'s characterization of minimum labor standards as laws "applicable to all employees," *id.* at 502. See App. 26a (noting holding of *Associated*

Builders & Contractors of S. Cal., Inc. v. Nunn, 356 F.3d 979, 990 (9th Cir. 2004), that "state substantive labor standards * * * are not invalid simply because they apply to particular trades, professions, or job classifications rather than to the entire labor market"). But the Seventh Circuit deemed the *Bragdon* approach "better reasoned" than the later decisions rejecting it. App. 26a. The court further recognized that a "series of cases," including decisions of this Court, the Ninth Circuit, and the D.C. Circuit, had upheld workplace protection laws "that apply only to particular occupations, industries or categories of employers" against preemption challenges, but distinguished the instant case because it addressed a law limited "by location" as well as "by trade." App. 25a-26a.[2]

In addition, the Seventh Circuit also reasoned that the Amendment does not qualify as a minimum labor standard because "minimum" "implies a low threshold." App. 34a. According to the court, the Amendment's protections do not comprise a "true minimum labor

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[2] The Seventh Circuit purported to distinguish *Fort Halifax*, 482 U.S. 1; *Dillingham Construction N.A., Inc. v. County of Sonoma*, 190 F.3d 1034 (9th Cir. 1999); *Viceroy Gold Corporation v. Aubry*, 75 F.3d 482 (9th Cir. 1996); *National Broadcasting Company v. Bradshaw*, 70 F.3d 69 (9th Cir. 1995); and *Washington Services Contractors Coalition v. District of Columbia*, 54 F.3d 811 (D.C. Cir. 1995), on this ground. App. 25a-26a.

standard" because they are "higher" than those for other Illinois workers, App. 32a-33a; they are too "stringent," App. 38a; and, in the court's view, they "would be very difficult for any union to bargain for," App. 35a. As a result, the court hypothesized, the mandated rest breaks would "interfere" with room attendants' pay and quota structure under respondent's expired collective bargaining agreement, and the Amendment's rebuttable presumption of retaliation would similarly undermine the dispute-resolution mechanisms set forth in that agreement. App. 40a-43a.

REASONS FOR GRANTING THE PETITION

In using *Machinists* preemption to invalidate a state workplace law applicable to union and nonunion employees alike, the Seventh Circuit broke from this Court's definition of a "minimum labor standard" in *Metropolitan Life* and *Fort Halifax*. The Seventh Circuit's redefinition of a "minimum labor standard" conflicts with both federal and state appellate court decisions, including a ruling by the Illinois Appellate Court rejecting the same preemption challenge to the same Illinois law. Moreover, the Seventh Circuit's decision contributes significantly to uncertainty over the scope of state and local power to enact workplace protection laws, and it casts doubt on myriad of laws governing the workplace already on the books. Only this Court can impose much-needed clarity on this critical area of state and local lawmaking, and establish definitively—notwithstanding the Seventh Circuit's decision in this case, resurrecting a Ninth Circuit ruling whose reasoning that court has disavowed—that federal law does not require States wishing to provide workplace protections to do so only with untailored, one-size-fits-all rules.

I. Courts Are Divided Over Whether Targeted Minimum Labor Standards Are Preempted By The NLRA.

1. The Seventh Circuit's determination that the Amendment is not a "minimum labor standard" is impossible to reconcile with decisions of the Second, Ninth, and D.C. Circuits. These cases recognize that, to avoid preemption, state laws need only be general in the sense that they apply to union and nonunion workers alike (as all agree the Amendment does). See *Metro. Life*, 471 U.S. at 753; *Fort Halifax*, 482 U.S. at 19-20. Nothing in these cases limits the States' ability to tailor workplace protections based on geographical and/or occupational differences.

Indeed, in holding that the Amendment's "narrow scope" prevented it from being a minimum labor standard, App. 30a, the Seventh Circuit recognized that "a series of cases" have held that regulations that "apply only to particular occupations, industries or categories of employers have survived preemption challenge[s]," App. 25a. But the court below relied on the Ninth Circuit's decision in *Chamber of Commerce v.*

Bragdon, which it characterized as "better reasoned" than conflicting decisions that have rejected the *Bragdon* approach. App. 26a. *Bragdon* held that a county ordinance prescribing wage and benefit levels for private construction contractors was preempted under the *Machinists* doctrine. See 64 F.3d at 504. The Ninth Circuit reasoned that the ordinance was "incompatible with the goals of the NLRA" because it "provide[d] for specific minimum wages and benefits to be paid to each craft and only to those workers who are engaged in the specific construction projects covered by the Ordinance." *Id.* at 501, 502. In line with *Bragdon*, it was thus critical to the Seventh Circuit's preemption analysis that the Amendment "lack[ed] * * * general application." App. 29a. The court ultimately concluded that to survive preemption, a minimum labor standard must target substantially all of the labor market. See *ibid.* On this point—essential to the holding below—the Seventh Circuit's decision is in square conflict with other decisions of the Ninth Circuit, as well as the rule in the Second and D.C. Circuits.

First, although downplayed by the Seventh Circuit, see App. 28a-29a n.9, the Ninth Circuit itself has rejected the *Bragdon* analysis on which the decision below relied. Thus, in *Dillingham Construction N.A., Inc. v. County of Sonoma*, 190 F.3d 1034 (9th Cir. 1999), the court held that a law requiring payment of prevailing wages to apprentices on public construction projects was a "minimum labor standard[] immune from NLRA preemption." *Id.* at 1039; see also *Viceroy Gold Corp. v. Aubrey*, 75 F.3d 482, 489-490 (9th Cir. 1996) (overtime law applying only to miners not preempted); *Nat'l Broad. Co., Inc. v. Bradshaw*, 70 F.3d 69, 71-72 (9th Cir. 1995) (same for law applying only to broadcast employees).

Subsequently, in *Associated Builders & Contractors of Southern Califorina, Inc. v. Nunn*, 356 F.3d 979 (9th Cir. 2004), the court expressly rejected *Bragdon* in holding that a law requiring contractors to pay registered apprentices on private construction projects certain wage rates based on their "craft and geographical area"—just like the ordinance challenged in *Bragdon*—was not *Machinists* preempted. *Id.* at 983, 990-991. The court warned that "*Bragdon* must be interpreted in the context of Supreme Court authority and our other, more recent rulings on NLRA preemption," which make clear that "the NLRA does not authorize us to pre-empt minimum labor standards simply because they are applicable only to particular workers in a particular industry." *Id.* at 990; accord *ibid.* ("It is now clear * * * that state substantive labor standards * * * are not invalid simply because they apply to particular trades, professions, or job classifications rather than to the entire labor market.").[3]

Not only does the Seventh Circuit's decision part ways with current Ninth Circuit case law, but it is also inconsistent with the rule adopted by the Second and D.C. Circuits. In *General Electric Company v. New York Department of Labor*, 891 F.2d 25 (2d Cir. 1989), the Second Circuit upheld New York's prevailing wage law against a claim that it was NLRA preempted because it was not universal in scope, applying only to public works contracts, see *id.* at 26, 27-28; see also *Roundout Elec., Inc. v. NYS Dep't of Labor*, 335 F.3d 162, 169 (2d Cir. 2003) (declining to follow *Bragdon*). The Second Circuit adopted the reasoning of the district court, see *id.* at 27, that it "d[id] not matter that the coverage of the statute is limited." *Gen. Elec. Co. v. N.Y. State Dep't of Labor*, 698 F. Supp. 1093, 1098 (S.D.N.Y. 1988). As the district court had explained, "coverage of minimum wage statutes is rarely universal"; accordingly, that "the state ha[d] a rational reason for applying this statute to the employees of private contractors engaged in performing public work and for setting its minimum standards at the level it has selected" was sufficient to sustain the law. *Ibid.* It was similarly irrelevant that

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[3] Although *Nunn* rejected *Bragdon*'s reasoning, it did not overrule *Bragdon*, see 356 F.3d at 990-991, adding to the confusion in the lower courts.

the prevailing wage law required minimum wages in excess of those applicable to other occupations: "The common thread in the Supreme Court's 'minimum labor standard' concept is not a dictionary definition of 'minimum,' nor a requirement that the minimum standards be neutral in their effect on the collective bargaining process, but a judgement that the substantive rights which the state seeks to create are consistent with the 'general legislative goals of the NLRA.'" *Id.* at 1100 (quoting *Metro. Life*, 471 U.S. at 757).

Likewise, in *Washington Services Contractors Coalition v. District of Columbia*, 54 F.3d 811 (D.C. Cir. 1995), the D.C. Circuit upheld labor legislation requiring only "contractors who employ 25 or more persons and perform food, janitorial, maintenance, or non-professional health care services" to retain a predecessor's employees for ninety days after taking over a service contract. *Id.* at 813-814. In rejecting a *Machinists* preemption claim to this targeted law, the court held that the NLRA "does not preempt local regulation of *any* facet of the employment relationship, but rather only those laws that disturb the labor dispute resolution system established by the NLRA." *Id.* at 817 (emphasis in original). Because the law at issue was "substantive employee protective legislation having nothing to do with rights to organize or bargain collectively," *Machinists* preemption did not apply. *Id.* at 818.

Thus, the result under *Bragdon* and in the Seventh Circuit would have been different in either the Second or D.C. Circuits; the fact that legislation applied only to certain workers would have subjected it to *Machinists* preemption in those cases. The Third Circuit has declined to follow *Bragdon* on this point as well, as have the California courts. See *The St. Thomas-St. John Hotel & Tourism Ass'n, Inc. v. Gov't of the United States Virgin Islands*, 218 F.3d 232, 244 (3d Cir. 2000); *S. Cal. Edison Co. v. Pub. Utils. Comm'n*, 140 Cal. App. 4th 1085, 1102-1103 (2006).[4]

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[4] Beyond relying on *Bragdon*, the Seventh Circuit supported its view that only laws applying to substantially all of the labor market qualify as minimum labor standards with citations to *Barnes v. Stone Container Corporation*, 942 F.2d 689 (9th Cir. 1991), and *Hull v. Dutton*, 935 F.2d 1194 (11th Cir. 1991). See App. 24a-25a. But *Barnes* did not involve a challenge to a minimum labor standard, but rather whether an individual could invoke Montana's Wrongful Discharge Act during an impasse in collective bargaining negotiations. See 942 F.2d at 693. And in *Hull*, the challenged Alabama statute applied only to the State's own employees, making it "an expression of the state's power as an employer to regulate relations with its employees, rather than the state's authority to regulate in the interest of the health, welfare, and mores of its citizens." 935 F.2d at 1198-1199. The Seventh Circuit's misreading of these cases is additional evidence of confusion over the meaning of the term "minimum labor standard."

2. The decision below makes an effort to distinguish some of the cases in the foregoing line by observing that the Amendment is limited geographically as well as by trade, but this observation is of no legal moment and does nothing to reconcile the Seventh Circuit with other courts. Such geographic targeting is a common and necessary feature of laws in Illinois and elsewhere. The Amendment, as originally drafted, would have applied statewide. See App. 91a. But, as the Seventh Circuit itself has recognized, Chicago and Cook County differ fundamentally from the rest of the State. See *Hearne v. Bd. of Educ. of City of Chicago*, 185 F.3d 770, 774 (7th Cir. 1999) ("the Illinois statute books are riddled with laws that treat communities with more than 500,000 residents—*i.e.*, Chicago—differently from smaller ones"). The Amendment thus was limited to Cook County after downstate hotels successfully demonstrated that Cook County's hotel industry differed fundamentally from that in other areas of the State. See App. 94a-95a. The Illinois legislature appropriately "concluded from such evidence that [the Amendment] would protect hotel room attendants from overwork in the jurisdiction where the majority of such employees would be impacted and in the jurisdiction best positioned to absorb the costs of [the Amendment's] new regulations." *Ibid.*

Nor is Cook County merely "one of Illinois's 102 counties," as the Seventh Circuit described it. App. 26a.

With 5.3 million residents (forty-three percent of Illinois's population), Cook County is among the largest counties in the nation and has a population exceeding that of twenty-nine States. See http://quickfacts.census.gov/qfd/states/17/17031.html (last visited Jun. 26, 2009) (Cook County); http://www.census.gov/statab/ranks/rank01.html (last visited Jun. 26, 2009) (State rankings). Given Cook County's substantial population and concentration of hotels, the Seventh Circuit's concern about the geographic scope of the Amendment is nonsensical. That leaves only the fact that the Amendment does not apply statewide, but that is logically immaterial. If state subdivisions may pass workplace protection laws—as they routinely do, see *infra* pp. 39-40, it is inconceivable that a state law limited to an area with a larger population risks any greater interference with federal labor law.

3. Finally, the decision below not only is irreconcilable with the rulings of three circuit courts, but it also creates a conflict between state and federal law within the Seventh Circuit. The Seventh Circuit invalidated the Amendment notwithstanding that the Illinois Appellate Court had recently upheld it against an identical preemption challenge. These conflicting rulings leave petitioner Shannon, who is charged with enforcing the Amendment, see 820 Ill. Comp. Stat. 140/6 (2008), in an untenable situation requiring this Court's intervention.

The Illinois Appellate Court's decision is *res judicata* as to every hotel belonging to the Association that brought that case. See, *e.g.*, *Rein v. David A. Noyes & Co.*, 665 N.E.2d 1199, 1204 (Ill. 1996); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1082 (9th Cir. 2003); *Expert Elec., Inc. v. Levine*, 554 F.2d 1227, 1233 (2d Cir. 1977).[5] And while Illinois courts must follow this Court on issues of federal preemption, they are not bound by the Seventh Circuit's preemption decisions, see, *e.g.*, *Weiland v. Telectronics Pacing Sys., Inc.*, 721 N.E.2d 1149, 1153-1154 (Ill. 1999); *Hinterlong v. Baldwin*, 720 N.E.2d 315, 323 (Ill. App. Ct. 1999), meaning that even non-Association members (other than respondent) remain subject to enforcement actions. For these entities, *Ludwig* is *stare decisis* in the Circuit Court of Cook County, the only jurisdiction where the Amendment applies. See, *e.g.*, *People v. Carpenter*, 888 N.E.2d 105, 111 (Ill. 2008); *Delgado v. Bd. of Election Comm'rs of City of Chicago*, 865 N.E.2d 183, 188 (Ill. 2007). As a practical matter, however, petitioner Shannon is reluctant to flout the

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[5] The Seventh Circuit's rejection of *Ludwig* does not change this result. See, *e.g.*, *Rhoades v. Casey*, 196 F.3d 592, 602 (5th Cir. 1999); *Bd. of Trs. of Carpenters Pension Fund for N. Cal. v. Reyes*, 688 F.2d 671, 673 (9th Cir. 1982).

holding of the Seventh Circuit. As a result, she is inhibited from performing her statutory duty to enforce the Amendment.

Illinois is not the only State in which a state and federal court are at odds over whether a law must be broadly applicable to constitute a "minimum labor standard." For example, although the Ninth Circuit has yet to overrule *Bragdon* expressly, that case has been squarely rejected by California's state appellate court. In upholding a prevailing wage requirement limited to workers on one type of construction project against a *Machinists* challenge, the California Court of Appeal "decline[d] to follow *Bragdon*," which the court described as "inconsistent" with this Court's "rule * * * that state regulation of the substantive terms of employment * * * is not subject to *Machinists* preemption." *S. Cal. Edison,* 140 Cal. App. 4th at 1103-1104 (citing *Metro. Life*, 471 U.S. at 758).

Thus state officials face a legal dilemma: is their authority to regulate workplace standards limited to laws applicable to substantially all of the labor market—as *Bragdon* and the Seventh Circuit hold—or may they, as their own state courts have determined, target workplace protections to categories of workers who really need them and employers that can best tolerate them. This intra-State uncertainty is an additional reason why this Court should grant certiorari review.

II. The Decision Below Is Incompatible With Decisions Of This Court.

After bemoaning that this Court's "guidance" on what constitutes a "minimum labor standard" is "sparse," App. 22a, the Seventh Circuit proceeded to fundamentally alter the concept. According to the court, the Amendment does not qualify as a "minimum labor standard" because it is "not a statute of general application," App. 23a, but rather is targeted to a particular occupation in a particular locale. The court further sought to bolster its holding by characterizing the statute as exceeding "a low threshold" and as unduly "stringent." App. 34a, 38a. But on top of breaking from other circuits, the Seventh Circuit's doctrinal innovations are incompatible with this Court's cases, which make clear that the term "minimum labor standard" merely denotes a substantive labor standard applicable to union and nonunion workplaces alike. Even the Seventh Circuit acknowledged that the Amendment easily satisfies this definition. See App. 23a (Amendment "facially affects union and nonunion employees equally"). The court should have gone no further.

1. In *Metropolitan Life*, this Court rejected an NLRA preemption challenge to a Massachusetts law requiring minimum mental-healthcare benefits for all employees, including those subject to benefit plans negotiated pursuant to collective-bargaining agree-

ments. See 471 U.S. at 727, 758. The Court expressly disapproved the view that required-benefit laws like Massachusetts's were preempted because they "in effect mandate terms of collective-bargaining agreements," and thereby remove "the choice of terms" in such agreements from "the free play of economic forces." *Id.* at 748. As the Court explained, "[t]he NLRA is concerned primarily with establishing an equitable process for determining terms and conditions of employment, and not with particular substantive terms of the bargain that is struck." *Id.* at 753. In addition, there generally is "no incompatibility" "between federal rules designed to restore the equality of bargaining power[] and state or federal legislation that imposes minimal substantive requirements on contract terms negotiated between parties to labor agreements." *Id.* at 754.

This Court thus determined that Congress did not intend the NLRA to displace state laws that are "unrelated * * * to the processes of bargaining or self-organization." *Metro. Life*, 471 U.S. at 756. Rather, States are free to enact "minimum labor standards" pursuant to their "'broad authority under their police powers to regulate the employment relationship to protect workers.'" *Id.* at 755, 756 (quoting *DeCanas*, 424 U.S. at 356). "Minimum labor standards," the Court further explained, are laws that "affect union and nonunion employees equally," and, thus, they are not preempted under *Machinists* because they "are not laws designed to encourage or discourage employees in the promotion of their interests collectively" but, instead, "'give specific minimum protections to *individual* workers and * * * ensure that *each* employee * * * receive[s]'" statutorily mandated protections. *Id.* at 755 (quoting *Barentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981) (emphasis in original)).

2. Subsequent to *Metropolitan Life*'s holding that state "minimum labor standards" are not preempted by the NLRA, this Court in *Fort Halifax* made clear that a state law need not be applicable to substantially all of the labor market to qualify as such a standard, for the Court in that case sustained a narrowly targeted statute against an NLRA preemption challenge. The Court upheld a Maine law requiring an employer that terminates operations at a plant with one hundred or more employees (or relocates those operations more than one hundred miles away) to provide severance pay to any employee who had worked in the plant for more than three years. See 482 U.S. at 4 n.1, 5, 23. Thus, the state statute was not broadly applicable; it applied only to larger plant closings, distant relocations, and longer-tenured employees.

Even though the law was limited in its application, this Court upheld the Maine statute as a "minimum labor standard" akin to the one sustained in *Metropolitan Life.* Like the Massachusetts law, Maine's plant-closing law "provide[d] protections to individual union and nonunion workers alike, and thus 'neither encourage[d] nor discourage[d] the collective-bargaining processes that are the subject of the NLRA.'" 482 U.S. at 20-21 (quoting *Metro. Life*, 471 U.S. at 755). The Court acknowledged that "the Maine statute g[ave] employees something for which they otherwise might have to bargain," but the same could be said for almost any workplace law, and "'there is nothing in the NLRA * * * which expressly forecloses all state regulatory power with respect to those issues * * * that may be the subject of collective bargaining.'" *Id.* at 21-22 (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504-505 (1978)); see also *id.* at 21 ("the mere fact that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of pre-emption"). In short, the Maine statute was "'a valid and unexceptional exercise of the [State's] police power.'" *Id.* at 22 (quoting *Metro. Life*, 471 U.S. at 758) (alteration in original).

3. Notwithstanding the actual holdings of *Metropolitan Life* and *Fort Halifax*, the Seventh Circuit, like the Ninth Circuit in *Bragdon*, seems to have been led astray by some of the more general language in those decisions. The court below focused on the use of the phrase "laws of *general application*" in *Metropolitan Life* to describe minimum labor standards, App. 23a (emphasis in original), and the description of such standards as "minimal" and as a "backdrop" to negoti-

ations in *Metropolitan Life* and *Fort Halifax*, respectively, App. 34a. Contrary to the Seventh Circuit's approach, however, nothing in this Court's decisions indicates that these references were intended to bar States from adopting anything but "low threshold" or untailored laws that apply broadly to all sectors of the labor market.

As explained, *Metropolitan Life* itself held that "minimum labor standards" are those that "affect union and nonunion employees equally." 471 U.S. at 755. And the Court's reference to a "law of general application," *id.* at 750 n.28, 753, was derived from *New York Telephone Company v. New York State Department of Labor*, 440 U.S. 519 (1979), where a plurality of the Court used the phrase to distinguish laws targeting unionized workplaces, see *id.* at 533 ("Section 591(1) is not a 'state la[w] regulating the relations between employees, their union and their employer,' as to which the reasons underlying the pre-emption doctrine have their 'greatest force.' Instead * * * the statute is a law of general applicability.") (internal citation omitted).

This view is consistent with this Court's approval in *Fort Halifax* of a narrowly-targeted law and with the State's recognized police power authority to regulate the employment relationship. The Seventh Circuit sought to distinguish the Amendment from Maine's plant-closing law by claiming that the latter, although admittedly not universally applicable, "still had a very broad application." App. 24a. But the court made no effort to explain why a plant-closing law targeted to only a limited class of large businesses in a very small State is more broadly applicable than a law targeted to one occupation in a county that is larger than 29 States. Rather, it reasoned merely that the Amendment's limitation to one Illinois county "serves as a dimin.-centime to collective bargaining" and "makes it possible to target union-heavy counties (or union-light counties), and thus reward (or punish) union activit[ies]." App. 30a, 32a. But this Court rejected precisely these claims in *Fort Halifax*. There, the Court noted that "[t]h[e] argument—that a State's establishment of minimum substantive labor standards undercuts collective bargaining—was considered and rejected in *Metropolitan Life*," 482 U.S. at 20, thus doing away with the Seventh Circuit's concern about "disincentiv[es]" to collective bargaining. And as for the suggestion that the Amendment might affect in practice union workplaces more heavily than nonunion, *Fort Halifax* also rejected an argument that the Maine statute was preempted because it "d[id] not fall equally upon union and non-union employees." *Id.* at 22 n.15.

Indeed, the idea that a workplace standard is preempted because it affects a trade or locale meeting some undefined threshold of unionization not only conflicts with this Court's precedents but would make it impossible for States to set workplace standards in any industry with a significant union presence, even when large numbers of the affected workforce were non-unionized. This result, which "penalizes] workers who have chosen to join a union by preventing them from benefitting from state labor regulations imposing minimal standards on nonunion employers," "would turn the policy that animated the [NLRA] on its head." *Metro. Life*, 471 U.S. at 756. The Seventh Circuit's appoach also is unworkable in practice, for it offers no meaningful standard for determining when an industry or locale is sufficiently "union-heavy" or "union-light" to trigger federal preemption. Thus, the Seventh Circuit's reliance on the phrase "law of general application" to invalidate the Amendment because of its targeted scope is inconsistent with this Court's holdings and their underlying rationales.

4. The Seventh Circuit's decision also resulted from a lack of clarity in the term "minimum labor standard" itself. Pointing to this Court's characterization of minimum labor standards as involving "minimal substantive requirements," App. 34a, the lower court held that the Amendment "does not qualify as a 'minimum' labor standard" because "'[m]inimum,' * * * implies a low threshold," whereas the Amendment "establishes terms of employment that would be very difficult for any union to bargain for," App. 34a-35a; see also App. 38a

("[t]he more stringent a state labor substantive standard, the more likely it is that the state law interferes with the bargaining process").

But this interpretation of the phrase "minimum labor standard" is incompatible with the rationales of *Metropolitan Life* and *Fort Halifax*. Speculation about whether a statutorily mandated benefit would have been "difficult" to achieve in bargaining played no role in the Court's analysis in these cases. In fact, the nature of the benefits at issue refutes the Seventh Circuit's view that only insubstantial state regulations may escape NLRA preemption: neither the severance-pay provision in *Fort Halifax* (requiring one week's pay for each year of employment to all employees who had worked more than three years, see 482 U.S. at 4 n.1) nor the mental-healthcare benefit in *Metropolitan Life* (requiring coverage for "'mental or nervous conditions'" that provides sixty days per year in a mental hospital and treats confinement in a general hospital "'no differently] than * * * any other illness,'" 471 U.S. at 730 n.11) (quoting statute), may fairly be characterized as a law with "minimal substantive impact" on collective bargaining agreements, App. 34a.[6]

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[6] Indeed, the *Metropolitan Life* Court cited with approval myriad state mandated-benefit laws, none of which satisfy the Seventh Circuit's "low threshold" requirement. See 471 U.S. at 730 n.10 (describing state laws requiring "alcoholism

(continued...)

Equally misplaced is the Seventh Circuit's view that the Amendment is not a "true minimum labor standbeen" because the Illinois One Day Rest in Seven Act, which the Amendment modified, "already established a minimum labor standard for breaks." App. 32a-33a. Under the court's analysis, once a State sets a labor standard that applies broadly, it may never adopt different standards later for occupations warranting greater protection. This is a radical and novel limitation on the States' "great latitude" and "'broad authority under their police powers to regulate the employment relationship to protect workers,'" including by responding to unique and changing workplace conditions. *Metro. Life*, 471 U.S. at 756 (quoting *DeCanas*, 424 U.S. at 356). It also is an unwise limitation, for it favors one-size-fits-all legislation over more carefully tailored law-making. Rather, as the Court's endorsement of substantial state workplace regulation in *Metropolitan Life* and *Fort Halifax* makes plain, the term "minimum labor standard" simply means a floor from which individuals and unions must negotiate upwards.

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[6] (...continued)
coverage," "certain birth-defect coverage," "outpatient kidney-dialysis coverage," and coverage for "reconstructive surgery for insured mastectomies"). To say the least, these substantial and costly benefits might well be difficult for union negotiators to achieve in bargaining.

Not only is the Seventh Circuit's rule inconsistent with this Court's decisions, but it is unworkable. The court set forth no standard for determining whether a workplace law is too "stringent" or provides a benefit that would be "very difficult for any union to bargain for." App. 35a-38a. As a result, the rule is an invitation to prohibited judicial second-guessing of economic legislation. See *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 124 (1978); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (*per curia*).

5. The Seventh Circuit also broke from this Court's case law in suggesting that federal law preempts workplace regulations without an "opt-out" for labor agreements setting different standards. See App. 33a. The court concluded that "when the parties are not free to devise their own arrangement preemption applies because the statute intrudes on the collective bargaining process." App. 34a. But this runs afoul of *Fort Halifax*, where the Court was careful to point out that the Massachusetts statute in *Metropolitan Life* "permitted] *no* collective bargaining" but nevertheless "escaped] NLRA pre-emotion." 482 U.S. at 22 (emphasis in original).

6. Finally, the court below claimed that preemption was necessary because the Amendment "interfered]" with the terms of respondent's expired collective bargaining agreement, App. 43a, both because its cause of action for retaliation was inconsistent with the

agreement's dispute-resolution mechanism, and because its mandated breaks supposedly undermined the room-cleaning quota system established by the agreement, see App. 40a-43a. But this Court's holdings create no exception based on the happenstance that some set of employees somewhere in the jurisdiction are already subject to a collective bargaining agreement covering the same topic. See *Fort Halifax*, 482 U.S. at 21-22 ("the mere fact that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of pre-emotion, for 'there is nothing in the NLRA * * * which expressly forecloses all state regulatory power with respect to those issues * * * that may be the subject of collective bargaining'") (quoting *Malone*, 435 U.S. at 504-505 (1978) (ellipses in orig-final)).

In fact, such an exception would be nonsensical, for it would effectively preclude unionized employees from benefitting from state labor protections imposing minimum standards on nonunion employers, something the NLRA clearly does not contemplate. See *Lividas*, 512 U.S. at 130 ("Denying represented employees basic safety protections might 'encourage' collective bargain-in over that subject * * *, but we have never suggested that labor law's bias toward bargaining is to be served by forcing employees or employers to bargain for what they would otherwise be entitled to as a matter of course."). Rather, the fact that, in some instances, a new state law will cause employers and unions to go back to the bargaining table is fully consistent with the NLRA, which envisions bargaining with the various state workplace regulations as a floor or "backdrop." *Metro. Life*, 471 U.S. at 757.

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Thus, for several reasons, the Seventh Circuit's decision is impossible to reconcile with this Court's decisions. Its misapplication of the terms "law of general application" and "minimum labor standard" threaten added confusion in this important area of federal-state relations. Worse, the decision calls into question numerous state and local workplace standards already on the books, see *infra* pp. 35-41, and it is likely to chill legislatures from enacting necessary new ones. This Court's certiorari review is needed to resolve this uncertainty about the States' authority to regulate the workplace and to clarify language used in its previous decisions controlling this area of law.

III. The Issue Presented Is One Of Critical Importance, And The Decision Below Casts Doubt On Many Existing Workplace Protection Laws.

In cases "where federal law is said to bar state action in fields of traditional state regulation," this Court "always" "works] on the assumption that the historic police powers of the States [are] not to be superceded by [federal law] unless that was the clear and manifest purpose of Congress." *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997) (internal quotations and citations omitted); accord *Fort Halifax*, 482 U.S. at 21 ("pre-emotion should not be lightly inferred * * * since the establishment of labor standards falls within the traditional police power of the State"). Not withstand-in the Court's conclusion, applying this presumption against preemption, that Congress did not intend the NLRA "to disturb the myriad state laws * * * that set minimum labor standards, but were unrelated in any way to the processes of bargaining or self-organization," *Metro. Life*, 471 U.S. at 756, the decision below calls into question a wide variety of state and local laws regulating the nation's workplaces.

The features of the Amendment on which the Seventh Circuit relied to find preemption are common to many workplace statutes, and the court provided no principled basis to distinguish Illinois's statute from many such laws. As a result, the Seventh Circuit's decision, if allowed to stand, will encourage litigation over the validity of existing laws and inhibit state and local governments from enacting lawful reforms that their citizens favor. It also will require state legislated-urea to forego sensible targeting of workplace regular-tigons to those employees most in need of certain protections or those employers most able to bear the additional cost of compliance. Instead, state legislatures will be forced to craft "one-size-fits-all" regulations rather than risk costly litigation and the possibility of judicial invalidation.

Workplace legislation always has targeted particular occupations and locales. See, *e.g.*, *Holden v. Hardy*, 169 U.S. 366, 389-390 (1898) (upholding work hours law covering only mine workers). Indeed, many modern state workplace safety laws establish special protec-tigons for particular occupations and industries—typically, as occurred here, in response to identified conditions peculiar to those jobs. See App. 86a-87a (noting unique workplace stresses on hotel room attendants as result of "quota system" and increased work intensity). On the precise issue here—rest and meal breaks—many States have requirements that vary by job description, reflecting differences in the need for and feasibility of taking breaks. See, *e.g.*, 7 Colo. Code Regs. § 1103-1(8) (employees in four industries—retail and trade, commercial and support service, food and beverage, and health and medical—must receive a paid ten-minute rest break for each four-hour work period and a thirty-minute meal break after five hours); Neb. Rev. Stat. § 48-212 (2008) (employees in assembly plants, workshops, and other mechanical establishments must receive thirty-minute meal break during each eight-hour shift and be allowed to leave the premises during this break); N.Y. Lab. Law § 162 (McKinney 2009) (mandating thirty-minute meal break for most employees whose shifts exceed six hours, but requiring sixty-minute meal break for factory workers); 43 Pa. Cons. Stat. Ann. § 1301.207(c) (West 2009) (seasonal farm workers may not work more than five hours without meal or rest period); Wis. Stat. Ann. § 103.85(2) (West 2009) (exempting janitors, security personnel, persons involved in the manufacture or distribution of dairy products, and "persons employed in bakeries, flour and feed mills, hotels, and restaurants" from Wisconsin's One Day Rest in Seven Act).

Similarly, protections against mandatory overtime often target particular occupations, like nurses and miners, seen as vulnerable to overwork. See, *e.g.*, 210 Ill. Comp. Stat. 85/10.9(b) (2008) (barring hospitals from requiring nurses to work mandatory overtime); Me. Rev. Stat. Ann. tit. 26, § 603(5) (2009) (nurses cannot be disciplined for refusing to work overtime, and must be allowed at least ten hours of off-duty time immediately following twelve or more consecutive hours of worktime); R.I. Gen Laws § 23-17.20-3(b) (2009) (in no case will nurse be required to work longer than twelve hours except when there is an unforeseeable emergency); Wash. Rev. Code § 49.28.140 (West 2009) (nurses may not be required to work overtime); W. Va. Code Ann. § 21-5F-3 (West 2009) (no nurse may be forced to work overtime except in cases where patient's safety is at risk); Alaska Stat. § 23.10.410 (2009) (with certain exceptions, miner may not be employed in underground mine or work more than ten hours in twenty-four hours); Colo. Rev. Stat. Ann. § 8-13-102 (West 2009) (mine workers may be forced to work more than eight hours only if there is written work plan outlining conditions under which longer workday would be permitted and employees are given reasonable notice of proposed increase in work schedule); Mo. Ann. Stat. § 290.020 (West 2009) (mining employees may not be required to work longer than eight hours).

It is likewise common for state standards to apply differently in different geographic locations. Generally, such measures provide heightened protections for workers in urban areas, in light of higher costs of living or different industry or economic conditions, as was true here. See App. 94a-95a (Amendment "protect[s] hotel room attendants from overwork in the jurisdiction where the majority of such employees would be impacted and in the jurisdiction best positioned to absorb the costs of [the] new regulations."). The prototypical example is prevailing wage statutes, long used by States to establish minimum pay for public projects on a county-by-county (as well as trade-by-trade) basis, with higher rates for workers in urban than rural areas. See, *e.g.*, 820 Ill. Comp. Stat. 130/1, 2 (2008) (setting prevailing wage as prevailing hourly rate including fringe benefits for work of similar character in same locality); accord Ind. Code Ann. § 5-16-7-1 (West 2009); Tenn. Code Ann. § 12-4-405 (West 2009); Tex. Gov't Code Ann. § 2258.021(a)(1) (2009); Wis. Stat. Ann. § 103.49(d)(1) (West 2009).[7] Local ordinances also routinely provide different substantive workplace rules. See, *e.g.*, http://www.no-smoke.org/pdf/100ordlisttabs.pdf (last visited Jun. 26, 2009) (chart collecting U.S. local smoke-free workplace ordinances).

In addition, while the Seventh Circuit found fault with the Amendment's anti-retaliation provision, such provisions are routinely used to promote improved compliance in the face of limited enforcement resources. For example, state and local laws often provide for

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[7] More recently, state "living wage" laws have set minimum pay levels by geographic region. See, *e.g.*, Md. Procure. Regs. 21.11.10.01 § (B)(4), (5) (2009), and http://www.dllr.state.md.us/labor/livingwagefaqa.shtml#15 (last visited Jun. 26, 2009) (minimum wage for employees under certain state services contracts is nearly three dollars an hour higher for workers in urban counties).

rebuttable presumptions of retaliation against workers who assert their rights. See, *e.g.*, Ariz. Rev. Stat. Ann. § 23-364(B) (2009) (adverse action within ninety days of assertion of minimum wage law rights "raise[s] a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons"); N.J. Stat. Ann. § 34:20-9 (West 2009) (rebuttable presumption arises upon adverse action within ninety days of asserting rights under law protecting against independent contractor classification in construction); San Diego, Cal., Municipal Code § 22.4230 (2005) (same for adverse action within ninety days of providing information toward or cooperating in compliance investigation); Santa Fe, N.M., Municipal Ordinance 28-1.6(B) (same for adverse action within sixty days of asserting or communicating information regarding rights); S.F., Cal., Admin. Code § 12W.7 (same for adverse action within ninety days of filing complaint, cooperating with investigation, opposing any unlawful practice, or informing person of rights).

Likewise, while the Seventh Circuit held that the Amendment's treble damages provision "can in no sense be considered 'minimal,'" App. 37a, many States require treble damages or similarly substantial penalties to secure compliance with their minimum wage and workplace safety laws. See, *e.g.*, Ariz. Rev. Stat. Ann. § 23-364(G) (2009) (requiring mandatory treble damages for mini-mum wage violations plus daily penalties for retaliation against workers seeking to enforce their rights); Ohio Const. Art. II, § 34a (same); Mass. Gen. Laws. Ann. ch. 149, § 27 (West 2008) (treble damages for minimum wage violations); Wis. Stat. Ann. § 103.96(2) (West 2008) (triple backpay for willful violations of anti-retaliation provisions under migrant worker protection law).

* * *

The ruling below calls into question these and other substantive state and local laws governing the work-place. This Court's intervention thus is essential to resolve the lower courts' uncertainty over the scope of the States' police power in this critical area of state regulation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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