No. 14-915

IN THE

Supreme Court of the United States

REBECCA FRIEDRICHS, *et al.*,
Petitioners,
v.
CALIFORNIA TEACHERS ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

THOMAS A. WOODLEY
Counsel of Record
DOUGLAS L. STEELE
DONNA-MARIE K. MCKINNON
WOODLEY & MCGILLIVARY LLP
1101 Vermont Avenue, NW
Suite 1000
Washington, DC 20006
(202) 833-8855
taw@wmlaborlaw.com

Counsel for Amicus Curiae The International Association of Fire Fighters

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Chicago Teachers Union v. Hudson,
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Keller v. State Bar of California,
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Lehnert v. Ferris Faculty Association,
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TABLE OF AUTHORITIES—Continued

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Cal. Gov. Code § 3515.7(a) 5

Mich. Comp. Laws § 423.210(3)(c) 6

Mich. Comp. Laws § 423.210(4)(a)(i) 6

Mich. Comp. Laws § 423.210(4)(a)(ii) 6

Mich. Comp. Laws § 423.210(4)(b)..... 6

Wis. Stat. § 111.70(2) 6

OTHER AUTHORITIES

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NFPA 1500: STANDARD ON FIRE DEPARTMENT OCCUPATIONAL SAFETY AND HEALTH PROGRAM (2013 ed. 2012) 11, 15, 17

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TABLE OF AUTHORITIES—Continued

Page(s)

NFPA 1851: STANDARD ON SELECTION, CARE, AND MAINTENANCE OF PROTECTIVE ENSEMBLES FOR STRUCTURAL FIRE FIGHTING AND PROXIMITY FIRE FIGHTING (2014 ed. 2013). 12, 13

NAT'L INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH: A SUMMARY OF A NIOSH FIRE FIGHTER FATALITY INVESTIGATION: A CAREER LIEUTENANT AND FIRE FIGHTER/PARAMEDIC DIE IN A HILLSIDE RESIDENTIAL HOUSE FIRE – CALIFORNIA (Mar. 1, 2012)..... 10

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NAT'L INSTITUTE OF STANDARDS AND TECHNOLOGY, REPORT ON RESIDENTIAL FIREGROUND FIELD EXPERIMENTS (Apr. 2010). 9

TABLE OF AUTHORITIES—Continued

Page(s)

Press Release, *IARC: Diesel Engine Exhaust Carcinogenic,* International Agency for Research on Cancer (June 12, 2012). 15

Randy L. Tubbs, *Noise and Hearing Loss in Firefighting*, 10 OCCUPATIONAL MED.: STATE OF THE ART REVIEWS 843 (Oct.-Dec. 1995). 14

Rita F. Fahy, Paul R. LeBlanc, and Joseph L. Molis, *NFPA's Firefighter Fatalities in the United States – 2014* (June 2015), *available at* http://www.nfpa.org/research/reports-and-statistics/the-fire-service/fatalities-and-injuries/firefighter-fatalities-in-the-united-states 17

ROLAND ZULLO, UNIV. OF MICH. INST. FOR RESEARCH ON LAB., EMP., AND THE ECON., RIGHT-TO-WORK LAWS AND FATALITIES IN CONSTRUCTION (Mar. 2011). 20

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Stefanos N. Kales, et al., *Firefighters and on-duty deaths from coronary heart disease: a case control study*, ENVTL. HEALTH: A GLOBAL ACCESS SCIENCE SOURCE (Nov. 6, 2003) 18

TABLE OF AUTHORITIES—Continued

Page(s)

Stefanos N. Kales, et al., *Firefighters' Hearing: A Comparison With Population Databases From the International Standards Organization*, 43 J. OF OCCUPATIONAL AND ENVTL. MED. 7 (July 2001) 14

Stephen Kerber, *Analysis of Changing Residential Fire Dynamics and Its Implications on Firefighter Operational Timeframes,* FIRE TECH. (Oct. 2012). 9

BRIEF OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICUS CURIAE*

Amicus curiae represents public safety employees that serve and protect citizens and their communities across the nation.[1] The International Association of Fire Fighters ("IAFF") is an organization representing more than 300,000 professional fire fighters, paramedics, and other emergency responders in the United States and Canada. More than 3,200 IAFF affiliates protect the lives and property of over 85 percent of the continent's population in nearly 6,000 communities in every state in the United States and in Canada. The IAFF's mission includes improving the working conditions of fire fighters and emergency medical services employees, as well as advancing the general health and well-being of those personnel through collective bargaining, labor agreements, and other appropriate means. The IAFF seeks to promote the welfare of fire fighters and other emergency responders with respect to health and safety, education, training, protective gear and equipment, and other terms and conditions of employment.

This case addresses the constitutionality of agency fees, which require public employees who benefit from union representation to pay for their fair share of the

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[1] Pursuant to Rule 37, counsel for Petitioners and counsel for Respondents have consented to the filing of this *amicus curiae* brief. No counsel for a party authored this *amicus curiae* brief in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

costs of negotiating and administering collective bargaining agreements. Many IAFF affiliates negotiate collective bargaining agreements containing agency fee arrangements.

SUMMARY OF ARGUMENT

Fire fighters routinely encounter hazards on the job, and they risk their lives in order to protect their communities. Through collective bargaining, the IAFF and its local affiliates work to reduce those hazards and risks. Collective bargaining and union representation are therefore vital for public safety unions and the employees they represent. In reliance on *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), state and local governments have established a collective bargaining system, granting the exclusive bargaining representative the ability to collect agency fees from non-union members to cover the costs of collective bargaining because this structure serves essential government interests in attracting and retaining high quality personnel.

Fair share fees thus play a significant role in maintaining a stable collective bargaining system where the union serves as the exclusive representative of all employees, and non-members benefit substantially from the union's collective bargaining efforts. This long-established structure also fosters and encourages a productive relationship between the employer and the union. Fire fighter unions seek to obtain important health and safety protections through collective bargaining, which include adequate staffing levels, proper training and equipment, employee wellness programs, and other health and safety measures, in order to protect fire fighters, emergency medical service personnel, and the communities they

serve. It is imperative that public safety unions fairly receive adequate funds through membership dues and fair share fees in order to best protect both public safety employees and their communities.

Abood has been settled precedent *for nearly 40 years*. The Court has repeatedly reaffirmed and clarified the principles set forth in *Abood*, and that well-reasoned decision is now firmly embedded in the Court's First Amendment jurisprudence. In addition, *amicus curiae* has significant reliance interests in *Abood* and the system of collective bargaining and fair share fees established pursuant to that decision, and the Court's precedents and the principle of *stare decisis* militate against overturning *Abood* and imposing a ban on the collection of fair share fees.

ARGUMENT

FIRE FIGHTERS' SIGNIFICANT RELIANCE INTERESTS IN THE STABILITY AND FAIRNESS OF THE COLLECTIVE BARGAINING SYSTEM, INCLUDING THE COLLECTION OF FAIR SHARE FEES, STRONGLY SUPPORT THIS COURT'S REAFFIRMANCE OF *ABOOD*

Fire fighters and paramedics depend on the collective bargaining system established by state and local governments in reliance on *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), allowing for the designation of an exclusive representative that can collect fair share fees from non-union members to cover the costs of collective bargaining. Public employers and their employees have significant interests in a stable and working collective bargaining structure that encourages cooperation and efficiency. Due to the dangers and risks of public safety jobs, fairness dictates that public safety unions receive adequate

funding through union dues and agency fees in order to effectively bargain with employers and secure much needed health and safety protections for public safety employees and the communities in which they perform their vital services. Furthermore, *Abood* crafted a working constitutional balance and has been embedded into the Court's First Amendment jurisprudence through subsequent decisions for almost four decades. The significant reliance interests of the IAFF and its many affiliated unions would be turned upside down if *Abood* and its progeny are overruled and a prohibition is established against the collection of fair share fees.

I. It Is Imperative That Public Safety Unions Be Fairly Funded to Best Serve and Protect the Interests of Fire Fighters, Paramedics, and Emergency Response Personnel and the Communities They Serve

Collective bargaining and union representation is of paramount importance and value to fire fighters and emergency response personnel who serve and safeguard their communities, and they are historically essential to a cooperative and productive relationship between government employers and public safety personnel. The Court in *Abood* underscored the "important contribution of the union shop to the system of labor relations," and the significance and "desirability of labor peace." *Abood v. Detroit Board of Education*, 431 U.S. 209, 222, 224 (1977). The Court further determined that the desirability for labor peace "is no less important in the public sector." *Id.* at 224.

In those jurisdictions where fire fighters may engage in collective bargaining,[2] state and local governments overwhelmingly find that the collective bargaining structure, including the ability of the exclusive representative to collect fair share fees from non-members, allows state and local governments to advance their interests in effective operations by collectively bargaining with one employee representative and preventing free riding on the union's obligation to represent *all* members of the bargaining unit. All of the elements of the collective bargaining structure, including financial resources for public safety unions funded in part by fair share fees, are crucial to ensure that collective bargaining functions as intended by state legislatures to facilitate achievement of the government's goal of delivering efficient services to its citizens. In addition, governments recognize that the community benefits from fire fighter collective bargaining because fire fighter unions are well positioned to protect the health and welfare of not just the first responders, but also the citizens they safeguard.

As a result, it naturally follows that some states have recognized that sound public policy demands that state and local government employers allow public safety unions the ability to collect fair share fees due to the nature of their work, while also denying other public unions this right. Significantly, at least two

[2] About half of the states allow for collective bargaining and fair share arrangements. *See, e.g.*, Cal. Gov. Code § 3515.7(a).

state legislatures, Wisconsin[3] and Michigan,[4] recognized that public safety unions necessarily require the ability to collect fair share fees, due to the critically important and dangerous work performed by these employees.

These states are making a nuanced judgment about how to best structure the relationships between their public employers and employees. In doing so, Wisconsin and Michigan have made an eminently reasonable judgment in the most critical area of

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[3] Wisconsin law provides, "A general municipal employee has the right to refrain from paying dues while remaining a member of a collective bargaining unit. A public safety employee or a transit employee, however, may be required to pay dues in the manner provided in a fair–share agreement . . . ." Wis. Stat. § 111.70(2).

[4] Michigan law declares that "an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following . . . Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative." Mich. Comp. Laws § 423.210(3)(c). Michigan law, however, carved out public safety employees from this mandate by stating, "Subsection (3) does not apply to any of the following . . . A public police or fire department employee . . . ." Mich. Comp. Laws § 423.210(4)(a)(i). State troopers and sergeants are also exempt as well. Mich. Comp. Laws § 423.210(4)(a)(ii). Michigan law also goes on to state, "Any person described in subdivision (a), or a labor organization or bargaining representative representing persons described in subdivision (a) and a public employer or this state may agree that all employees in the bargaining unit shall share fairly in the financial support of the labor organization or their exclusive bargaining representative by paying a fee to the labor organization or exclusive bargaining representative that may be equivalent to the amount of dues uniformly required of members of the labor organization or exclusive bargaining representative." Mich. Comp. Laws § 423.210(4)(b).

public safety that a system of exclusive representation, which permits the public safety exclusive representative to bargain for fair share fees with the local government employer, is the optimal way to ensure the continuous provision of high quality services to the citizens of these states. This judgment should be respected.

Petitioners seek to overturn *Abood* based, not only on circumstances that are specific to a single sector of public employment, but also on a record that is completely devoid of factual development. Petitioners' arguments do not take into account the wide variety of public-sector employment arrangements to which *Abood* applies—especially those involving fire fighters and EMS workers, where collective bargaining supported by fair share fees is common. Petitioners instead are requesting that the Court interfere with states' reasoned policy judgments and substitute their own judgment in place of the states and the strong public policies that justify fair share fee arrangements. States are in the best position to assess whether collective bargaining and agency fees serve vital government interests in attracting and retaining a stable, experienced, and qualified workforce and in improving the services provided to citizens.

A. Full and Adequate Financial Resources Are Crucial for IAFF Affiliates to Obtain Essential Health and Safety Protections for All Bargaining Unit Members that They Are Obligated by Law to Represent.

The collective bargaining process for fire fighters does not merely entail improving wages, which are of course important to attract and retain top quality first responders. Fire fighter unions also use their limited

resources to obtain necessary health and safety protections for bargaining unit members in order to allow them to better serve their communities. Health and safety is the highest-priority bargaining issue for fire fighters. Not all states have laws regulating fire fighter health and safety, and some states that have enacted such laws do not have meaningful mechanisms to enforce these laws. As a consequence, it is incumbent on the fire fighter unions to bargain for and enforce these important protections. Adequately and fairly funding unions through membership dues and fair share fees is, therefore, essential to allow unions the opportunity to secure and preserve these necessary protections.

There are numerous collective bargaining priorities specific to the work performed by fire fighters and paramedics, and due to space constraints, the IAFF cannot discuss every one of them. Instead, highlighted here are a few significant priorities that IAFF affiliates often spend their resources on to illustrate the significance of collective bargaining, with fair share fees, to public safety employees and how fairness requires that a union's bargaining efforts, which benefit *all* employees, be adequately funded.

1. Adequate Staffing Levels and Training for All Bargaining Unit Members.

First, a significant collective bargaining priority funded by fire fighter unions includes maintaining sufficient staffing levels to ensure that fire fighters and paramedics can efficiently respond to emergencies. Decreased staffing levels result in a loss of jobs, loss of life, a decline in the safety of fire fighters and emergency response employees, and a substantial decline in the safety of the community. The National

Fire Protection Association (NFPA) – a nonprofit organization and the leading authority on fire safety that develops science-based codes and standards to minimize the possibility and effects of fire – recommends that the minimum staffing levels for a fire engine company to perform effective fire suppression tasks is four employees per fire engine. NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 1710: STANDARD FOR THE ORGANIZATION AND DEPLOYMENT OF FIRE SUPPRESSION OPERATIONS, EMERGENCY MEDICAL OPERATIONS, AND SPECIAL OPERATIONS TO THE PUBLIC BY CAREER FIRE DEPARTMENTS, ch. 5.2.3 (2016 ed. 2015).

When fire fighters arrive at the scene of a fire, they must perform critical tasks, which include establishing the water supply, deploying an initial attack line, ventilating, performing search and rescue, and establishing a Rapid Intervention Crew, which is a standby crew tasked with immediately rescuing fire fighters in trouble. With more fire fighters on the ground, these tasks are performed more quickly, which better protects citizens' lives and property. One study found that a four-person crew completed the necessary tasks an average of 5.1 minutes faster (nearly 25% faster) than a three-person crew when operating on structure fires for one-, two-, or three-family dwellings. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, REPORT ON RESIDENTIAL FIREGROUND FIELD EXPERIMENTS 10 (Apr. 2010). While five minutes may not seem like a lot of time, when responding to a fire, every second is critical. One study, which consisted of multiple fire experiments to compare the impact of the changes in residential structures over the past several decades, found that rooms with modern construction and home contents transitioned to flashover, which is when all of the combustible materials in a room simultaneously ignite, in less than five minutes.

Stephen Kerber, *Analysis of Changing Residential Fire Dynamics and Its Implications on Firefighter Operational Timeframes*, FIRE TECH. (Oct. 2012).

Fires burn faster today due to modern building construction, larger homes, more open floor plans, and home contents increasingly constructed with synthetic materials, and it is more imperative than ever to get water on the fire as soon as possible to prevent the loss of life and property. *Id*. In addition, if a fire fighter is in trouble, it is critical for the rescue crew to minimize the amount of time a fire fighter is in danger. If staffing levels are not sufficient, then the rescue crew may be assigned fire fighting duties at the scene that hamper their ability to immediately respond to a downed fire fighter, which needlessly endangers the lives of fire fighters.

In fact, inadequate staffing has been cited as a major contributing factor to emergency responses that resulted in fire fighter fatalities. In 2011, two IAFF Local 798 members in San Francisco tragically lost their lives in the line of duty while fighting a residential fire. The National Institute for Occupational Safety and Health (NIOSH), the federal agency responsible for conducting investigations of fire fighter line-of-duty deaths, found that in this incident, staffing levels were not adequately maintained, and recommended that the Fire Department maintain sufficient staffing levels to prevent similar fire fighter deaths in the future. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, A SUMMARY OF A NIOSH FIRE FIGHTER FATALITY INVESTIGATION: A CAREER LIEUTENANT AND FIRE FIGHTER/PARAMEDIC DIE IN A HILLSIDE RESIDENTIAL HOUSE FIRE – CALIFORNIA 21 (Mar. 1, 2012).

IAFF locals in fair share states are better able to secure adequate staffing levels, which protect all employees, because they can properly fund bargaining efforts. For example, IAFF Local 1619 in Prince George's County, Maryland, which has a fair share agreement with the employer, has obtained adequate staffing levels through collective bargaining by successfully incorporating into their contract for each fire station the NFPA-recommended minimum staffing level of four career personnel. In addition, IAFF Local 42 in Kansas City, Missouri, which also collects fair share fees from non-members, negotiated a collective bargaining agreement providing that fire apparatus shall be staffed in compliance with the NFPA standards.

Adequate training is another important bargaining priority funded by fire fighter unions to the benefit of all employees. IAFF affiliates spend their resources on obtaining adequate training through negotiations with the employer, to the benefit of all employees, and fair share fees play a crucial role in that effort. For fire fighters and EMS personnel, regular, updated, and high quality training is essential to protect fire fighter safety and to ensure that fire fighters and EMS workers are capable of protecting the citizens they serve. The NFPA recommends minimum training and education requirements for fire fighters, and the NFPA further recommends that fire fighters train "on a regular basis but not less than annually." NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 1500: STANDARD ON FIRE DEPARTMENT OCCUPATIONAL SAFETY AND HEALTH PROGRAM, ch. 5.3.3 (2013 ed. 2012) [hereinafter NFPA 1500].

In addition, more specialized training can expand the amount of services that fire fighters/paramedics

can provide to their communities, such as Hazmat, technical rescue, terrorism response, mass casualties, and other emergency incidents. IAFF affiliates in fair share states are in a better position to secure much needed protections with respect to training, which benefits all employees. For example, IAFF Local 311 in Madison, Wisconsin, which has a fair share agreement with the employer, secured in the collective bargaining agreement regular Hazmat training for its Hazmat team. Specifically, the Fire Department is required to conduct monthly Hazmat training sessions, where each monthly training session is held three times, once during each of the three shifts, during the course of the regular work day.

2. Improvements to Personal Protective Equipment, Fire Equipment, and Apparatus to Safeguard All Fire Fighters and the Public.

Another significant collective bargaining priority funded by fire fighter unions is obtaining and maintaining the proper personal protective equipment (PPE). These unions often devote their resources to bargaining for higher quality PPE and for regular PPE cleanings, a priority that benefits all public safety employees. Proper PPE that complies with NFPA standards is of paramount importance to fire fighters in order to provide protection from hazardous exposures. For example, NFPA 1851 provides that fire departments should provide the means to have PPE cleaned and decontaminated. NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 1851: STANDARD ON SELECTION, CARE, AND MAINTENANCE OF PROTECTIVE ENSEMBLES FOR STRUCTURAL FIRE FIGHTING AND PROXIMITY FIRE FIGHTING, ch. 7.1.1 (2014 ed. 2013). Soiled or contaminated gear is hazardous to fire

fighters because these contaminants may be flammable, toxic, or carcinogenic, which cause health problems in the long term, such as cancer. Coupled with this risk, contaminated PPE may also have reduced protective qualities. *Id.* at A.7.1.1.

IAFF locals in fair share states are better able to obtain protections with respect to fire fighter PPE, which inure to the benefit of all employees. For example, IAFF Local 344 in Detroit, Michigan, which receives fair share fees, bargained with the City of Detroit for two sets of turnout gear (fire coats, bunker pants, fire boots, and fire gloves) that conform with current NFPA standards to be provided by the City to each employee. In addition, the collective bargaining agreement further mandates that the turnout gear shall be cleaned and replaced in accordance with current NFPA standards.

Adequately funded IAFF affiliates also bargain for health and safety improvements to fire equipment and apparatus to better protect fire fighters. These improvements include hearing loss prevention programs. Excessive noise is one of the many hazards that fire fighters are exposed to on the job, and the main sources of noise include fire sirens, alarms, communication devices, audio equipment, engine pumps, rotary and chain saws, ventilation fans, and pneumatic tools used in emergency ventilation and extrication. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, WORKPLACE SOLUTIONS: PROMOTING HEARING HEALTH AMONG FIRE FIGHTERS, Publication No. 2013-142 (May 2013) (hereinafter PROMOTING HEARING HEALTH). In addition, fire fighters are frequently exposed to chemicals and combustion byproducts that may have toxic effects to the ear and exacerbate the onset of hearing loss. *Id.*

Fire fighting activities therefore often result in fire fighters being exposed to relatively continuous noise levels, and after being repeatedly exposed to excessive noise levels, fire fighters are at a dangerously high risk of developing occupational hearing loss. *Id.*; Stefanos N. Kales, et al., *Firefighters' Hearing: A Comparison With Population Databases From the International Standards Organization*, 43 J. OF OCCUPATIONAL AND ENVTL. MED. 7, 650 (July 2001) (hereinafter *Firefighters' Hearing*). Fire fighters tend to lose their hearing at an accelerated rate compared to the general population. *Firefighters' Hearing*, *supra*, at 650. Fire fighter hearing loss is particularly harmful because many of the tasks performed by fire fighters depend on their hearing ability. It is nearly impossible to see in a smoke-filled environment, and fire fighters are trained to listen for moans and cries when conducting a rescue search. Fire fighters must listen to and respond to radio communications and listen for the warning sound from an air horn that signals fire fighters to immediately leave a building due to imminent danger. Hearing loss, therefore, "can literally be a life-and-death situation" for fire fighters. Randy L. Tubbs, *Noise and Hearing Loss in Firefighting*, 10 OCCUPATIONAL MED.: STATE OF THE ART REVIEWS 843, 844 (Oct.-Dec. 1995).

NIOSH therefore recommends that fire departments consider limiting noise emission when purchasing new equipment and train fire fighters about harmful noise levels from fire fighting tasks and equipment, the effects of noise exposure, hearing loss, and appropriate hearing protection devices. PROMOTING HEARING HEALTH, *supra*. IAFF locals in fair share states are in a better position to bargain for these protections and therefore frequently do so. For example, one IAFF affiliate that collects fair share fees, IAFF Local 2881,

which represents employees of the California Department of Forestry and Fire Protection (CAL FIRE), negotiated for hearing protection/communications systems on all new fire apparatus, dozer transports, and crew carrying vehicles in order to better protect their members' hearing.

Another health and safety priority for fire fighters is the installation of exhaust removal systems, such as source capture devices that attach directly to the tailpipe of fire apparatus and capture diesel engine exhaust before it enters the room air, for fire apparatus stored in an apparatus bay of a fire station. Fire fighters are typically exposed to extended periods of diesel exhaust from apparatus idling in the apparatus bays, which causes exhaust to enter the offices and living quarters. The International Agency for Research on Cancer, part of the World Health Organization and the authoritative international agency on cancer causation, classified diesel engine exhaust as carcinogenic and as known to cause cancer in humans. It is therefore essential that fire fighter exposures to diesel exhaust be either eliminated or kept as low as feasibly possible. Press Release, *IARC: Diesel Engine Exhaust Carcinogenic*, International Agency for Research on Cancer (June 12, 2012). NFPA 1500 provides, "The fire department shall prevent exposure to fire fighters and contamination of living and sleeping areas to exhaust emissions." NFPA 1500, *supra*, at ch. 9.1.5.

As a result, NIOSH recommends that fire departments improve local exhaust ventilation in apparatus bays, including installing tailpipe exhaust systems, to reduce exposures to the lowest feasible concentration. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, A SUMMARY OF HEALTH HAZARD EVALUATIONS: ISSUES RELATED TO OCCUPATIONAL EXPOSURE TO FIRE

FIGHTERS, 1990 TO 2001 6 (Jan. 2004). IAFF affiliates therefore prioritize negotiating for exhaust removal systems. For example, IAFF Local 2881, representing CAL FIRE, successfully negotiated for exhaust removal systems for all new facilities designed to house fire apparatus, including fire engines, crew carrying vehicles, and transports, and has enshrined this arrangement in their collective bargaining agreement.

3. Enhanced Health and Welfare Benefits, Annual Medical Examinations, and Employee Wellness Programs for All Fire Fighters.

Another collective bargaining priority for all fire fighters funded by the union includes negotiating for annual medical examinations administered through employee wellness programs. Wellness programs are of extreme importance for fire fighters because they face a lot of significant health risks on the job, including an elevated risk of cancer and cardiac issues. A fire fighter's work entails high levels of physical exertion, uncontrolled environmental exposures, and psychological stress from observed intense human suffering. Practically every emergency situation encountered by a fire fighter has the potential for exposure to carcinogenic agents that are known to cause cancer. Alarmingly, the IAFF estimates that approximately 60 percent of the line-of-duty deaths of IAFF members result from occupational cancer. Many line-of-duty deaths further result from heart attacks or strokes, and fire fighters have one of the highest rates of on-the-job heart attack deaths among all occupations. Stefanos N. Kales, *Emergency Duties and Deaths from Heart Disease among Firefighters in the United States*, 356 NEW ENG. J. MED. 1207, 1208 (Mar. 22, 2007). The NFPA found that in 2014, 56 percent

of fire fighters who died while on duty in the United States died from sudden cardiac death. Rita F. Fahy, Paul R. LeBlanc, and Joseph L. Molis, *NFPA's Firefighter Fatalities in the United States – 2014* (June 2015), http://www.nfpa.org/research/reports-and-statistics/the-fire-service/fatalities-and-injuries/firefighter-fatalities-in-the-united-states.

Annual medical exams allow fire fighters/paramedics to maintain a high level of job performance and provide high quality services to American communities. These exams, however, should screen for the unique risks and health conditions that may affect the ability of fire fighters to safely perform their jobs. *See* NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 1582: STANDARD ON COMPREHENSIVE OCCUPATIONAL MEDICAL PROGRAM FOR FIRE DEPARTMENTS, ch. 7 (2013 ed. 2013); NATIONAL FIRE PROTECTION ASSOCIATION, NFPA 1583: STANDARD ON HEALTH-RELATED FITNESS PROGRAMS FOR FIRE DEPARTMENT MEMBERS, (2015 ed. 2015); NFPA 1500, *supra*, at ch. 10.1.3. As a result, wellness programs typically reduce the number of work-related injuries suffered by fire fighters while serving their communities. In the IAFF's experience, annual exams save more fire fighter lives than many other preventative measures by providing early detection and treatment of health conditions proven to be related to the fire fighting profession, which in turn allows fire fighters to enjoy longer, healthier careers. Furthermore, wellness programs are popular with fire fighters because through these programs, fire fighters receive a free annual exam while they are on duty. For many fire fighters, employer-provided health insurance does not fully cover the costs of a much-needed annual medical examination. Moreover, the public has a significant interest in fire fighters being physically fit and able to perform essential job tasks.

Fire fighter unions often devote their limited financial resources to negotiate for focused wellness programs that assist all employees. One study confirmed, "Despite recommendations that all firefighters receive periodic, occupational medical examinations, the fire service is failing to provide adequate medical programs to many U.S. firefighters." Stefanos N. Kales, et al., *Firefighters and on-duty deaths from coronary heart disease: a case control study*, ENVTL. HEALTH: A GLOBAL ACCESS SCIENCE SOURCE, 11, (Nov. 6, 2003). Unions with fair share agreements have better resources to negotiate with the employer for these programs to the benefit of all employees. For example, in 2003, IAFF Local 1619 in Prince George's County, Maryland negotiated through collective bargaining a comprehensive wellness and fitness program. Several years after implementation of the program, IAFF Local 1619 and the County saw a comprehensive return on the investment and positive performance data and added more components to the wellness program. In addition, in 2013, IAFF Local 22 in Philadelphia, which collects fair share fees, obtained through the collective bargaining process an employee wellness fitness program, where bargaining unit employees will receive a physical examination once every two years, have hearing conservation testing, and a voluntary fitness program. IAFF Local 2240 in Corvallis, Oregon, which collects fair share fees, also collectively bargained for medical evaluations for fire fighters in accordance with NFPA 1582 and at no cost to the employee. This is, again, an important and potentially life-saving benefit protecting all bargaining unit employees, regardless of union membership.

Additionally, IAFF Local 798 in San Francisco, California, which receives fair share fees, has a section in its collective bargaining agreement providing for health care screenings and vaccinations paid for by the City, including the Hepatitis B vaccine and Hepatitis C screenings, voluntary prostate cancer and breast cancer screenings, and voluntary kidney and bladder cancer screenings. The City also agreed to provide immunizations for tetanus-diphtheria, rubella, measles, polio, and influenza at no cost to the members. Furthermore, acknowledging the significant health and safety risks faced by fire fighters, IAFF Local 858 in Denver, Colorado, which receives fair share fees, negotiated with the City of Denver to include a provision in their collective bargaining agreement requiring the City to pay the cost of reasonable funeral expenses up to a maximum of $10,000 in the event a fire fighter dies from injuries sustained in the line of duty. Furthermore, the contract requires the City to pay the full cost of health insurance and dental insurance for a surviving spouse and the children of a fire fighter who is killed in the line of duty.

B. Fair Share Fees Are Integral to Supporting and Maintaining a Stable Collective Bargaining System, Which Results in Better Protections for the Safety, Health, and Welfare of Fire Fighters and the Communities They Serve.

As illustrated by the above collective bargaining priorities for fire fighter unions, adequate resources and fairness in funding are crucial in order for fire fighter unions to properly perform their representational duties that better protect the lives and welfare of all personnel, regardless of union affiliation, as well as the public that they serve.

Significantly, data shows that in collective bargaining states where unions are properly funded with dues and fair share fees, the rate of worker deaths and injuries is substantially less than in right-to-work states. For example, the University of Michigan performed a remarkable study comparing the rate of fatalities for construction employees in right-to-work states (with no fair share fees) and in non-right-to-work states, and found that the fatality rate is significantly higher in right-to-work states. In fact, the rate of industry fatalities is 40 percent higher in right-to-work states. ROLAND ZULLO, UNIV. OF MICH. INST. FOR RESEARCH ON LAB., EMP., AND THE ECON., RIGHT-TO-WORK LAWS AND FATALITIES IN CONSTRUCTION 6 (Mar. 2011).

The study found that "the positive effect that unions have on reducing fatalities appears to be stronger in states without [right-to-work] laws" and recognized that unions in right-to-work states "have fewer resources to devote to safety training and accident prevention." *Id.* at 5, 11. A study on construction industry work is an appropriate comparator to fire fighting because both occupations experience high rates of worker injuries and fatalities. Overturning *Abood* would thus produce disastrous consequences, where both public safety employees and their communities will be less safe.

In order for collective bargaining to be meaningful, "a government wishing to bargain with an exclusive representative" requires "a viable counterpart," which in turn requires that "a union . . . receive adequate funding." *Harris v. Quinn*, 134 S. Ct. 2618, 2656 (2014) (Kagan, J., dissenting). Agency fees thus play an important role in supporting and maintaining a stable collective bargaining system where the union serves

as the exclusive representative of all employees. *See United States v. United Foods*, 533 U.S. 405, 414 (2001) ("To attain the desired benefit of collective bargaining, union members and nonmembers were required to associate with one another . . . ."). Especially in the important area of fire protection and rescue services, state and local governments have a compelling interest in allowing for agency fee arrangements because non-members undeniably benefit from the union's efforts in collective bargaining, contract administration, and grievance representation. *See Abood*, 431 U.S. at 222 (non-members "obtain[] benefits of union representation that necessarily accrue to all employees"); *Lehnert v. Ferris Faculty Association*, 500 U.S. 507, 556 (1991) (Scalia, J., concurring in judgment and dissenting in part) ("[T]he source of the state's power, despite the First Amendment, to compel nonmembers to support the union financially, is elimination of the inequity that would otherwise arise from mandated free-ridership").

Moreover, laws authorizing collective bargaining with fair share fee arrangements are further justified because public unions, as the exclusive representative, have the legal duty of fair representation to non-members in the bargaining unit. *See Abood*, 431 U.S. at 221. Therefore, basic principles of fairness justify the unions' receipt of agency fees in order to fund their efforts as the exclusive representative of all employees.

As this Court recognized in *Abood*, collective bargaining "often entail[s] expenditure of much time and money." *Abood*, 431 U.S. at 221 ("The tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are

continuing and difficult ones."). Typically, the parties do not meet at the bargaining table a few times and reach a quick agreement; collective bargaining negotiations are usually a drawn out process that can sometimes take years.

Additionally, this process almost always requires fire fighter unions to hire attorneys, experts, economists, and professional negotiators at great cost to the union in order to match the resources and experts put forth by public employers. *See Abood*, 431 U.S. at 221. Most importantly, non-union members benefit greatly when IAFF local affiliates obtain non-controversial protections such as adequate staffing, education, training, equipment, and other health and safety measures, which are overwhelmingly favored by all fire fighters, regardless of union affiliation. If unions are not able to adequately and fairly fund collective bargaining, then they will not be able to secure many of these protections for the employees they represent.

The costs of processing grievances and going to arbitration are steep as well. Petitioners dodge this point and instead aver, "Agency fees . . . cannot be justified on the ground that some small percentage of those fees might aid the small percentage of employees who file CBA grievances." Pet. Br. 45. Petitioners fail to understand that the union's efforts in monitoring and enforcing the collective bargaining agreement benefit *all* members of the bargaining unit. For example, if a union wins a contract interpretation grievance with respect to overtime pay, all members benefit from a properly enforced contract. For disciplinary grievances, all bargaining unit employees benefit from the proper enforcement of a contract's just cause provision; in fact, in the IAFF's experience, pursuit of these grievances reduces the frequency of

arbitrary or improper discipline for *all* employees, not just for the individual grievant.

Petitioners also completely disregard the "expenditure of much time and money" in handling grievances. *Abood*, 431 U.S. at 221. Unions such as IAFF local affiliates typically must pay for attorneys, assist with paying for an arbitrator and other costs associated with arbitration hearings, and expend much time to ensure that grievances are properly handled. This is hardly a "small" burden for unions. Despite the tremendous time commitment and financial cost of grievance handling, Petitioners go so far as to argue that handling non-member grievances "actually benefits the unions." Pet. Br. 45. Petitioners also disingenuously contend that unions "do not assist nonmembers on matters that would tangibly benefit them—e.g., resisting discipline or termination." *Id.* at 46. *This assertion is patently false*; fire fighter unions frequently represent non-members in discipline or termination grievances, demonstrating that public safety unions "tangibly benefit" non-members.

Petitioners also misconstrue the nature and purpose of union time – where union officials are afforded paid time on duty to perform union business (such as filing grievances, attending disciplinary interviews by management officials, and participating in collective bargaining negotiations) – as "deals [struck by unions] that . . . expressly favor union leaders." Pet. Br. 41 n.11. The reality is that union time is not a fancy perk that unions negotiate to unfairly favor union officers over other bargaining unit members; union time is an absolute necessity for unions to properly negotiate and administer collective bargaining contracts, stemming from their duty of fair representation and the interest of public employers in maintaining a cooperative

relationship with the union, which in turn benefits all. This is certainly true with respect to the safe and efficient performance of fire protection and emergency medical services.

Moreover, union time benefits the employer as well, as it fosters the fair and reasonable administration of the collective bargaining agreement that is essential to workplace harmony, cohesion, and morale. This is particularly important in the sphere of public safety officials, who literally depend on union cooperation and loyalty when facing life-threatening situations on a daily basis. Stability in collective bargaining is therefore of paramount importance in the public safety realm because of the dangerous nature of the work, and courts have recognized a heightened government interest in securing discipline, efficiency, and morale in organizations such as fire departments. *See, e.g., Anderson v. Burke County*, 239 F.3d 1216, 1222 (11th Cir. 2001).

The above collective bargaining interests are therefore vital to both union members and non-members alike. Fire fighter unions' ability to fund and negotiate for proposals that bolster the safety of fire fighters and EMS workers benefits all those employees, regardless of whether they are union members. Therefore, fair share fees are an essential component of the existing collective bargaining structure, which encourages a strong and productive relationship between the employer and public safety unions and also clearly results in better protections for the health and welfare of fire fighter and EMS personnel, as well as the public.

II. The Collection of Fair Share Fees Is Constitutional

Abood has been settled precedent for almost 40 years, and the Court has repeatedly reaffirmed and refined the bedrock First Amendment principles set forth in *Abood* in its subsequent decisions. *See Locke v. Karass*, 555 U.S. 207, 214 (2009). In upholding fair share fees as consistent with the First Amendment, the Court has afforded great weight to the long-standing bedrock principle of exclusive union representation, and the policy decision of a state to "establish [exclusive representation] for local government units." *Abood*, 431 U.S. at 223.

Abood correctly recognized that "the designation of a union as exclusive representative" inherently "carries with it great responsibilities." *Id.* at 221. As an exclusive representative, "the union is obliged 'fairly and equitably to represent all employees . . . union and nonunion,' within the relevant unit." *Id.* (quoting *Machinists v. Street*, 367 U.S. 740, 761 (1961)). Justice Scalia, in an opinion joined by Justice Kennedy in all but one part, aptly describes the rationale underpinning *Abood*, which still is true today: "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them; or, looked at from the other end, where the state creates in the nonmembers a legal entitlement from the union, it may compel them to pay the cost." *Lehnert*, 500 U.S. at 556 (Scalia, J., concurring in judgment and dissenting in part).

The Court's reasoning in upholding fair share fees as consistent with the First Amendment rests on two fundamental principles. First, the Court recognized that "it would promote peaceful labor relations" to allow for fair share agreements "requiring employees

who obtain the benefit of union representation to share its cost." *Abood*, 431 U.S. at 219; *see also Locke*, 555 U.S. at 213. Second, the Court determined that requiring all bargaining unit employees, regardless of union membership, to pay their fair share of the union's collective bargaining expenditures "distribute[s] fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become 'free riders' – to refuse to contribute to the union while obtaining benefits of union representation." 431 U.S. at 222; *see also Locke*, 555 U.S. at 213. As further explained in Justice Scalia's opinion in *Lehnert*, "What is distinctive, however, about the 'free riders' who are nonunion members of the union's own bargaining unit is that in some respects *they* are free riders whom the law *requires* the union to carry – indeed, requires the union to go *out of its way* to benefit, even at the expense of its other interests." *Id.* at 556. The interests in promoting labor peace and in preventing free riders are still compelling four decades later, and Petitioners present no novel arguments or changed circumstances to upset established law and practices and mandate a different conclusion.

Abood therefore strikes the appropriate balance with respect to the First Amendment. Under the fair share fee system established in *Abood*, union members are not forced to subsidize the collective bargaining costs for non-members who receive the same benefits of union representation, and non-members are not forced to pay the union "for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative." *Abood*, 431 U.S. at 235. Viewed another way, Justice Kagan explained that *Abood* "protect[s] an employee's

most significant expression" but "also enables the government to advance its interests in operating effectively—by bargaining, if it so chooses, with a single employee representative and preventing free riding on that union's efforts." *Harris*, 134 S. Ct. at 2645. Justice Scalia has also underscored the appropriate balance struck in *Abood*: "Our First Amendment jurisprudence . . . recognizes a correlation between the rights and the duties of the union, on the one hand, and the nonunion members of the bargaining unit, on the other." *Lehnert,* 500 U.S. at 556.

In asking the Court to overturn *Abood*, Petitioners argue that collective bargaining "involves policy and political issues no different than those involved in lobbying and political advocacy." Pet. Br. 23. This is not a novel contention, and Petitioners offer no additional facts or circumstances that warrant disturbing the *Abood* precedent on these grounds. Petitioners also conveniently disregard the fact that the Court has thoroughly considered and dispensed with this argument in *Abood*, *Lehnert*, and other decisions. *Abood*, 431 U.S. at 231; *Lehnert*, 500 U.S. at 521-22.

The *Lehnert* opinion reinforced the *Abood* precedent by further elaborating on the obvious differences between collective bargaining and political advocacy that make required payments to the former constitutional and to the latter unconstitutional. First, unlike contract negotiations between a public employer and a union, legislatures and the media "are public fora open to all." *Lehnert*, 500 U.S. at 521. Moreover, a union engages in collective bargaining pursuant to statutory authority, and unions generally have no equivalent authority or duty with respect to lobbying. *See id.* at 558-59 (opinion of Scalia, J.). In addition, "unlike

discussion by negotiators regarding the terms and conditions of employment, lobbying and electoral speech are likely to concern topics about which individuals hold strong personal views." *Id.* at 521. This proposition rings especially true with respect to fire fighters and EMS/rescue personnel and their desire for adequate staffing, equipment, training, and other health and safety measures, as these priorities are hardly controversial, and there are few if any dissenters within bargaining units when it comes to the personal well-being of these employees and the welfare of the community.

The Court in *Lehnert* further determined that the principles underpinning *Abood* – labor peace and preventing free riders – do not apply in the political advocacy and lobbying context. For instance, the Court noted that "it would not further the cause of harmonious industrial relations to compel objecting employees to finance union political activities." *Lehnert*, 500 U.S. at 521. In addition, "the so-called 'free-rider' concern" does not apply "where lobbying extends beyond the effectuation of a collective-bargaining agreement. The balancing of monetary and other policy choices performed by legislatures is not limited to the workplace but typically has ramifications that extend into diverse aspects of an employee's life." *Id.*

Despite Petitioners' empty assertions to the contrary, the Court's decisions following *Abood* in the last several decades have repeatedly reaffirmed and refined the holding in *Abood* to ensure that First Amendment principles are properly interpreted.[5] In

[5] *Abood* is also a foundational case in this Court's First Amendment jurisprudence regarding financial support even beyond the agency fee context, and overturning *Abood* will also

each of the agency fee cases decided by this Court from *Ellis v. Railway Clerks*, 466 U.S. 435 (1984) through *Locke v. Karass*, 555 U.S. 207 (2009), the Court squarely upheld the rule in *Abood* as a "general First Amendment principle" that "[t]he First Amendment permits the government to require both public sector and private sector employees who do not wish to join a union designated as the exclusive collective-bargaining representative at their unit of employment to pay that union a service fee as a condition of their continued employment." *Locke*, 555 U.S. at 213. In addition, in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and subsequent cases, the Court established robust procedures to "adequately protect[] the basic distinction drawn in *Abood*," between chargeable collective bargaining activities and non-chargeable political activities. 475 U.S. at 302; *see also Ellis*, 466 U.S. 435 (1984); *Lehnert*, 500 U.S. 507 (1991); *Locke*, 555 U.S. 207 (2009). These well-considered decisions ensure that non-members' First Amendment rights are adequately safeguarded with respect to fair share fees.

III. Fire Fighter Unions and the Emergency First Responders They Represent Have Significant Reliance Interests in *Abood*

Despite Petitioners' blanket assertion that "no individual or entity has a valid reliance interest in *Abood*," Pet. Br. 58, the IAFF has significant reliance interests in *Abood* and the system of collective bargaining and fair share fees upheld in that decision.

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have the unsettling effect of calling these cases into question. *See, e.g.*, *Keller v. State Bar of California*, 496 U.S. 1 (1990) (relying on *Abood* to uphold mandatory fees charged by state bar associations).

Public employers and public employees have freely negotiated and entered into "not tens or hundreds, but thousands of contracts between unions and governments across the Nation" containing agency fee agreements in reliance on *Abood*. *Harris*, 134 S. Ct. at 2645 (Kagan, J., dissenting).

Petitioners, however, somehow believe that overturning *Abood* would not interfere with the existing collective bargaining system and resulting labor agreements. Pet. Br. 58. This assertion betrays a fundamental lack of understanding about how the collective bargaining process works. First, many contracts contain union security clauses, which require non-members to pay fair share fees and allow for employer payroll deductions of union dues and fair share fees from bargaining unit workers. Each of these contracts would have to be reopened and renegotiated, at great time and expense to the affected unions, which in turn will need to consult with lawyers in order to navigate the legal complexities of a post-*Abood* landscape. Moreover, in many cases, public sector unions have likely bargained away important benefits or protections in order to secure agency shop agreements, and they will not be able to revisit those provisions until the current contract has expired.

Public safety unions also currently rely on fair share fees in order to properly negotiate, administer, and enforce contracts, including contracts currently in effect, and process grievances. If *Abood* is overturned, IAFF local unions will experience a sudden and substantial financial shortfall, and they will have to immediately modify their already-established budgets and re-determine their priorities in order to accommodate free-riders receiving the benefits secured by the

union. These unions will have less funds and resources for collective bargaining, and they will have to make tough choices regarding what they can and cannot afford with respect to contract negotiations, grievances, arbitration, and other representational obligations. This will unquestionably impact priorities at the bargaining table and contract enforcement. Make no mistake – this will negatively impact *all* public safety employees and the public they protect. It is difficult to overstate the resentment and lowering of morale among dues-paying union members and free-riders, contrary to the interests of public safety employees, the IAFF affiliates, government employers, and the public at large.

Petitioners assert that Respondent Unions "have not identified anything they would have done differently absent the nondiscrimination duty, much less something that would be different with that duty but without agency fees." Pet. Br. 58. As explained above, without fair share fees, unions will have to provide less services in order to allow non-members to free ride on union benefits. IAFF affiliates will be unable to obtain as many collective bargaining protections, including those related to health and safety, for bargaining units because they will have less money, while still having to fully perform all their legal duties as the collective bargaining representative.

Moreover, without fair share fees, unions would still be required to fairly represent all employees in the bargaining unit, including non-union members. Therefore, fire fighter unions and their members would be obligated to cover the collective bargaining costs for non-members, *which unfairly burdens union members and significantly reduces the value of their contributions to the union* (especially in light of the

diminished ability of the union to provide protections to the bargaining unit), and thus lead to "inequity" between members and non-members. *See Lehnert*, 500 U.S. at 556 (Scalia, J., concurring in judgment and dissenting in part) ("nonunion members . . . in some respects *they* are free riders whom the law *requires* the union to carry—indeed, requires the union to *go out of its way* to benefit").

Furthermore, public employees will have a substantial incentive to free ride off the benefits obtained by the union, even if they support the union's efforts. Petitioners gratuitously argue that in circumstances where a majority of bargaining unit members support having a union, it can "naturally" be presumed that a high percentage of these employees will become union members and willingly pay union dues. Pet. Br. 32-33. As Justice Kagan rightfully points out in *Harris* "not just those who oppose but those who favor a union have an economic incentive to withhold dues; only altruism or loyalty—as *against* financial self-interest—can explain their support." 134 S. Ct. at 2656.

In addition, overturning *Abood* would completely dismantle the successful collective bargaining structure, enacted by governments, that serves the vital interest of "promoting labor peace." *Lehnert*, 550 U.S. at 520. Public employers and fire fighter unions have established long-standing and productive collective bargaining relationships with each other and have come to rely on the exclusive representation scheme, with fair share fees, as a cornerstone for stability in labor relations. Fire fighters depend on this stability, boosting morale, which in turn, benefits the entire bargaining unit and the community they serve. In contrast, disturbing this working system that has been

in place for almost four decades would seriously undermine the capacity of the IAFF affiliates to adequately protect and represent fire fighters and EMS/rescue employees, consistent with the best interests of state and local governments and the public.

Finally, this Court has repeatedly affirmed that "*[s]tare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision" with the undesirable result of "dislodg[ing] settled rights and expectations or requir[ing] an extensive legislative response." *Hilton v. S. Carolina Pub. Railways Comm'n*, 502 U.S. 197, 202 (1991). Here, the states and local governments have established collective bargaining systems authorizing fair share fees based on the general First Amendment principles articulated in *Abood*. Public employers and public employees have entered into multi-year labor contracts containing fair share fee provisions in reliance on *Abood* and state collective bargaining law. Accordingly, the IAFF and its local affiliates respectfully submit that *stare decisis* principles fully support the conclusion that the well-reasoned and balanced precedent established in *Abood* and its progeny should not be disturbed by a decision in this case, especially in light of the unsettling labor relations consequences that would surely result.

In sum, the Court should reject Petitioners' challenge to the long-established fair share fee structure for public employees, including fire fighters and EMS personnel, developed in *Abood*. The outcome urged by Petitioners would undermine a system that has worked well for nearly 40 years, and deprive IAFF-affiliated unions of the support and financial resources they need to carry out their critical public functions. Fundamental fairness clearly supports the labor

relations principle that non-union members in the bargaining unit should fairly share in the cost of the benefits and protections they receive through the union that is certified and obligated by law to provide them full representation.

CONCLUSION

For the reasons set forth above, the IAFF and its fire fighter affiliates respectfully submit that the judgment of the court of appeals should be affirmed.

Respectfully submitted,

THOMAS A. WOODLEY
Counsel of Record
DOUGLAS L. STEELE
DONNA-MARIE K. MCKINNON
WOODLEY & MCGILLIVARY LLP
1101 Vermont Avenue, NW
Suite 1000
Washington, DC 20006
(202) 833-8855
taw@wmlaborlaw.com

Counsel for Amicus Curiae
The International Association of Fire Fighters

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