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No. 11-681

In the

Supreme Court of the United States

PAMELA HARRIS, *et al.*,

Petitioners,

v.

PAT QUINN, Governor of Illinois, *et al.*,

Respondents.

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

Brief for the States of New York, Arkansas, Delaware, Hawaii, Iowa, Kentucky, Maine, Minnesota, Missouri, New Hampshire, New Mexico, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia as *Amici Curiae* in Support of Respondents

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QUESTION PRESENTED

Congress has comprehensively regulated labor relations in the private sector, but has left it to the States to address labor relations between state and local governments and their own employees. In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), this Court confirmed that the Constitution permits States to adopt for the public sector the same model of collective bargaining that is widely used in the private sector pursuant to federal labor law. This model authorizes employees to select a union to act as their exclusive representative in collective bargaining negotiations, and, as an adjunct, permits the selected union to charge all represented employees, including those who decline to join the union, an "agency fee" to defray the costs of union collective-bargaining activities benefiting all employees. *Abood*'s framework is foundational to state labor law. Forty-one States, the District of Columbia, and the Commonwealth of Puerto Rico have adopted exclusive representation for public-sector labor relations, and twenty-two of those States and the District of Columbia, authorize agency fees as well.

Amici States address the following question raised by petitioners:

Should *Abood* be overruled or severely limited, thereby forcing States to abandon the collective-bargaining model of exclusive representation and agency fees that States have used for decades to ensure peace and stability in state and local government labor relations?

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Commcications Workers of America v. Beck, 487 U.S. 735 (1988)....................5

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Locke v. Karass, 555 U.S. 207 (2009) 7

National League of Cities v. Usery, 426 U.S. 833 (1976) 21

Navy Charleston Naval Shipyard v. Federal Labor Relations Authority, 885 F.2d 185 (4th Cir. 1989) 29

Oil, Chemical & Atomic Workers International Union v. Mobil Oil Corp., 426 U.S. 407 (1976) 4

Railway Employees' Department v. Hanson, 351 U.S. 225 (1956) 5

United States v. International Business Machines Corp., 517 U.S. 843 (1996) 13

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29 U.S.C.
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45 U.S.C. § 151 *et seq.* 3

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Ark. Code Ann. § 6-17-202 29

Ark. Code. § 6-17-202 8

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Idaho Code
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State Pers. & Pens. § 3-301 8
State Pers. & Pens. § 3-407 8
State Pers. & Pens. § 3-502 8

Me. Rev. Stat. Ann.
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tit. 43, § 1102.3 9

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tit. 3, § 1451f 8

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S.D. Codified Laws § 3-18-3 8

Tenn. Code Ann. §§ 49-5-610 to -613 29

Texas
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Utah Code Ann.
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Va. Code § 40.1-57.2 29

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Wash. Rev. Code
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§ 41.59.100 9
§ 47.64.160 9
§ 288.52.045 9

Wis. Stat.
§ 111.81 30
§ 111.83 8
§ 111.85 30
§ 111.91 28
§ 111.845 30

Wyo. Stat. § 27-10-103 8

Miscellaneous Authorities

Atlanta Buses Running Again, N.Y. Times, June 25, 1950 19

Blair, Patricia N., *Union Security Agreements in Public Employment*, 60 Cornell L. Rev. 183 (1975) 26

Bus Strike Imperils Chicago's Transit, N.Y. Times, Aug. 26, 1968 19

Connecticut Interim Commission to Study Collective Bargaining by Municipalities, *Final Report* (1965) 22

Cooke, Louise, *Workers' Unrest Interrupts Municipal Service*, St. Petersburg Times, July 15, 1974 20

De Toledano, Ralph*, The Police Were Shouting "Scab,"* Daily News, Oct. 29, 1975.......................18

Derber, Milton, *Labor-Management Policy for Public Employees in Illinois: The Experience of the Governor's Commission, 1966-1967*, 21 Indus. & Lab. Rel. Rev. 541 (1968) 22

Donovan, Ronald, *Administering the Taylor Law: Pubic Employee Relations in New York* (1990) 15, 20

Edwards, Harry T., *The Emerging Duty to Bargain in the Public Sector*, 71 Mich. L. Rev. 885 (1973)...22

Fragrant Days in Fun City, Time, Feb. 16, 1968.......19

Franklin, Ben A., *Troopers Patrol Baltimore to Bar Renewed Unrest*, N.Y. Times, July 13, 1974 18

Freeman, Joshua B., *Working-Class New York: Life and Labor Since World War II* (2001)..........20

Horowitz, Morris A., *Collective Bargaining in the Public Sector* (1994) 15

Kearney, Richard C., *Labor Relations in the Public Sector* (3d ed. 2001)..........................passim

Maryland Department of Labor, Licensing & Regulation, *Collective Bargaining for Maryland Public Employees: A Review of Policy Issues and Options* (1996)...................18, 22

Massachusetts Legislative Research Council, *Report Relative to Collective Bargaining and Local Government Employees* (1969) 16, 22

Michigan Advisory Committee Public Employee Relations, *Report to Governor* (1967), *reprinted in* Gov't Emp. Relations Report, No. 181 (Feb. 28, 1967) 22

N.Y. Div. of Budget, Budget Report for S. 6835, *reprinted in* Bill Jacket for ch. 677 (1977).............9

N.Y. Governor's Committee on Public Employee Relations, *Final Report* (1966) ... passim

New Jersey Publis & School Employees' Grievance Procedure Study Commissionn, *Final Report* (1968) 22

Ohio Legislative Services Committee, *Public Employee Labor Relations* (1969) 21

Olson, Mancur, *The Logic of Collective Action* (1965) 24

Pennsylvania Governor's Commission to Revise the Public Employee Law, *Report and Recommendations* (1968)..................16, 22, 17

Perlmutter, Emanuel, *Welfare Strike Due in City Today Inspite of Writ*, N.Y. Times, Jan. 4, 1965...20

Ross, Anne M., *Public Employee Unions and the Right to Strike*, 92 Monthly Lab. Rev. 14 (1969) 16

Smith, Russell A., *State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis*, 67 Mich. L. Rev. 891 (1968) 23

Stetson, Damon, *Fourth Hospital Moves Patients*, N.Y. Times, Nov. 23, 1968 20

Stieber, Jack, *Public Employee Unionism: Structure, Growth, Policy* (1973) 16, 30, 23

Strike Halts Most Public Transit Runs in Philadelphia, N.Y. Times, Mar. 26, 1977............19

Strike's Bitter End, Time, Nov. 29, 1968.....................18

Sullivan, Joseph F., *Mediators Seek to Settle Newark Sanitation Strike*, N.Y. Times, Dec. 29, 1976..19

Transit Strike, N.Y. Times, Jan. 5, 1966..................19

Transit Workers Strike Los Angeles Area Bus System, N.Y. Times, Aug. 27, 1979......................19

U.S. Bureau of Labor Statistics, News Release, Union Members—2012 (Jan. 23, 2013), *available at* http://www.bls.gov/news.release/.......27

Whiteside, Sally J., Robert P. Vogt, & Sherryl R. Scott, *Illinois Public Labor Relations Laws: A Commentary and Analysis,* 60 Chi.-Kent L. Rev. 883, 924 & n. 264 (1984) 9

Ziskind, David, *One Thousand Strikes of Government Employees* (1940).......................15, 19

Zwerdling, A.L., *The Liberation of Public Employees: Union Security in the Public Sector*, 17 B.C. Indus. & Com. L. Rev. 993 (1975) 26

INTEREST OF THE AMICI STATES

Amici, the States of New York, Arkansas, Delaware, Hawaii, Iowa, Kentucky, Maine, Minnesota, Missouri, New Hampshire, New Mexico, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia[1], file this brief in support of respondents, Pat Quinn, the Governor of Illinois, SEIU Healthcare Illinois and Indiana, and other respondent unions. Amici States have a compelling interest in preserving the flexibility in structuring public-sector labor relations upheld by *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). *Abood* held that deference should be afforded to States' policy choices concerning public-sector labor relations, and in particular, affirmed that the government interest in achieving labor peace is sufficient to authorize exclusive representation and agency-fee charges as part of an effective system for settling public-sector labor disputes through collective bargaining. While resolving that the First Amendment did not prohibit States from adopting these same tools for public-sector collective bargaining that had long proven effective in the private sector, *Abood* also made clear that public employees must be allowed to decline to fund political or ideological activities by unions unrelated to the collective-bargaining process.

Amici States employ a wide range of different public-sector labor schemes. But whatever their

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[1] The District of Columbia is not a State, but possesses a strong interest in this matter similar to those of the States. It is included in this brief's references to "amici States."

current scheme, all Amici States have a common interest in preserving the regulatory flexibility that has been a core feature of public-sector labor relations since *Abood*. The practical experience of Amici States confirms that there is no one-size-fits-all solution: The task of balancing the potentially divergent interests of public employers, employees, unions, and the public is delicate and difficult, and also politically sensitive. And the stakes are high. The relative success of state labor relations systems since *Abood* should not be mistaken for evidence that the leeway afforded by that decision is no longer needed. In the decades before *Abood*, many States like New York faced paralyzing public-employee strikes and labor unrest that routinely jeopardized public order and safety. Because such public-sector unrest disrupts secure and effective provision of government services and results in great public harm, the States' interest in achieving labor peace in the public sector is far greater than any government interest in avoiding strikes and work interruptions in private industry. For state and local governments, labor peace secures the uninterrupted function of *government itself* and is a necessary precondition for the services and programs state and local governments provide.

In addition to preserving a range of regulatory options, Amici States also have a fundamental interest in avoiding the vast disruption in state and local labor relations that would occur if *Abood*'s framework were now abandoned. Overturning *Abood,* as petitioners seek, would disrupt hundreds of currently effective collective bargaining agreements and threaten to unsettle the public-sector labor schemes of nearly every State, the District of

Columbia and Puerto Rico. All States that statutorily authorize collective bargaining by public-sector employees have enacted a system of exclusive representation, and twenty-two of those States and the District of Columbia permit agency fees. Excising these features would upset the carefully calibrated systems of almost every State in the Union and mandate vast and untested changes in public-sector labor relations.

Petitioners and others who oppose the concept of public-sector unions or who object to exclusive representation or agency fees have recourse that does not require overturning settled precedent and constitutionalizing a single approach to public-sector labor relations for all state and local governments nationwide. *Abood* is permissive, not mandatory: voters and elected officials in each State remain free to decide what rules or policies should apply in public-sector labor relations. This Court should decline to intervene in the ongoing policy debate about public-sector unions, just as it declined to do so in deciding *Abood* nearly forty years ago.

STATEMENT OF THE CASE

Labor relations law in the United States has long been based on a model of exclusive representation accompanied by "agency-fee" authorization. The first federal law guaranteeing workers the right to organize was the Railway Labor Act (RLA), 45 U.S.C. § 151 *et seq*. Enacted in 1926 after decades of labor unrest in the railroad industry, resulting in repeated railroad shutdowns, the RLA enabled railroad workers to select a union that would serve as their exclusive representative in collective-bargaining

negotiations and imposed a corresponding duty of fair-representation on the union to represent all employees fairly, in good faith, and without discrimination. *See Burlington N. R.R. Co. v. Bhd. of Maint. of Way Employees*, 481 U.S. 429, 444 (1987); *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 750-60 (1961). The RLA was later expanded to specifically authorize "union-shop" arrangements,[2] including provisions requiring workers to pay the union fees to the union designated as their exclusive-bargaining representative, as a condition of continued employment.

Congress adopted a similar model in 1935 in enacting the much broader National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169, the federal statute that comprehensively regulates labor relations for most employees in the private sector. As with the RLA, Congress sought to end labor strife and to reduce the need for labor strikes by fostering a process of collective bargaining. And Congress once again selected a system of collective bargaining founded on exclusive representation as the best model for achieving labor peace. *See First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 674-75 (1981). To protect the effective operation of the exclusive representation system, the NLRA also authorized "agency shop" agreements requiring all represented

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[2] *See* Ch. 1220, 64 Stat. 1238 (1951) (amending 45 U.S.C. § 152). The term "union shop" is generally, though not always, used to denote a requirement of union membership and fee payment by all represented employees, while "agency shop" denotes a requirement to pay fees but not to join the union. *See Oil, Chem. & Atomic Workers Int'l Union v. Mobil Oil Corp.*, 426 U.S. 407, 409 n.1 (1976).

employees to pay fees to cover costs of collective bargaining. *See Commc'ns Workers of Am. v. Beck*, 487 U.S. 735, 738 & 744-45 (1988).

In a series of decisions beginning with *Railway Employees' Department v. Hanson*, 351 U.S. 225, 238 (1956), this Court construed the "union shop" and "agency shop" provisions of the RLA and NLRA as requiring only financial support for an employee-selected union, not compelled union membership by objecting employees. This Court also determined that compulsory fees must be limited to compensating the union for actual collective-bargaining related activities, and could not be used to fund unrelated political lobbying. With the statute so narrowed, the Court rejected claims that government legislation authorizing unions to impose a mandatory financial obligation on represented employees to support union activities germane to collective bargaining violated the First Amendment rights of objecting employees. *See Bhd. of Ry. & S.S. Clerks v. Allen*, 373 U.S. 113 (1963); *Street*, 367 U.S. at 749.

These decisions left open the question whether States could adopt the same tools in establishing labor-relations systems for employees of state and local governments. In *Abood*, this Court settled the scope of state authority. *Abood* involved a First Amendment challenge to a Michigan statute that authorized collective bargaining for local public employees under the same exclusive-representation/ agency-fee model authorized by federal law for the private sector. 431 U.S. at 223-24. In addressing objecting employees' First Amendment challenge, this Court acknowledged differences between private-sector and public-sector collective bargaining, but found no reason to prohibit States from adopting

familiar tools to promote effective collective bargaining in public employment.

Abood found that "[t]he governmental interests advanced by the agency-shop provision" in Michigan's statute were "the same as those promoted by similar provisions in federal law." *Id.* at 224. This Court noted that the government had a strong interest in providing for exclusive representation given "the confusion and conflict that could arise" if rival unions all vied for employee members, and government employers had to reach multiple, potentially varying agreements with different unions. *Id.* While exclusive representation confers similar benefits for both private- and public-sector collective bargaining, it also creates an inherent "free-rider problem:" if employees were guaranteed union representation regardless of their payment of fees, they may decline to share in the costs incurred by the union—creating the risk that unions would be underfunded and unable to fulfill their intended duties and responsibilities. *See id.* at 221 (recognizing that the union's "tasks of negotiating and administering a collective-bargaining agreement . . . often entail expenditure of much time and money"). *Abood* concluded that the differences between public- and private-sector collective bargaining should not deprive States of the ability to pursue labor peace through effective collective bargaining by adopting exclusive-representation and agency-fee rules similar to those sanctioned under federal law for private-sector labor regulation. *Id.* at 231-32.

Abood recognized that public-sector unionization was controversial as a policy matter. This Court acknowledged that there was widespread debate and disagreement about the application of private-sector

models to public-sector labor relations. *Id.* at 224-25 & 229. But this Court warned against judicial intervention in questions about how to structure effective labor relations. Instead, *Abood* deferred to state judgments about appropriate measures for effective state and local government labor relations—noting that the "ingredients" of labor peace and stability were too numerous and complex, and too time-and-context-dependent, for judges to second-guess the wisdom of particular state choices. *Id*. at 225 n.20 (quoting *Hanson*, 351 U.S. at 233-34).

With *Abood,* the framework for both private- and public-sector labor relations was settled. The Court's precedents, culminating in *Abood*, established this general principle: "The 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 . . . to pay that union a service fee as a condition of their continued employment," so long as objecting employees are not charged for political or ideological activities unrelated to the union's collective-bargaining activities. *Locke v. Karass*, 555 U.S. 207, 213 (2009). In both situations, this Court's precedents "determined that the First Amendment burdens accompanying the payment requirement are justified by the government's interest in preventing freeriding by nonmembers who benefit from the union's collective-bargaining activities and in maintaining peaceful labor relations." *Id.*

Abood's framework is now central to state labor law. *See* Appendix, Survey of State Statutory Authority for Public-Sector Collective Bargaining by Exclusive Representative. Forty-one States, the District of Columbia and Puerto Rico, authorize

collective bargaining for at least some public employees, and all adopt the federal model of exclusive representation.[3] Twenty-two States and the District of Columbia also authorize agency fees (also known as "fair share" fees) to provide a mechanism for ensuring that represented employees contribute to union costs germane to collective bargaining. The majority of these statutes make agency-fee requirements a permissible subject of bargaining and authorize (but do not require) agency-fee provisions as part of public-sector collective bargaining agreements.[4] Many state agency-fee statutes were enacted in specific reliance on *Abood*.[5]

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[3] *See* Alaska Stat. § 23.40.110(b); Ark. Code. § 6-17-202; Cal. Gov't Code § 3515.5; Conn. Gen. Stat. § 5-271; Del. Code tit. 19, § 1304(a); D.C. Code § 1-617.10; Fla. Stat. § 447.307(1)(a); Ga. Code Ann. § 25-5-5; Haw. Rev. Stat. § 89-8; Idaho Code §§ 33-1273, 44-1803; 5 Ill. Comp. Stat. § 315/3(f); Ind. Code §§ 20-29-5-2, 20-29-2-9; Iowa Code § 20.16; Kan. Stat. § 72-5415(a); Ky. Rev. Stat. §§ 67A.6902, 345.030; La. Rev. Stat. § 23:890(D); Me. Rev. Stat. Ann. tit. 26, §§ 967 & 979-F; Md. Code, State Pers. & Pens., §§ 3-301, 3-407; Mass. Gen. Laws ch. 150E, § 4; Mich. Comp. Laws Ann. §§ 423.26, 423.211; Minn. Stat. § 179A.06(2); Mo. Rev. Stat. §§ 105.510-105.520; Mont. Code Ann. §§ 39-31-205, 39-31-206; Neb. Rev. Stat. § 48-838 (4); Nev. Rev. Stat. 288.160; N.H. Rev. Stat. Ann. §§ 273-A:38, 273-A:11; N.J. Stat. § 34:13A-5.3; N.M. Stat. Ann. § 10-7E-15; N.D. Cent. Code § 15.1-16-11; N.Y. Civ. Serv. Law § 204; Ohio Rev. Code § 4117.04; Okla. Stat. tit 19, § 901.30-2(E), Or. Rev. Stat. § 243.666; 43 Pa. Stat. § 1101.606; P.R. Laws tit. 3, §§ 1451b, 1451f; R.I. Gen. Laws § 36-11-2; Texas Loc. Gov't Code § 174.101-102; S.D. Codified Laws § 3-18-3; Utah Code § 34-20a-4; Vt. Stat. Ann. tit. 3, § 941(h) & tit. 16 § 1991(a); Wash. Rev. Code §§ 41.56.080, 41.80.080(2)-(3); Wis. Stat. § 111.83(1); Wyo. Stat. § 27-10-103.

[4] *See* Alaska Stat. § 23.40.110(b); Cal. Gov't Code §§ 3502.5, 3513(k), 3515, 3515.7; 3546, 3583.5; Conn. Gen. Stat. § 5-280;

(*continues on next page*)

As relevant here, the Illinois Public Labor Relations Act (IPLRA) permits state employees to select a union to serve as their exclusive representative in collective bargaining negotiations with the State. 5 Ill. Comp. Stat. 315/6(a). The IPLRA also contains language, specifically drafted by the Illinois Legislature to comport with *Abood*,[6] authorizing collective-bargaining agreements to require non-union-member employees to "pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment." *Id.* 315/6(e).

This First Amendment challenge to the IPLRA's agency-fee provision is brought by persons employed under Illinois Medicaid programs and paid by Illinois to provide in-home services to individuals who would otherwise face institutionalization due to their need for long-term care. Pet. App. 2a-3a. The lower courts

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Del. Code § 1319; D.C. Code § 1-617.07, Haw. Rev. Stat. § 89-4; 5 Ill. Comp. Stat. 315/6(e), 115 Ill. Comp. Stat. 5/11; Me. Rev. Stat. Ann. tit. 26, § 629; Md. Code, State Pers. & Pens. § 3-502; Mass. Gen. Laws ch. 150E, § 2; Minn. Stat. § 179A.06; Mo. Rev. Stat. § 105.520; Mont. Code Ann. § 39-31-204; N.H. Rev. Stat. Ann. § 273-A.11; N.J. Stat. § 34:13A-5.5; N.M. Stat. § 10-7E-4; N.Y. Civ. Serv. Law § 208(3); Ohio Rev. Code § 4417.09(C); Or. Rev. Stat. § 243.672(c); 43 Pa. Stat. Ann. § 1102.3; R.I. Gen. Laws § 36-11-2; Vt. Stat. Ann., tit. 3, § 962 & tit.16, § 1982; Wash. Rev. Code §§ 41.80.100, 41.59.100, 47.64.160, 288.52.045.

[5] *See, e.g.*, N.Y. Div. of Budget, Budget Report for S. 6835, at 3, *reprinted in* Bill Jacket for ch. 677 (1977) (discussing *Abood*).

[6] *See* Sally J. Whiteside, Robert P. Vogt, & Sherryl R. Scott, *Illinois Public Labor Relations Laws: A Commentary and Analysis,* 60 Chi.-Kent L. Rev. 883, 924 & n.264 (1984).

dismissed all claims. Pet. App. 1a-39a. In particular, the court of appeals ruled that the plaintiffs were state employees within the meaning of *Abood* and found no legal or factual basis to distinguish *Abood*'s holding that agency fees in the public sector do not violate the First Amendment.[7] Pet. App. 1a-2a, 13a.

SUMMARY OF ARGUMENT

Abood appropriately afforded deference to state judgments about how best to structure the labor relations of state and local governments. Such deference not only reflects the complex issues involved in crafting a fair and effective system of public-sector labor relations, but also recognizes the paramount government interest in maintaining labor peace and avoiding disruptions in government operations and services.

In arguing that *Abood* should be overruled, petitioners and their amici distort the nature of the government's interest in labor peace and ignore the history of public-sector collective-bargaining laws. Contrary to their arguments, the government interest in labor peace is not limited to avoiding internal workplace or management disruption. Rather, States enacted collective-bargaining laws for public employees in response to public-sector strikes and labor breakdowns that threatened the provision of government services and imposed vast financial

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[7] The court of appeals' holding is narrow. The court concluded that plaintiffs were "state employees" for the limited purpose of collective bargaining, and the only issue decided by the court was the constitutionality of authorizing agency fees under the First Amendment. Pet. App. 1a, 6a.

and other harms on the public. The government's compelling interest in avoiding such breakdowns and the attendant public harm continue to support public-sector collective-bargaining laws today.

Consistent with *Abood*, different States have enacted different systems for regulating public-employee labor relations. This variation is not a reason to abandon *Abood*, but rather a natural and appropriate result of its flexible framework. And the degree of variation in state laws should not be overstated: exclusive representation and agency fees are widely used in public-sector collective bargaining today, as they have been for decades, and as they have been used in the private sector since the beginning of United States labor law. *Abood* has appropriately allowed States to adopt the same toolkit for public-sector collective bargaining that Congress has long authorized for private-sector labor relations.

Finally, as petitioners and their amici emphasize, state and local governments stand in a dual role as employer and policy maker when structuring public-sector labor relations. But that unavoidable reality is no reason to restrict the States' ability to enact public-sector collective-bargaining systems modeled on federal labor law. Petitioners give short shrift to the government's interest, as employer, in structuring collective-bargaining systems to ensure that government operations are effective and efficient in serving the public. *Abood* accords fully with the traditional leeway granted to States under the First Amendment in controlling the public-employment relationship. This Court has consistently upheld the government's right to restrict the speech or associational activities of public employees, and it

has not prohibited States from adopting rules for managing public workers that are widely accepted as necessary in the private sector.

ARGUMENT

Abood recognized that the task of devising an appropriate labor-relations system is complex and challenging, and deferred to States' judgments that core elements of private-sector collective bargaining are also appropriate to secure labor peace in the public sector. The decision is now foundational to state labor law. As a result, petitioners' attack on *Abood*—and claim that both exclusive representation and agency fees should be banned for public-sector collective bargaining—is an attack on the fundamental choices made by the States, calling into question the labor-relations schemes of almost every State in the Nation.

Principles of *stare decisis* have special force when States have extensively relied on this Court's precedent in structuring their laws. *See, e.g.*, *Bush v. Vera*, 517 U.S. 952, 985-86 (1996) (plurality op.) (adhering to *stare decisis* is particularly important in "sensitive political contexts" where legislatures have modified key practices in reliance on this Court's precedent); *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 785-86 (1992) (declining to abandon settled jurisprudence where "State legislatures have relied upon" this Court's precedent, and resulting state statutes would be invalidated if precedent were overruled or altered); *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202-03 (1991) ("*Stare decisis* had added force" when state legislatures have relied on this Court's precedent and overruling a prior decision would require "States to

reexamine their statutes" and require "extensive" legislative amendment."). Even in constitutional cases, the doctrine of *stare decisis* carries such persuasive weight that this Court has "always required . . . special justification" for overruling settled precedent. *See, e.g., United States v. Int'l Bus. Machs. Corp.,* 517 U.S. 843, 856 (1996) (quotation marks omitted).

Petitioners identify no special justification for overruling *Abood.* Their arguments trivialize the nature of the government's compelling interest in achieving labor peace, seek to constitutionalize models of collective bargaining that are untested or reflect policy judgments better left to the political process, and distort First Amendment doctrine as it applies to the public-employment relationship.

I. Achieving Labor Peace Is Critical to Avoiding Labor Unrest By Public Employees That Threatens Grave Public Harm By Disrupting Government Services And Programs.

Petitioners' argument that *Abood* is inconsistent with First Amendment doctrine hinges on an overly narrow and historically inaccurate conception of the government interest in labor peace. Petitioners trivialize the government interest in labor peace by treating it as limited to an efficiency-based concern with avoiding "internal" management or workplace disruptions in government offices or other work settings. *See* Pet. Br. 15, 25, 27, 39. But while amici States' experience confirms that public-sector collective bargaining promotes efficiency and associated benefits in government work settings, the States have enacted public-sector labor laws to

achieve a far broader and more compelling purpose: to protect the public's access to government services and programs from disruption through strikes and labor unrest.

A. State Laws Governing Public-Sector Collective Bargaining Were Adopted in Response to Devastating Strikes and Labor Unrest by State and Local Employees.

Labor regulation in the United States has always been concerned with avoiding harm to the public caused by labor strife and work stoppages. For example, Congress enacted the RLA and NLRA in large part to avoid the public harm caused by labor unrest by railroad workers, and workers in other private industries, that threatened to disrupt the flow of interstate commerce and undermine national economic stability.[8] Those statutes aimed to establish effective collective-bargaining procedures for the private sector as an alternative to labor disruptions that often had been violent, jeopardized public order, and destabilized the economy.

Public-sector collective-bargaining laws were likewise enacted to avoid public harm from work

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[8] *See* 29 U.S.C. § 151 (policy rationale supporting enactment of NLRA was to end industrial unrest and strikes caused by employees seeking the right to collectively bargain). *See* generally *Fafnir Bearing Co. v. NLRB*, 362 F.2d 716, 717 (2d Cir. 1966) (observing that the NLRA was "conceived during the Great Depression and founded upon a frank recognition that our boom-and-bust economy was attributable in part to labor-management unrest").

stoppages and other disruptions in government operations. States confronted many of the same issues regarding strikes and unrest in the public sector that private employers had faced. *See, e.g.,* Morris A. Horowitz, *Collective Bargaining in the Public Sector* 2 (1994) (citing David Ziskind, *One Thousand Strikes of Government Employees* (1940) (documenting 1,116 strikes by employees in all sectors of government service through 1940)). Although strikes and other work disruptions by public workers are now rare (yet not unheard of), they were common at the time that the majority of States first adopted state labor relations laws. States faced strikes by public employees of all types—from public school teachers to grave diggers. *See* Richard C. Kearney, *Labor Relations in the Public Sector* 221-24 (3d ed. 2001); Ronald Donovan, *Administering the Taylor Law: Pubic Employee Relations in New York* 1-3, 106-07 (1990) (discussing strikes in New York between 1940s and 1960s).

Important public services were repeatedly interrupted or disrupted by strikes (or the threat of strikes) by public workers. Much of the labor unrest occurred because state and local workers wanted a greater role in determining the terms of their employment and lacked other means, such as state-sanctioned collective bargaining, to air grievances and settle disputes with management. *See* N.Y. Governor's Comm. on Public Emp. Relations, *Final Report* 42, 54 (1966) (commenting that the inability of public employees to unionize and have "a greater

voice" in determining the terms of their employment contributed to the use of strikes).[9]

The pace of public-sector labor disruptions increased dramatically in the 1960s—in part, because public employees were seeking the *same* labor protections and rights that they had seen guaranteed to their private-sector counterparts through collective bargaining under federal labor law. Between 1965 and 1970, for example, there were over 1,400 separate work-stoppages by state and local public workers, involving well over a quarter million employees. Kearney, *supra*, at 226-27.[10] In

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[9] *See also* 5 Ill. Comp. Stat. § 315/2(2) (declaring that collective bargaining, in part, was designed to provide employees, barred from striking "an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act"); Pa. Governor's Comm'n to Revise the Pub. Emp. Law, *Report and Recommendations* 6 (1968) (concluding that the "inability" of public employees to "bargain collectively has . . . led to more friction and strikes than any other single cause"); N.Y. Governor's Comm., *supra*, at 9 ("There is now a widespread realization that protection of the public from strikes in the public services requires the designation of other ways and means for dealing with claims of public employees for equitable treatment.").

[10] *See also* Mass. Legis. Research Council, *Report Relative to Collective Bargaining and Local Government Employees* 31 (1969) (in 1966, 450,000 man-days were lost to strikes by public-sector employees); Anne M. Ross, *Public Employee Unions and the Right to Strike*, 92 Monthly Lab. Rev. 14, 14 (1969) ("In 1966-67 alone, strikes in the public sector, at the State and local levels, caused more idle man-days and involved more workers than strikes in all the preceding 8 years . . . ."); Jack Stieber, *Public Employee Unionism: Structure, Growth, Policy* 159-68 (1973) (describing rise in strike activity between 1958 and 1970).

the 1960s in New York alone, "strikes by public employees" were "too numerous to recall or record"; they included "strikes by transit workers, firemen, sanitation employees, teachers, ferry workers, and on other occasions, social workers, practical nurses, city-employed lifeguards, doctors and public health nurses, etc." *DiMaggio v. Brown*, 19 N.Y.2d 283, 289 (1967).

Walkouts and other work stoppages occurred despite state laws that directly prohibited public employees from striking or punished them for doing so.[11] *See, e.g., Ass'n of Surrogates & Sup. Ct. Reporters v. State*, 78 N.Y.2d 143, 152-53 (1991) (recounting New York's historical experience). The States found that direct prohibitions on strikes were ineffective and difficult to enforce, and failed to address the root causes of labor unrest.[12] And it quickly became clear that no matter what the merits or scope of the underlying controversy, labor unrest in the public sector had the potential to inflict vast public harm and disruption:

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[11] The existence of prohibitions on strikes by public employees, which remain common, underscore the vital importance of avoiding labor unrest in the public sector. *See* Kearney, *supra*, at 235 (thirty-five States ban strikes by public employees).

[12] *See, e.g.,* Pa. Governor's Comm., *supra*, at 7 (1968) (noting that "[t]wenty years of experience has taught" that statutory ban on public-employee strikes "is unreasonable and unenforceable, particularly when combined with ineffective or non-existent collective bargaining"); N.Y. Governor's Comm., *supra*, at 40-41 (explaining that "feeling of futility" among public-sector employees, grounded in their inability to participate in determining the terms of their employment, led to strikes despite statutory prohibition on strikes).

- In 1919, "looting, violence, and general mayhem" spread throughout Boston as result of a strike by city police officers. Kearney, *supra*, at 222-23. The same occurred in Baltimore during a 1974 strike by police officers, jail guards, and other municipal workers: "looting, shooting, and rock-throwing" were "widespread" and "fires ran 150 percent above normal." *See* Md. Dep't of Labor, Licensing & Regulation, *Collective Bargaining for Maryland Public Employees: A Review of Policy Issues and Options* 5 (1996) (recounting 1974 strike); Ralph de Toledano*, The Police Were Shouting "Scab,"* Daily News, Oct. 29, 1975, at 18 (same). State troopers had to patrol the streets to keep the peace. *See* Ben A. Franklin, *Troopers Patrol Baltimore to Bar Renewed Unrest*, N.Y. Times, July 13, 1974, at 1.

- During a series of public-teacher walkouts in New York City in 1968, more than a million children were denied schooling for thirty-six schooldays. Parents had to physically occupy public schools to keep the schools open; other parents banded together to improvise alternative schools in "churches, storefronts, brownstone basements and apartments." Many children were denied key services provided through public schools. For example, while the city typically provided 400,000 free daily lunches to schoolchildren, only 160,000 were provided during the teacher strikes. *See Strike's Bitter End*, Time, Nov. 29, 1968, at 97.

- Strikes by public transport workers in Cleveland, Philadelphia, Atlanta, Chicago, Los Angeles, and New York City caused vast

public disruption. Soldiers under federal command had to reopen the Philadelphia transit system in 1944. *See Atlanta Buses Running Again*, N.Y. Times, June 25, 1950, at 50 (Atlanta's transit strike); *Bus Strike Imperils Chicago's Transit*, N.Y. Times, Aug. 26, 1968, at 25 (Chicago strike); *Strike Halts Most Public Transit Runs in Philadelphia*, N.Y. Times, Mar. 26, 1977, at 8 (Philadelphia strike); *Transit Workers Strike Los Angeles Area Bus System*, N.Y. Times, Aug. 27, 1979, at A15 (Los Angeles and Cleveland strikes). And private businesses suffered over $100 million in losses daily during the twelve-day 1966 transit strike in New York City. Social and public-health harms also occurred. The city's blood supply for transfusions fell to a twenty-year low during the 1966 strike because people could not travel to hospitals to donate blood. The shortage of blood supply caused the postponement of nonemergency surgeries. *See Transit Strike*, N.Y. Times, Jan. 5, 1966, at 33.

- Strikes by sanitation workers caused uncollected trash to pile up on city streets and threatened a serious public-health emergency in many cities. *See, e.g.*, *Fragrant Days in Fun City*, Time, Feb. 16, 1968, at 33; *see also* Joseph F. Sullivan, *Mediators Seek to Settle Newark Sanitation Strike*, N.Y. Times, Dec. 29, 1976, at 55 (discussing strike in Newark, N.J.); Ziskind, *supra*, at 91-94 (recounting strikes by sanitation workers across the country).

- A strike by eight thousand welfare workers in New York City forced two-thirds of the city's

welfare centers to close for twenty-eight days in 1965, and led to the interruption of services to more than 500,000 welfare recipients, many of whom were children or elderly. *See* Joshua B. Freeman, *Working-Class New York: Life and Labor Since World War II* 205-06 (2001); *see also* Emanuel Perlmutter, *Welfare Strike Due in City Today Inspite of Writ*, N.Y. Times, Jan. 4, 1965, at 1. Strikes by workers at state mental hospitals also interrupted critical care for patients with mental illness. In 1968, a strike by mental-health workers at four state-run hospitals in New York forced patients to be sent home and led to a reduction in psychiatric treatment and rehabilitation services. *See* Donovan, *Administering the Taylor Law*, *supra,* 89-90 (1990); Damon Stetson, *Fourth Hospital Moves Patients*, N.Y. Times, Nov. 23, 1968, at 1. Care was also interrupted in Ohio in 1974 when half of the workers at the State's mental hospitals went on strike. *See* Louise Cooke, *Workers' Unrest Interrupts Municipal Service*, St. Petersburg Times, July 15, 1974, at 4-A.

As these examples illustrate, the harm of unresolved public-labor disputes is not confined to the "internal" operations of public employers. For state and local governments that employ workers to provide public services—many essential to the welfare of their citizens—the connection between labor peace and public welfare is direct and unavoidable. Many public services such as police and fire protection, sanitation, and public-health are provided uniquely by state and local governments, and absence of the services threatens serious irreparable harm to the

public. *See Nat'l League of Cities v. Usery*, 426 U.S. 833, 851 (1976), *overruled on other grounds*, *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985). Even where there are private substitutes, state and local programs are often provided at no-cost (such as public education) or are heavily subsidized (such as public transportation). Disruption of these services harms the public generally but especially threatens the most vulnerable citizens—low-income persons or those who have a special need for government support. The harms of public-sector labor breakdowns are also difficult to predict or to control, and even short-term disruptions in particular services can have vast social and economic spillover effects. States thus have a compelling, ongoing interest in avoiding public-sector labor unrest.

B. In Responding To These Public Crises, States Naturally Looked To The Collective-Bargaining Model That Had Already Proven Effective In The Private Sector Under Federal Labor Law.

States crafted public-sector labor laws directly in response to concerns for the public welfare caused by the pattern of strikes and unrest by public employees.[13] A primary goal in establishing collective

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[13] *See, e.g.*, Ohio Legis. Serv. Comm., *Public Employee Labor Relations* 35-38 (1969) (discussion of strike activity nationwide and strikes in Ohio). See *infra*, note 16 (policy statements by States concerning their implementation of collective bargaining).

bargaining was to give public employees a voice in negotiating the terms and conditions of their employment in order to avoid and minimize the potential for strikes and other work stoppages that threatened state and local government operations and the provision of public services. *See, e.g.*, N.Y. Governor's Comm., *supra*, at 9, 42. Many States adopted collective bargaining for public employees only after careful study by expert committees or commissions charged with examining the underlying reasons for public-sector labor unrest and devising appropriate solutions.[14]

In devising labor-relations systems for public employees, States understandably looked to federal-law collective-bargaining solutions that had already proven effective in minimizing labor unrest in private industry.[15] Indeed, no alternative schemes had

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[14] *See, e.g.*, Milton Derber, *Labor-Management Policy for Public Employees in Illinois: The Experience of the Governor's Commission, 1966-1967*, 21 Indus. & Lab. Rel. Rev. 541, 549 (1968); *see also* Conn. Interim Comm'n to Study Collective Bargaining by Municipalities, *Final Report* 7-8 (1965); N.J. Pub. & Sch. Emps.' Grievance Procedure Study Comm'n, *Final Report* 6, 15-17 (1968); N.Y. Governor's Comm., *supra*, at 34-35, 41-42; Md. Dep't of Labor, Licensing & Regulation, *supra*, at 3-6; Mass. Legis. Research Council, *supra*, at 8-11; Mich. Advisory Comm. Public Employee Relations, *Report to Governor* (1967), *reprinted in* Gov't Emp. Relations Report, No. 181 (Feb. 28, 1967); Pa. Governor's Comm., *supra*, at ii, 1.

[15] *See, e.g.*, Harry T. Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 Mich. L. Rev. 885, 932 (1973) (noting "accelerating" trend among States towards using "private sector principles to guide the development of labor relations in the public sector"); N.J. Pub. & Sch. Emps.', *supra*, at 15 ("As experience in private employment suggests, stable

(*continues on next page*)

proven both workable and effective in diminishing labor unrest. As a result, every State that established collective bargaining for state and local public employees provided for bargaining under the exclusive-representation model that Congress had adopted for private-sector bargaining. See *supra* note 3 & Appendix. Many States also authorized agency-fee payments, as Congress did, as an adjunct to exclusive representation. See *supra* note 4 & Appendix.

The goal of adopting these elements of private-sector collective bargaining was not simply to maximize efficiency, but rather to devise an effective and fair bargaining system that assured public-sector labor stability for the benefit of the *public* that depended on government services and operations. *See, e.g.*, N.Y. Civ. Serv. Law § 200 (fundamental aim was to regulate public-sector labor relations to "protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government"); Iowa Code § 20.1 (state policy is to authorize collective bargaining for public employees

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negotiating relationships will benefit both public employees and the general public"); N.Y. Governor's Comm., *supra*, at 20-21, 29 (acknowledged that framework for collective bargaining in public sector could be modeled on "the methods developed since 1935 in the private sector"); Russell A. Smith, *State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis*, 67 Mich. L. Rev. 891, 897, 899, 901, 904 (1968) (noting that various state commissions relied on NLRA and other private-sector models in offering recommendations for public-sector labor relations policy in the State); Stieber, *supra*, at 212 (stating that public-sector collective bargaining followed the pattern in the private sector).

to "protect the citizens of this state by assuring the effective and orderly operations of government").[16]

Petitioners have pointed to no effective model of collective bargaining in the United States—actually tested in practice and by wide application—that dispenses with the concept of exclusive representation by a single selected union that is obligated to represent all employees in negotiations with the employer over the term and conditions of employment. And while there is some variation in the use of agency-fee payments, the use of such payments is closely connected to the goal of ensuring effective collective bargaining and thereby promoting labor peace.

Agency-fee provisions promote stable and secure funding for unions by eliminating the "free-rider" problem that arises when employees can benefit from union efforts in collective bargaining without having to share in the costs of such efforts. *See* Mancur Olson, *The Logic of Collective Action* 84-87 (1965). Contrary to the suggestions of petitioners and their amici, the interest in avoiding free riders is not about

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[16] *See also* Del. Code tit. 19, § 1301 (collective bargaining system for public employees is designed to "to protect the public by assuring the orderly and uninterrupted operations and functions" of government); Fla. Stat. § 447.201 (same); Kansas Stat. § 75-4321(3) (same); Neb. Revised Stat. §§ 48-802 & 81-1370 (same)); Or. Rev. Stat. § 243.656 (permitting collective bargaining "safeguards . . . the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest"); Vt. Stat. Ann., tit. 3, § 901 (purpose and policy of state employees labor relations act is "to protect the rights of the public in connection with labor disputes").

ensuring, for its own sake, that workers do not obtain a benefit from the union free of charge. It is instead about addressing the collective-action problem that arises when opportunities for free-riding lead individuals not to pay for activities that provide a common benefit. Agency-fees promote more than simple fairness: they address the risk that employees as a whole would fail to adequately support the union's collective-bargaining activities, if there were no secure mechanism for charging employees a share of the cost of those activities. Just as in other situations where individual free-riding distorts and impairs the adequate provision of collectively beneficial services, in the exclusive-representation context, the temptation for employees to free ride threatens the ability of unions to secure adequate funding to fulfill their responsibilities.

The States' interest in agency fees is not about punishing or restraining individual employee free-riding, but is fundamentally a labor-peace interest in avoiding the well-known, systematic effects of unchecked free ridership, effects that jeopardize the union's intended function and thus hamper the effectiveness of collective bargaining in achieving labor peace. Secure funding assists unions in fulfilling their significant responsibilities under an exclusive-representation system in many ways: (1) fairly apportioning costs to all represented employees ensures that unions may obtain the substantial resources they often need to adequately fulfill their exclusive-representation responsibilities, *Abood*, 431 U.S. at 221; (2) absence of secure funding may create skewed incentives for unions to make excessive bargaining demands or disparage management as antagonistic to labor to convince employees to give

financial support, Patricia N. Blair, *Union Security Agreements in Public Employment*, 60 Cornell L. Rev. 183, 189 (1975); and (3) likewise, eliminating agency fees as a secure funding mechanism may require unions to focus disproportionate effort on recruiting members and collecting fees, thereby diverting attention from their bargaining and contract-administration responsibilities.[17] See A.L. Zwerdling, *The Liberation of Public Employees: Union Security in the Public Sector*, 17 B.C. Indus. & Com. L. Rev. 993, 1012 (1975). *Abood* appropriately authorizes States to authorize agency fees to prevent the systematic harms of free-riding from undermining the benefits of collective bargaining for achieving labor peace and stability.

II. The Variation in Public-Sector Collective Bargaining Laws Does Not Undermine *Abood*, But Rather Confirms the Validity of Its Flexible Framework.

Petitioners argue that the fact that not all States authorize agency fees, and that the federal government does not authorize them for federal employees, fatally undermines *Abood*'s analysis. *See* Pet Br. 36. But their argument misunderstands

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[17] States could also conclude that authorizing agency fees furthers labor peace by eliminating the resentment and infighting caused by some employees not contributing to union expenses while benefitting from union efforts funded by their coworkers. *See, e.g.*, *Ellis v. Ry., Airline & S.S. Clerks*, 466 U.S. 435, 452 (1984) (allowing free-riding corrodes workplace harmony and cooperation by "stirring up resentment" because some employees can "enjoy[] benefits earned through other employees' time and money").

Abood. *Abood* is more than a yes-or-no decision about agency fees. Its broader holding is that States should have leeway to devise labor-relations systems best suited to individual state circumstances and policy decisions. *Abood* recognizes that the task of crafting a workable labor relations system is complex and difficult and requires balancing numerous interests—in areas where there is widespread debate and no clear answer. As a result, *Abood* does not mandate that any State enact any particular labor-relations law. It leaves States free to devise systems based on their own history and particular policy choices, and it gives voters in each State the ultimate say over changes or amendments to labor policy. *See Abood*, 431 U.S. at 224-25 & n.20.

The flaws in petitioners' argument run deeper still. They not only wrongly dismiss the importance of the flexibility preserved by *Abood*, but also propose to constitutionalize a model of collective bargaining that is largely untested in the United States. Petitioners challenge not only agency-fee payments, but also the concept of exclusive representation in collective bargaining, and its associated requirement that a designated union fairly represent all employees in the bargaining process. *See* Pet Br. 23-24, 35. But petitioners' hypothetical alternatives to exclusive representation have not been tested in the real world, and certainly have not been tested on any scale that could justify imposing them as a constitutional requirement for nearly seven million state and local employees covered by existing state collective-bargaining laws. *See* U.S. Bureau of Labor Statistics, News Release, Union Members—2012, tbl. 3 (Jan. 23, 2013), *available at* http://www.bls.gov/news.release/pdf/union2.pdf. Exclusive representation is a core

element of private-sector collective bargaining, and has been universally adopted by every State that statutorily authorizes public-sector bargaining. Petitioners' real claim is that States should be constitutionally compelled to experiment with unproven alternatives in structuring the labor relations of state and local governments, at risk of repeating past public crises resulting from public-sector labor unrest. This Court has never interpreted the limited First Amendment rights of public employees as imposing those enormous public costs. See *infra*, at III.

Moreover, although there is variation in use of agency fees, agency-fee provisions remain a widely adopted model for ensuring that unions will effectively fulfill their exclusive-representation duties. Some public-sector labor schemes that decline to permit agency fees also circumscribe the scope of collective bargaining in public employment.[18] Petitioners' alternate model does not establish that a more-comprehensive system of collective bargaining is widely achievable without allowing agency fees. Federal law, for example, allows federal workers to unionize under an exclusive-representation model, without permitting agency fees, but also specifically

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[18] *See, e.g.*, Wis. Stat. § 111.91(2)-(3) (prohibiting collective bargaining for state employees over designated subjects and limiting bargaining over wage increases); *see also* Kearney, *supra*, at 55-70 (noting that while many States follow the NLRA model by authorizing "a broad scope of negotiations over wages, hours and other terms and conditions of employment," the details and scope of state public-sector "bargaining provisions vary greatly").

exempts federal agencies from any obligation to bargain over wages, number of employees, or other key issues covered by broader state collective-bargaining regimes. 5 U.S.C. § 7106(a)(1). *See also Navy Charleston Naval Shipyard v. Fed. Labor Relations Auth.*, 885 F.2d 185, 187 (4th Cir. 1989) (federal law regulates federal-employee labor relations by cordoning off important management prerogatives and making union proposals touching on those matters nonnegotiable).

Likewise, many of the States identified by petitioners that do not authorize agency fees—sometimes referred to as "right-to-work" States—have also made fundamentally different choices about the role and scope of collective bargaining. Many of those States deny public employees the right to collectively bargain at all, or limit collective bargaining to only a few classes of employees.[19] The "right-to-work" States have thus made a foundationally different policy choice about labor relations for

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[19] *See, e.g.*, Texas Gov't Code § 617.002(a) (barring state and local government officials from "enter[ing] into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees"); *see also* Ala. Code § 25-7-31; N.C. Gen. Stat. § 95-98; S.C. Code Ann. § 41-7-20; Va. Code § 40.1-57.2; Tenn. Code Ann. §§ 49-5-610 to -613 (repealing right to collectively bargain).

Five States permit collective bargaining for only a subset of public sector employees. *See* Ariz. Rev. Stat. Ann. § 23-1411 (permitting collective bargaining for public-safety employees); Ark. Code Ann. § 6-17-202(b) (permitting collective bargaining only for school teachers); La. Rev. Stat. Ann. § 23:890(B) (collective bargaining for municipal public transit employees); Ind. Code § 20-29-4-1 (school employees may collectively bargain); Utah Code Ann. § 34-20a-3 (firefighters may collectively bargain).

state and local government workers. *See* Kearney, *supra*, at 65 (explaining that in States that do not permit collective bargaining, the Legislature made a "calculated choice" to provide a "'good business climate' by holding down public employee compensation"). Those States' differing policy choices may well be appropriate to their particular circumstances, but they do not refute the benefit of agency fees for other States that adopt more comprehensive public-sector collective bargaining. And certain States with general right-to-work laws nonetheless authorize agency-fee agreements for some classes of public workers, such as firefighters and police officers, confirming that varied approaches to public-sector collective bargaining are appropriate and that no single template should be imposed as constitutionally mandated.[20]

Indeed, far from reflecting a uniform judgment about the efficacy of agency fees, much of the variation in public-sector labor laws can be explained by historical experience and differing circumstances. Many of the right-to-work States suffered no history of public-sector labor unrest or a much milder history than States with broader public-sector collective bargaining and authorization for agency fees. *See* Kearney, *supra*, at 65 & 73-74; *see also* Stieber, *supra*, at 161. Similarly, there have been far fewer strikes and work stoppages by federal employees than by state and local government workers, *see*

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[20] *See* Mich. Comp. Laws § 423.210(4) (exempting police, firefighters, and state troopers from general prohibition on agency-fee agreements); Wis. Stat. §§ 111.81(9), 111.845, 111.85 (exempting "public safety employees" from restrictions on "fair-share agreements").

Kearney, *supra*, at 226-27, potentially explaining why federal collective-bargaining rules differ. Many economic, political, and demographic factors may contribute to such historical differences. When it is properly understood, the variation in approaches to public-sector collective bargaining does not undermine *Abood*, but rather confirms its wisdom in giving States discretion to implement different collective-bargaining rules based on differing state experiences, budgetary conditions, economic and demographic factors, and policy judgments.

III. The First Amendment Does Not Prohibit States from Borrowing Effective and Widely Accepted Private-Sector Collective-Bargaining Models to Regulate Public-Sector Labor Relations.

Finally, petitioners and their amici argue that collective bargaining in the public sector implicates the dual role of government as both "employer and policy-maker" and that, as a result, state collective-bargaining laws should be subject to heightened First Amendment scrutiny. *See* Pet. Br. 23. But the fact that collective-bargaining concerns the role of state and local governments *as employers* supports *Abood*'s holding.

Abood's grant of deference to state judgments about labor-relations policy is not an anomaly in First Amendment law. Deference accords with this Court's public-employee speech cases affording government broad authority to terminate or discipline employees for protected speech in order to promote the effectiveness of government operations. This Court has consistently upheld the government's authority to manage public employees and regulate

the terms of public employment to promote the effective and efficient delivery of government services and programs. *See, e.g., Engquist v. Ore. Dep't of Agric.*, 553 U.S. 591, 598-600 (2008); *Garcetti v. Ceballos*, 547 U.S. 410, 417-20 (2006); *Waters v. Churchill*, 511 U.S. 661, 671-75 (1994) (plurality op.).

The Court's public-employee speech cases afford extensive deference to the government in structuring the public-employment relationship—giving "substantial weight" to government predictions of harm and disruption, "even when the speech involved is a matter of public concern."[21] *Waters*, 511 U.S. at 673-74 (plurality op.). This Court has acknowledged that, in many cases, a "respectable argument" could be made in favor of policies that would be more protective or accommodating to public employees' speech and associational rights. *Id.* at 673. But the Court has repeatedly declined to deny the govern-

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[21] Petitioners (Br. 28-31) improperly propose to use the "public concern" test from this Court's public employee-speech cases to eliminate deference to state governments in structuring public-sector labor relations. Petitioners' argument, however, inverts the original function of the "public concern" test, which holds that speech by a public employee must relate to a matter of public concern to receive any First Amendment protection at all. Even as to matters of public concern, this Court has affirmed that the government's interest in protecting the provision of public services and fulfilling its public responsibilities outweighs an individual employee's interest in speaking.

The "public concern" test therefore does not define the outer boundary of government authority in structuring the employment relationship, but instead triggers a balancing test that is deferential to the government's assessment of how to protect the efficient and effective provision of services by government workers.

ment reasonable flexibility to fulfill "its mission as employer" for the public good, and accordingly rejected any notion that employment-related measures must be "narrowly tailored to a compelling government interest." *Id*. at 674-75.

Abood is fully consistent with these cases: it authorizes exclusive representation and agency fees for collective bargaining as part of the public-employment relationship, and it makes clear that public employees may not be compelled to support political or ideological activities by unions outside of the collective-bargaining process. The deference that *Abood* extends to state labor relations and collective-bargaining laws is therefore appropriately centered on government's decisions in structuring negotiations as to the terms and conditions of public employment, not restricting public employees from expressing themselves or associating freely in their capacities as citizens.

Petitioners note that the majority of this Court's prior public-employee speech cases involved individual employees and the potential for disruption in individual workplaces. *See* Pet. Br. 28. But this Court has also upheld state and federal statutes broadly regulating the political activity of public employees *as a class*—confirming that "[e]ven something as close to the core of the First Amendment as participation in political campaigns may be prohibited to government employees." *Waters*, 511 U.S. at 672 (plurality op.) (citing cases). The States' interest in public-sector labor peace is deepened, not diminished because the threat of disruption extends far beyond any single employee or individual workplace.

Labor peace and stability is a broad problem, but the breadth of the government interest does not

justify enhanced restrictions on the government's ability to regulate labor relations and to borrow solutions found effective for achieving labor peace in the private sector. This Court has long confirmed that the First Amendment is not a mandate for lesser public efficiency. When the "government is employing someone for the very purpose of effectively achieving its goals," *id.* at 675, it is permitted flexibility to control its own operations and to define the terms of employment to serve its ends just as "private employers" do. *See Garcetti*, 547 U.S. at 418. And when an individual "enters government service," he or she "must accept certain limitations on his or her freedom," including limitations that would be imposed in a private employment setting. *Id.* These limitations may and often do restrict speech or associational activities that the government could not limit outside of the employment relationship.

It is petitioners' argument, not *Abood*, that is out of step with First Amendment doctrine. The Court has never suggested that the First Amendment prohibits public employers from adopting measures that have been found broadly effective for securing effective and efficient operations for private employers. *Abood* upholds only the right of States to mirror federal policy for effective collective bargaining and to adopt collective-bargaining schemes of tested efficacy and widespread application in the private sector. Almost every State in the Nation has adopted some features from private-sector collective bargaining for public-sector labor laws which those States deem critical to assuring labor peace and stability. Nothing in this Court's large body of public-employee First Amendment precedent prohibits that choice or supports upending long-settled state laws

governing collective bargaining by state and local employees.

CONCLUSION

This Court should decline to overrule *Abood*.

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Appendix

Survey of State Statutory Authority for Public-Sector Collective Bargaining by Exclusive Representative*

State	Authority
Alabama	No statutory authority
Alaska *Alaska Stat.*	*Public Employees* – §§ 23.40.100, **23.40.110**
Arizona	No statutory authority
Arkansas *Ark. Code Ann.*	*Teachers* – § 6-17-202
California *Cal. Gov't Code*	*Local Government Employees* – § **3502.5** *State Employees* – §§ 3515.5, **3515.7** *School Employees* – §§ 3543-3543.2, **3546** *Higher Education Employees* – §§ **3583.5**, **3584** *Home Care Providers* – § **110019**

**Citations in bold indicate authorization for agency or fair-share fees. Some States combine authority for collective-bargaining and for fees in a single statutory provision.*

Colorado *Colorado Rev. Stat.*	*Public Mass Transportation System Employees* – § 8-3-107
Connecticut *Conn. Gen. Stat.*	*Municipal Employees* – §§ 7-468 to -69 *State Employees* – §§ 5-271, **5-280** *Teachers* – § **10-153a** *Family Child Care Providers* – § **17b-705a** *Personal-Care Attendants* – § **17b-706b**
Delaware *Del. Code Ann. [tit.], [§]*	*Public Employees* – 19, §§ 1303-1304, **1319** *Police Officers & Firefighters* – 19, §§ 1603-1604 *Public School Employees* – 14, §§ 4003-4004, **4019**
District of Columbia *D.C. Code*	*Public Employees* – §§ 1-617.10, 1-617.11, **1-617.07**
Florida *Fla. Stat.*	*Public Employees* – § 447.307
Georgia *Ga. Code Ann.*	*Firefighters* – § 25-5-5 Collective-Bargaining Restriction on Teachers – § 20-2-989.10

State	Provisions
Hawaii *Haw. Rev. Stat.*	*Public Employees* – §§ **89-3**, **89-4**, 89-8
Idaho *Idaho Code Ann.*	*Teachers* – § 33-1273 *Firefighters* – § 44-1803
Illinois *[ch.] Ill. Comp. Stat. Ann. [§]*	*Public Employees* – 5, § **315/6** *Educational Employees* – 115, §§ 5/3, 5/10, **5/11** *Home Care & Home Health Workers* – 20, § **2405/3**
Indiana *Ind. Code*	*Employees of Correctional Institutions* – § 11-10-5-5 *Employees of State Institutions* – § 12-24-3-5 *Employees of Soldiers' & Sailors' Children's Home* – § 16-33-4-23 *Employees of the Schools for the Blind and for the Deaf* – §§ 20-21-4-4, 20-22-4-4 *Employees of a School Corp. or Charter School* – § 20-26-5-32.2 *Teachers* – §§ 20-29-2-9, 20-29-5-2 *Some Local Public Safety Employees* – § 36-8-22-7
Iowa *Iowa Code*	*Public Employees* – § 20.16

State	Authority
Kansas *Kan. Stat. Ann.*	*Teachers* – § 72-5415
Kentucky *Ky. Rev. Stat. Ann.*	*City & Local Government Firefighters* – §§ 345.030, 345.040 *Local Government Police Officers* – §§ 67C.402, 67C.404 *Urban-County Police Officers, Firefighter Personnel, Firefighters & Corrections Personnel* – §§ 67A.6902, 67A.6903 ***Housing Auth. of Louisville v. Serv. Emp. Int'l Union, Local 557***, 885 S.W.2d 692, 696-97 (Ky. 1994) (upholding fair-share fees)
Louisiana	No statutory authority
Maine *Me. Rev. Stat.[tit.][§]*	*Municipal Employees* – 26, §§ **629**, **963**, 965, 967 *State Employees* – 26 §§ **979-B**, 979-D, 979-F *University of Maine Employees* – 26 §§ 1023, 1025, 1026 *Judicial Employees* – 26 §§ **1283**, 1285, 1287

State	Statutes
Maryland *Md. Code Ann., [subject]*	*State Employees* – State Pers. & Pens., §§ 3-301, 3-407; **3-502** *Teachers* – Educ. §§ 6-404, **6-407** *School Employees* – Educ. §§ **6-504**, 6-505, 6-509 *Family Child Care Providers* – Fam. Law § **5-595.3** *Independent Child Care Providers* – Health-Gen. § **15-904**
Massachusetts *Mass. Gen. Laws [ch.], [§]*	*Public Employees* – 150E, §§ **2**, 4,5, **12** *Child Care Providers* – 15D, § 17 *Personal Care Attendants* – 118E, § 73
Michigan *Mich. Comp. Laws Ann.*	*Public Employees* – §§ 423.26, **423.210**, 423.211, *Public Police & Fire Dep't Employees* – § 423.234 *State Police Troopers & Sergeants* – § 423.274
Minnesota *Minn. Stat.*	*Public Employees* – § **179A.06** *Individual Providers* – § **256B.0711**
Mississippi	No statutory authority

Missouri *Mo. Rev. Stat.*	*Public Employees* – §§ 105.510, **105.520; *Schaffer v. Bd. of Educ.***, 869 S.W.2d 163, 166 (Mo. Ct. App. 1993) (finding implicit authority for fair-share provisions in § 105.520) *Personal Care Attendants* – § 208.862
Montana *Mont. Code Ann.*	*Public Employees* – §§ **39-31-204**, 39-31-205, 39-31-305, **39-31-401**
Nebraska *Neb. Rev. Stat.*	*Public Employees* – §§ 48-816, 48-838 *State Employees* – § 81-1372
Nevada *Nev. Rev. Stat.*	*Local Government Employees* – § 288.160
New Hampshire *N.H. Rev. Stat. Ann.*	*Public Employees* – §§ **273-A:3**, 273-A:11; ***Nashua Teachers Union v. Sch. Dist.*,** 707 A.2d 448, 451-52 (N.H. 1998**)** (§ 273-A:3(I) permits negotiation of agency fees)
New Jersey *N.J. Stat. Ann.*	*Public Employees* – §§ 34:13A-5.3, **34A:13A-5.5**, **34:13A-5.6**

New Mexico *N.M. Stat. Ann.*	*Public Employees* – §§ **10-7E-9**, 10-7E-15 *Family Child Care Providers* – § 50-4-33
New York *N.Y. [subject] Law*	*Public Employees* – Civ. Serv. §§ 204, **208** *Child Care Providers* – Lab. § 695-d
North Carolina *N.C. Gen. Stat.*	Public-sector collective-bargaining restriction – § 95-98
North Dakota *N.D. Cent. Code*	*Meet and Confer Authorization for Teachers* – § 15.1-16-13
Ohio *Ohio Rev. Code Ann.*	*Public Employees* – §§ 4117.04, 4117.05, **4117.09**
Oklahoma *Okla. Stat. Ann. [tit.] [§]*	*Municipal Firefighters & Police Officers* – 11 § 51-103 *Rural Fire Protection District Firefighters* – 19 § 901.30-2 *School Employees* – 70 § 509.2
Oregon *Or. Rev. Stat.*	*Public Employees* – §§ 243.666, 243.672 *Family Child Care Workers* – § 657A.430 *Home Care Workers* – §§ 410.612, 410.614

Pennsylvania *Pa. Stat. Ann. [tit.]*	*Public Employees* – 43 §§ **1102.3**, 1101.606 *Police Officers & Firefighters* – 43 § 217.1
Puerto Rico *P.R. Laws [tit.], [§]*	*Public Employees* – 3 §§ 1451b, 1451f, **1454a**
Rhode Island *R.I. Gen. Laws*	*State Employees* – §§ **36-11-2**, 36-11-7 *Employees, including Public Employees* – § 28-7-14 *Municipal Firefighters* – § 28-9.1-5 *Municipal Police Officers* – § 28-9.2-5 *Teachers* – § 28-9.3-3; ***N. Kingstown v. N. Kingstown Teachers Ass'n***, 297 A.2d 342, 346 (R.I. 1972) (fair-share fees permissible) *Municipal Employees* – § 28-9.4-4 *State Police* – § 28-9.5-5 *Statewide 911 Employees* – § 28-9.6-5 *State Correctional Officers* – § 28-9.7-5 *Family Child Care Providers* – §§ 40-6.6-2, 40-6.6-4

South Carolina	Public sector collective bargaining restriction
South Dakota *S.D. Codified Laws*	*Public Employees* – § 3-18-3
Tennessee *Tenn. Code*	*Meet and Confer Authorization for for Local Public-School Teachers* – § 49-5-608
Texas *Tex Gov't Code Ann.*	Public-sector collective-bargaining restriction – § 617.002
Utah *Utah Code Ann.*	*Firefighters* – § 34-20A-4
Vermont *Vt. Stat. Ann. [tit.], [§]*	*State Employees* – 3, §§ **903**, 941 *Judiciary Employees* – 3, §§ 1011, **1012** *Teachers & Administrators* – 16, §§ **1982**, 1991 *Independent Direct Support Providers* – 21, § **1634** *Municipal Employees* – 21, §§ **1722**, 1723, **1726**, 1734

Virginia *Va. Code Ann.*	Public sector collective bargaining restriction – § 40.1-57.2
Washington *Wash. Rev. Code*	*State Employees* – §§ **41.80.50**. 41.80.080, **41.80.100** *Local Government Employees* – §§ 41.56.100, **41.56.113**, **41.56.122** *School Employees* – §§ 41.59.090, **41.59.100** *Community College Employees* – §§ **28B.52.025**, 28B.52.030, **28B.52.045** *Marine Employees* – §§ 47.64.011, 47.64.135, **47.64.160** *Port Employees* – §§ 53.18.015, 53.18.050 *Long-Term Care Workers* – § 74.39A.270
West Virginia	No statutory authority
Wisconsin *Wis. Stat.*	*Public Safety Officers* – §§ **111.81**, 111.82, **111.85**, 111.825, 111.83
Wyoming *Wyo. Stat. Ann.*	*Firefighters* – § 27-10-103