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SUPREME COURT OF KENTUCKY
FILE NO. 2023-SC-0
Court of Appeals File
No. 2022-CA-001071 MR

NATHAN TORIAN, Individually, and as
representative of a class of similarly situated
persons comprising the unincorporated labor
organization, The International Association of
Fire Fighters, Local 168,

APPELLANT

VS. RAP 34 MICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

CITY OF PADUCAH, KY., *et al.*,

APPELLEES

APPEAL FROM THE McCracken Circuit Court
DIVISION TWO (II)
HONORABLE W. A. KITCHEN
NO. 21-CI-000490

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CERTIFICATE OF SERVICE

It is hereby certified that on the 22nd day of May, 2024, the foregoing was electronically filed using the court's eFiling system, which will automatically generate and send a Notice of Electronic Filing to all eFilers/parties associated with the case, along with a hyperlink to it; and one (1) copy of the foregoing was served via U.S. mail to: Hon. Kate Morgan, Court of Appeals Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. W. A. Kitchen, Circuit Judge, McCracken County Courthouse, 300 Clarence Gaines St., Paducah Kentucky, 42003; Hon. David O'Brien Suetholz & Hon. Peter J. Jannace, HERZFELD, SUETHOLZ, GASTEL, LENISKI & WALL, PLLC, 515 Park Avenue, Louisville, Kentucky 40208, *Counsel for Appellant*; and Hon. Stacey A. Blankenship & Hon. Kristen N. Worak, KEULER, KELLY HUTCHINS, BLANKENSHIP & SIGLER, LLP, 100 S. 4th St., Ste. 400, Paducah, KY 42001, *Counsel for Appellees*.

_____/s/ Benjamin S. Basil

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MAY IT PLEASE THE COURT:

COMES NOW Amicus Curiae, Kentucky Professional Fire Fighters (the “KPF”)), by counsel, and pursuant to RAP 34, that as and for its Brief in Support of the Appellant, NATHAN TORIAN, Individually, and as representative of a class of similarly situated persons comprising the unincorporated labor organization, The International Association of Fire Fighters, Local 168 (“Torian”) in the above captioned matter, hereby respectfully states as follows:

I. PURPOSE OF BRIEF AND ISSUES TO WHICH IT IS DIRECTED

As this Court is aware and as is relevant here, Amicus Curiae the KPF represents forty-eight local International Association of Fire Fighters unions throughout the Commonwealth, including: the Local 38 in Covington, with 109 active members; the Local 45 in Newport, with 30 active members; the Local 54 in Louisville, with 429 active members; the Local 168 in Paducah with 54 members; the Local 526 in Lexington, with 588 active members; the Local 706 in Ashland, with 45 active members; the Local 870 in Owensboro, with 68 active members; the Local 1017 Frankfort Professional Fire Fighters—in Frankfort, with 36 active members; the Local 1570 in Shively, with 20 active members; the Local 1646 in Mayfield, with 34 active members; the Local 1807 in Winchester, with 44 active members; the Local 1928 in Fort Thomas, with 18 active members; the Local 2290 in Henderson, with 39 active members; the Local 2438 at the Cincinnati/Northern Kentucky International Airport in Hebron, with 38 active members; the Local 3303 in Florence, with 61 active members; the Local 3621 in Richmond, with 27 active members; the Local 3751 in Dayton, with 12 active members; the Local 3784 in Hebron, with 38 active members; the Local 3795 in Wilder, with 7 active members; the Local 3945 in Independence, with 38 active members; the Local 3952 Franklin County Fire Department—in Frankfort, with 35 active members; the Local 4060 in Central Campbell County, with 22 active members; the Local 4178

in Taylor Mill, with 9 active members; the Local 4185 in Alexandria, with 15 active members; the Local 4206 in Erlanger, with 24 active members; the Local 4215 in Georgetown, with 18 active members; the Local 4228 in Dry Ridge, with 8 active members; the Local 4289 in Nicholasville, with 43 active members; the Local 4431 in Shelbyville, with 8 active members; the Local 4484 in Walton, with 17 active members; the Local 4521 in Burlington, with 28 active members; the Local 4587 in Danville, with 21 active members; the Local 4736 in Point Pleasant, with 10 active members; the Local 4805 in Mount Sterling, with 18 active members; the Local 4874 in Melbourne, with 7 active members; the Local 4974 in Elsmere, with 10 active members; the Local 5038 in Union, with 22 active members; the Local 5095 in Bardstown, with 6 active members; the Local 5101 in Shepherdsville, with 25 active members; the Local 5222 in Fort Mitchell with 13 active members; the Local 5244 in Crestwood, with 11 active members; the Local 5340 in Ft. Mitchell, with 7 active members; and the Local 5418 in Harrodsburg, with 6 active members.

So, in addition to the union Torian represents, Local 168, the Amicus Curiae KPFF represents an additional 47 IAFF locals, with an additional 2,010 active firefighters. Most of those firefighters are required to retain certification as emergency medical technicians—just like Local 168—and they routinely render emergency medical treatment to the communities they serve. They are far more than just firefighters.

For example, the City of Winchester, Kentucky, which is the employer of the IAFF Local 1807, employs single role paramedics within its Fire Department, which is aptly named Winchester Fire/EMS. Individuals employed with the Winchester Fire Department in that role only engage in Emergency Medical Services (“EMS”), they do not fight fires. Nevertheless, under the Court of Appeals’ interpretation of KRS 311A.027, the residency protection therein would not apply to Winchester’s Fire Department, because it primarily employs firefighters. That is so, even though its firefighters are required to have a valid Kentucky Board of

Emergency Medical Services EMT or Paramedic card to work there. That ruling applies equally to its single role paramedics, *even though they do not fight fires at all.*

The same can be said for the City of Henderson, which requires its firefighters to attain certification as an Emergency Medical Technician within one year of employment and maintain it throughout employment. The Owensboro Fire Department requires EMT or NREMT certification after 18 months. The Fort Thomas Fire Department requires every firefighter below the rank of Lieutenant to maintain EMT certification. The same goes for Montgomery County Fire/EMS. And Anchorage/Middletown Fire. And Louisville Fire. And Burlington Fire. And St. Matthews Fire and EMS. And many others.

What those fire departments have in common—as do most of the fire departments in Kentucky—is that their firefighters also provide emergency medical services. EMS response accounts for eighty (80) percent of response by Kentucky fire departments. If this very Court were to call 911 for a medical emergency, Frankfort Fire and EMS would send a firefighter to help.

Since the great majority of firefighters also wear EMT hats in Kentucky, the Court of Appeals' myopic interpretation of KRS 311A puts at risk life-saving measures that firefighters throughout the Commonwealth will now be unable to administer, such as Narcan and other emergency medical treatment, particularly needed in rural Kentucky. The Court of Appeals' construction of KRS 311A is not only contrary to well-established canons of statutory interpretation, but it is also harmful because the Commonwealth is contending with a public health crisis.

In 202 while this case was pending—the General Assembly enacted HB 777 with overwhelming bipartisan support, which overhauled the Kentucky Board of Emergency Medical Services (“KBEMS”) and created the Emergency Medical Services Task Force (the “EMS Task Force”) to address “the dire conditions all services are experiencing with recruitment and retention, equipment challenges,

training and educational requirements...”¹ The General Assembly saw fit to address that looming crisis with a collaborative effort between medical professionals and firefighters, among others. The Court of Appeals’ artificial distinction between those two classes of first responders has undermined the EMS Task Force’s concerted efforts to date.

The KPFF’s purposes for filing this Brief are two-fold: to represent the position of the 47 other IAFF locals who will be affected by this Court’s ruling, and to ensure that the work of the EMS Task Force—to which the KPFF provided valuable input—will not be undermined. KPFF accomplishes those purposes by addressing two background issues that support Torian’s interpretation of KRS 311A.027, and thus militate in favor of reversal here: (1) there is a regime of reciprocal training and certification for firefighters and EMS personnel alike, with standards promulgated by KBEMS; and (2) the General Assembly created the EMS Task Force in 2022 to address a shortage of EMS personnel in rural parts of the Commonwealth, which will be exasperated if municipalities can limit where first responders can reside.

Torian’s statutory interpretation of KRS 311A.027 is bolstered by those issues. The Court of Appeals’ interpretation of KRS 311A is contrary to the law and contrary to the public policy established by the General Assembly. Therefore, this Court should reverse the Court of Appeals to ensure that residence in a big city does not become a requirement to receive emergency medical care in Kentucky.

II. ARGUMENT

The dichotomy between firefighters and EMS personnel the Trial Court concocted—and the Court of Appeals ratified—does not hold water. On the contrary, the General Assembly has seen fit to institute a cross-training system for

¹ Shellie Hampton, *Task Force studying EMS challenges begins its work*, KY. ASS’N OF CNTYS., (July 15, 2021), <https://www.kaco.org/articles/task-force-studying-ems-challenges-begins-its-work/>.

the two disciplines. Moreover, amid the opioid epidemic, the General Assembly turned to the combined expertise of firefighters and EMS personnel when it created the EMS Task Force. Since the General Assembly does not treat the two disciplines differently when it comes to administering necessary medical services across the Commonwealth, this Court should not do so either. The Court of Appeals should be reversed.

a. Firefighters are trained and licensed to administer EMS

The statutory scheme for first responders does not differentiate between firefighters and EMS personnel in the way the Court of Appeals did. There is no meaningful distinction between the way EMS trained firefighters and EMS providers are trained and licensed. The overlap between training and licensure for those first responders is as much a matter of necessity as it is a matter of efficiency.

In 1972, the Governor’s Commission on Fire Protection was formed, and in 1982, it became funded (the “Kentucky Fire Commission”).² The mission of the Kentucky Fire Commission “has been to train and certify volunteer and career firefighters in Kentucky.”³ The statutes creating the Kentucky Fire Commission can be found in KRS Chapter 95A, which applies “to the personnel of fire departments in the state whether paid or unpaid, or both.” KRS 95A.010.

Since its inception, the Kentucky Fire Commission has been:

authorized to make full and complete studies, recommendations and reports to the Governor and the General Assembly for the purposes of suggesting minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, suggesting basic minimum courses of training for fire protection personnel and suggesting the procedure for the certification of fire protection personnel and the certification of fire protection instructors.

1983 Ky. Op. Att’y Gen. 2-146 (1983). In other words, the Kentucky Fire Commission is responsible for setting standards to train firefighters.

² See Ky. Fire Comm’n, *About*, KYFIRECOMMISSION.KCTCS.EDU, <https://kyfirecommission.kctcs.edu/About/>, (last visited May 20, 2024)

³ See *ibid.*

The makeup of the Kentucky Fire Commission gives a clue as to how it trains firefighters. The Kentucky Fire Commission is made up of fourteen members, including firefighters, fire chiefs, a licensed physician, and for our purposes here, “[o]ne (1) officer of a *fire-based emergency medical service* selected from a list of at least three (3) names submitted by the executive director of...” KBEMS, among others. KRS 95A.020(5)(n). If firefighters and EMS providers were truly mutually exclusive—like the Court of Appeals held—then a “fire-based emergency medical service” could not exist in that universe. Yet it does.

One division of the Kentucky Fire Commission is State Fire Rescue Training (“SFRT”). A key component of SFRT is emergency medical services training, which follows “the guidelines of [KBEMS]”⁴ SFRT is “the largest provider of emergency medical services training in the Commonwealth of Kentucky...”, and includes training in CPR, first aid and bloodborne pathogens, and qualifies for EMT – First Responder Medical, EMT – Basic, and EMT – Paramedic certifications.⁵ Likewise, KBEMS allows those who it certifies to fulfill their continuing education requirements through the “U.S. Fire Administration and all department components...”, among others. 202 KAR 7:601 § 13(1)(e)(6). The training for the Kentucky Fire Commission and KBEMS is reciprocal.

KBEMS was created by KRS Chapter 311A⁶—the chapter of the Kentucky Revised Statutes containing the statute from which this case arises, KRS 311A.027. See KRS 311A.015(1). The makeup of KBEMS is, in essence, the mirror image of the Kentucky Fire Commission. In addition to licensed physicians and other EMS personnel, KBEMS includes “[o]ne (1) licensed or certified emergency medical

⁴ Ky. Fire Comm’n, *Medical Programs*, KYFIRECOMMISSION.KCTCS.EDU, https://kyfirecommission.kctcs.edu/state_fire_rescue_training/educational_programs/medical_programs.aspx, (last visited May 20, 2024).

⁵ *Ibid.*

⁶ KRS 311A was amended by House Bill 777 during the Regular Legislative Session of 2022—while this case was pending. See H.B. 777 (Reg. Sess. 2022). The relevant amendments are discussed at length in Section II.b., *infra*.

services field provider appointed by the Governor from a list of three (3) individuals submitted by the *Kentucky Professional Fire Fighters...*—amicus herein—and “[o]ne (1) licensed or certified emergency medical services field provider appointed by the Governor from a list of three (3) individuals submitted by the *Kentucky Association of Fire Chiefs...*”, among others. KRS 311A.015(2)(g)-(h) (emphases added). So, just like an officer of a fire-based emergency medical service from a list submitted by KBEMS serves on the Kentucky Fire Commission, two licensed or certified EMS field providers—one from KPFF, one from KAFC—serve on KBEMS.

The licensed EMS field provider who the KPFF nominated and serves on KBEMS at present is Tim Webster:



Tim Webster

Representing: Kentucky Professional Fire Fighters

Term Expires July 2026

Contact: twebs333@yahoo.com

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And, yes, Tim Webster is a firefighter who also serves as the 1st District Vice President of the KPFF, amicus herein:



1st District Vice President

Tim Webster

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⁷ Ky. Bd. of Emerg. Med. Servs., *Board Members*, KBEMS.KY.GOV, <https://kbems.ky.gov/About/Pages/Board-Members.aspx>, (last visited May 20, 2024).

⁸ Ky. Prof. Fire Fighters, *Your Executive Board*, WWW.KPFF-IAFF.ORG, <https://www.kpff-iaff.org/about-us/executive-board/>, (last visited May 20, 2024).

So, to summarize, the Kentucky Fire Commission counts among its membership an officer of a fire-based emergency medical service recommended by KBEMS. The Kentucky Fire Commission trains firefighters. KBEMS includes licensed or certified EMS field providers from a list submitted by the KPFF and the KAFC, respectively. In other words, firefighters serve on KBEMS and an EMS officer, recommended by KBEMS, serves on the Kentucky Fire Commission.

KBEMS is created by KRS 311A, which is the chapter of the Kentucky Revised Statutes from which this appeal arises—KRS 311A.027. Given the overlapping training and licensure requirements for firefighters and EMS providers, the notion that KRS 311A does not apply to firefighters is a *non-sequitur*. Accordingly, the Court of Appeals' holding of same should be reversed.

b. The first responder shortage facing the Commonwealth

It is no secret that there is a nationwide shortage of first responders.⁹ Kentucky is certainly not immune to it.¹⁰ There is a shortage of firefighters in every corner of the Commonwealth, and beyond.¹¹ And the deficit is not unique to

⁹ See, e.g., Carlyle Coppins, *National volunteer firefighter shortage*, NEWS 40 WNKY, (Feb. 28, 2024), <https://www.wnky.com/national-volunteer-firefighter-shortage/>, (“A shortage of volunteers is causing fire departments to struggle to meet the needs of their community. 65 % of firefighters in the United States are made up of volunteers. Volunteer firefighters all over need more people willing to help save and serve their community. The number of volunteers dropped by two hundred twenty thousand and the number of runs tripled.”).

¹⁰ See, e.g., *ibid.* (“Bob Skipper Woodburn Fire Department Chief shares how this national issue is happening here locally. He says, ‘We are currently down to a roster of about 15 active volunteer crews and covering nearly 700 runs a year. So as our numbers drop in personnel, our run numbers are going up, which puts a lot more pressure on the people who remain.’”).

¹¹ See, e.g., Alyssa Williams, *‘The numbers are dwindling’: Central Ky. firefighters discuss firefighter shortage*, WKYT, (Aug. 30, 2023), <https://www.wkyt.com/2023/08/30/numbers-are-dwindling-central-ky-firefighters-discuss-firefighter-shortage/>, (“When we think of first responders, many of us imagine that they will be there for us no matter what, but what happens when a department is short-staffed and has no one to send to an emergency? This is an issue several Central Kentucky fire departments are seeing firsthand.”); Jordan Mullins, *EKY feels the effects of first responder shortage*, MOUNTAIN NEWS WYMT, (Jun. 9, 2023), <https://www.wymt.com/2023/06/09/eky-feels-effects-first-responder-shortage/>, (“Across the nation, towns and municipalities are feeling the effects of a first responder shortage, and Eastern Kentucky is no exception.”); Shaquille Lord, *Zoneton Fire Dept. in need of more volunteer*

firefighters. There is an acute shortage of EMS personnel in Kentucky as well.¹²

Indeed, the first responder shortage had gotten so dire, that during the regular session of 2022—while this Action was pending—the General Assembly enacted House Bill 777 (“HB 777”) with overwhelming bipartisan support. As relevant for our purposes here, HB 777: (1) amended KRS 311A.015 to transform KBEMS into an independent state agency; (2) revised the membership of KBEMS; (3) amended KRS 205.590 to establish a new technical advisory committee on emergency medical services; and (4) created the EMS Task Force. *See* H.B. 777 §§ 1, 16, 23 (20 Reg. Sess.).

For the KBEMS membership revisions, HB 777 swapped a fire-service-based, EMS certified, licensed Class I ground ambulance service administrator with two licensed or certified EMS field providers—one from KPFF, one from KAFC, as explained above. *See id.* § 1. HB 777 also established a new technical

firefighters amidst nationwide shortage, WLKY, (Apr. 18, 2023), <https://www.wlky.com/article/zoneton-fire-dept-need-volunteer-firefighters-shortage/43523552>, (“Fire departments throughout the country are dealing with staffing shortages. That includes smaller departments, like the Zoneton Fire and Protection District, which rely on volunteer firefighters to fill out their staff.”); Marella Porter, *Volunteer fire stations at risk amid firefighter shortage across Tri-State*, LOCAL12, (Feb. 17, 2023) <https://local12.com/news/local/volunteer-fire-stations-at-risk-amid-firefighter-shortage-across-tri-state-firefighters-burn-blaze-station-open-volunteers-volunteerism-roster-four-respond-missed-calls-first-responders-attention-petersburg-kentucky-cincinnati-ohio>, (“In the small town of Petersburg, Kentucky, the volunteer fire department is struggling to serve its people... It’s a nationwide issue. In Ohio, state fire marshal Kevin Reardon says the state has lost a lot of volunteers because of recent changes in society...”).

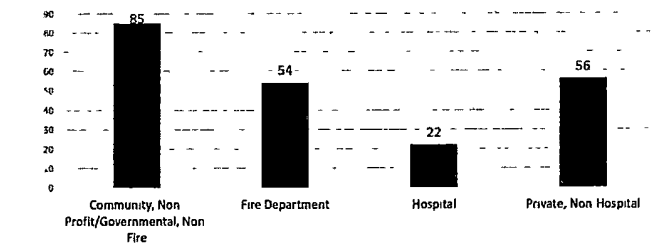
¹² *See, e.g.*, Carla Slavey, *Critical EMS staffing shortage in Ky. county risks public safety, officials say*, EMS1, (Nov. 22, 2023) <https://www.ems1.com/recruitment-and-retention/critical-ems-staffing-shortage-in-ky-county-risks-public-safety-officials-say>, (“Last week, David Sparks sounded out a warning at the Somerset City Council meeting: The personnel problems with Somerset-Pulaski County EMS are getting to be a critical situation. This Sunday, one of Sparks’ nightmare scenarios almost played out. On a day where the county only had enough people to cover three trucks — with only one of those capable of providing advanced life support — all three crews were on jobs when four other calls came in. And one of those four was also in need of an advanced crew, Sparks said. Pulaski ended up having to call surrounding counties for requests for mutual aid, with Wayne County and Lincoln County personnel responding... Current statistics indicate that the number of paramedics statewide who are retiring or leaving the profession are not being replaced at the same rate, Eubank said. And this isn’t just a state problem. There is a nationwide shortage of EMS professionals, he said.”).

advisory committee on emergency medical services receiving input from seven members, one of whom was appointed by KBEMS and one of whom represented a fire-based emergency medical service and was appointed by KAFC. *See id.* § 1 Critically, HB 777 clarified that “[a]ll members appointed to [that] committee *shall represent emergency medical services providers that operate in Kentucky... Ibid.* (emphasis added). Contra, the Court of Appeals’ conclusion that firefighters are not EMS providers subject to KRS 311A at all.

Finally, HB 777 created the EMS Task Force. *See id.* § 23. The EMS Task Force invited input from one representative recommended by the KAFC and one representative recommended by the KPFF, both of whom were approved by the Legislative Research Commission, among others. *See ibid.* A paramount aim of the EMS Task Force was to “[i]dentify strategies for recruitment and retention of the EMS workforce.”¹³

KBEMS presented to the EMS Task Force on July 14, 2022, and it identified the four service models utilized for the administration of EMS in the Commonwealth—fire departments were a close third:

Service Models



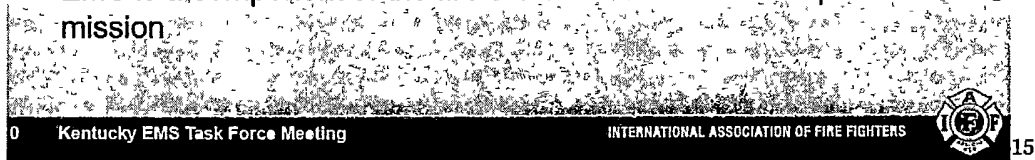
¹³ Sen. David P. Givens & Rep. Ken Fleming, *Findings and Recommendations of the Emergency Medical Services Task Force*, LEG. RES. COMM’N, (Nov. 15, 2022), <https://apps.legislature.ky.gov/CommitteeDocuments/356/22516/EMS%20Task%20Force%20final%20memo%2011-15-2022.pdf>.

¹⁴ *EMS Task Force Meeting*, KY. BD. OF EMERG. MED. SERVS., (July 14, 2022), [https://apps.legislature.ky.gov/CommitteeDocuments/356/21083/KBEMSEMS TaskForcePresentation_7.14.22.pptx](https://apps.legislature.ky.gov/CommitteeDocuments/356/21083/KBEMSEMS%20TaskForcePresentation_7.14.22.pptx).

Then, on August 16, 2022, Chris “Blue” Bartley, State Policy and Legislative Representative of the KPFF, presented to the EMS Task Force on exactly how delivery of Fire-Based EMS works:

What is Fire-Based EMS

- Fire service is the predominant provider of EMS transport in the United States
- 97% of the 200 most populated communities use fire-based EMS
- Fire-based EMS uses the fire service’s infrastructure to provide EMS
- Nearly all fire fighters have some level of EMS training
- EMS is a component of the fire service’s all-hazards response mission.



So, it is unsurprising that on November 1, 2022, the EMS Task Force presented its findings, including its recommendation to “[e]ncourage local governments to consider the advantages of fire-based EMS ambulance systems.”¹⁵

The upshot of all the above is that Kentucky is facing a first responder shortage—of firefighters and EMS personnel alike—and the General Assembly took steps to address that shortfall by enacting HB 777. HB 777 injected firefighters into the administration of KBEMS, which is responsible for the certification and licensure of EMS personnel. HB 777 also invited input from firefighters for a technical advisory committee concerning EMS, and for the EMS Task Force, because a substantial and growing amount of EMS services are delivered to those

¹⁵ *Kentucky EMS Task Force Meeting*, Ky. Prof. Fire Fighters, (Aug. 16, 2022), https://apps.legislature.ky.gov/CommitteeDocuments/356/21179/IAFF_KYEM_SPPT.pptx.

¹⁶ Ky. League of Cities, *EMS Task Force Presents Recommendations*, KLCCITYLIMIT.COM, (Nov. 3, 2022), <https://klccitylimit.com/news/2022/11/ems-task-force-presents-recommendations/>.

in need in the Commonwealth via Fire-Based EMS.

The Court of Appeals' holding that firefighters and EMS personnel are in mutually exclusive camps is contrary to the law and logic. Moreover, many volunteer firefighters are also career firefighters elsewhere. If large municipalities can tell those career firefighters where they must live, it could limit those firefighters' ability to volunteer in rural parts of the Commonwealth. Appellees' Machiavellian residency ordinance, hoarding EMS personnel within the boundaries of the City of Paducah during a personnel shortage, is counterproductive to the General Assembly's efforts to address that public health crisis, and harmful to the Commonwealth itself. It therefore follows that the Court of Appeals' decision cannot stand.

III. CONCLUSION

Since firefighters in the Commonwealth are EMS professionals subject to KRS 311A this Court should reverse the decision of the Court of Appeals.

Dated: May 22, 2024

Respectfully submitted,

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RAP 45(B)(2) WORD-COUNT CERTIFICATE

This document complies with the word limit of RAP 45(B)(2) because, excluding the parts of the document exempted by RAP 15(D) &, 45(B)(2), this document contains 4,322 words.

/s/ Benjamin S. Basil
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Counsel for Amicus Curiae