**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 17-2198**

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Mark F. MCCAFFREY,

Plaintiff - Appellant,

v.

MICHAEL L. CHAPMAN, in his personal capacity and in his official capacity as Sheriff of Loudoun County; BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, in their official capacities; LOUDOUN COUNTY, VIRGINIA,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:17-cv-00937-AJT-IDD)

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Argued: October 30, 2018 Decided: April 9, 2019

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Before WILKINSON, KING, and QUATTLEBAUM, Circuit Judges.

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Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Judge Wilkinson joined. Judge King wrote a dissenting opinion.

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**ARGUED:** Robert John Cynkar, MCSWEENEY, CYNKAR & KACHOUROFF PLLC, Woodbridge, Virginia, for Appellant. Alexander Francuzenko, COOK CRAIG & FRANCUZENKO, PLLC, Fairfax, Virginia, for Appellees. **ON BRIEF:** Patrick M. McSweeney, Powhatan, Virginia, Christopher I. Kachouroff, MCSWEENEY, CYNKAR & KACHOUROFF PLLC, Woodbridge, Virginia, for Appellant. Courtney Renee, OFFICE OF LOUDOUN COUNTY ATTORNEY, Leesburg, Virginia, for Appellees Board of Supervisors of Loudoun County, Virginia and Loudoun County, Virginia.

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QUATTLEBAUM, Circuit Judge:

This case arises from Sheriff Michael L. Chapman's decision not to re-appoint Mark F. McCaffrey as a deputy sheriff in Loudoun County, Virginia. In response, McCaffrey sued Sheriff Chapman, the Board of Supervisors of Loudoun County and Loudoun County (collectively "Appellees"). McCaffrey alleges that Sheriff Chapman did not re-appoint him because he supported Sheriff Chapman's political opponent during the re-election campaign. McCaffrey claims that Sheriff Chapman's failure to re-appoint him for his political disloyalty violated his First Amendment rights to freedom of political association and speech. The district court found that the *Elrod-Branti* doctrine, which permits public officials to fire certain employees for their support of a political opponent, precludes McCaffrey's First Amendment claims. Therefore, the district court

dismissed McCaffrey's complaint. For the reasons that follow, we affirm.

I.

A.

A sheriff has the power, under Virginia law, to appoint deputy sheriffs.[1] Appointments of deputy sheriffs technically expire at the end of a sheriff's four-year term, even if the sheriff is re-elected. In practice, deputy sheriffs are routinely re-appointed after each election.

McCaffrey started working in the Loudoun County Sheriff's Office ("LCSO") in 2005.[2] In 2008, he began working as a major crimes detective serving as a lead detective in complex, high-profile cases. McCaffrey supported Sheriff Chapman when he first ran for sheriff in 2011. However, when Sheriff Chapman ran for re-election in 2015, McCaffrey supported his opponent.

McCaffrey placed a sign in his yard in support of Sheriff Chapman's opponent and served as a delegate

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[1] The history of the office of sheriff runs deep in the state of Virginia. According to the National Sheriffs' Association, the first sheriff in America was Captain William Stone who, in 1634, was appointed sheriff for the Shire of Northampton in the colony of Virginia. Sheriff Roger Scott, *Roots: A Historical Perspective of the Office of Sheriff*, NATIONAL SHERIFFS' ASSOCIATION, https://www.sheriffs.org/publications-resources/resources/office-of-sheriff (saved as ECF opinion attachment).

[2] The facts described are taken from the complaint since we review the district court's order granting a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

to the Republican convention in which the Republican candidate for sheriff was chosen. McCaffrey also participated as an outside advisor in the screening of local candidates for potential endorsement by the Board of Directors of the local chapter of the Virginia Police Benevolent Association. McCaffrey did not speak publicly about the election. He did not wear campaign apparel or accessories. He did not use his LCSO position in support of Sheriff Chapman's opponent.

Sheriff Chapman viewed McCaffrey's support of his opponent as disloyal. McCaffrey's colleagues warned McCaffrey that there would be consequences for his disloyalty.

After Sheriff Chapman won re-election, McCaffrey received a letter informing him that his appointment as a deputy sheriff would not be renewed. In addition to not reappointing McCaffrey, Sheriff Chapman lowered McCaffrey's score on his final performance evaluation to prevent McCaffrey from receiving a bonus. Sheriff Chapman also interfered with McCaffrey's opportunity to be considered for a law enforcement position sponsored by the LCSO and a nearby municipal police department.

B.

In response to Sheriff Chapman's actions, McCaffrey filed a complaint against Appellees in Virginia state court. McCaffrey alleged that Sheriff Chapman's decision not to re-appoint him violated his First Amendment rights to freedom of political association

and speech under both the United States and the Virginia Constitution. Appellees removed the case to federal court based on federal question jurisdiction.

Appellees then moved to dismiss McCaffrey's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Appellees asserted that Sheriff Chapman's decision not to re-appoint McCaffrey fell squarely within an exception to the First Amendment known as the *Elrod-Branti* exception. As described more fully below, the *Elrod-Branti* exception, when applicable, allows public officials to terminate public employees for supporting a political opponent.

After oral argument, the district court found that the *Elrod-Branti* exception applied and dismissed McCaffrey's complaint.[3] McCaffrey appealed the order of the dismissal. We have jurisdiction of this appeal pursuant to 28 U.S.C. § 1291.

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[3] Since the district court found that Appellees did not infringe McCaffrey's First Amendment rights, it did not need to consider whether McCaffrey adequately pled municipal liability for his 42 U.S.C. § 1983 claims against the Board of Supervisors of Loudoun County, Virginia and Loudoun County, Virginia.

McCaffrey also filed a partial motion for summary judgment claiming, as a matter of law, Appellees' conduct violated the First Amendment. The district court denied this motion upon granting Appellees' motion to dismiss.

II.

A.

This Court reviews a district court's grant of a motion to dismiss de novo. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). In exercising this de novo review, we follow the well-settled standard for evaluating a motion to dismiss.

A plaintiff's complaint must set forth "a short and plain statement . . . showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 8 "does not require 'detailed factual allegations.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). But a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id*. at 677. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678.

In considering a motion to dismiss under Rule 12(b)(6), a court "accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff. . . ." *Nemet*, 591 F.3d at 255. However, a court should grant a Rule 12(b)(6) motion if, "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in

support of his claim entitling him to relief." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

B.

On appeal, McCaffrey alleges that the district court erred by dismissing his First Amendment claims. McCaffrey's appeal implicates two doctrines that provide exceptions to the First Amendment's protections.

The first doctrine is known as the *Elrod-Branti* exception. Generally, the First Amendment's right to freedom of political association prohibits government officials from terminating public employees solely for supporting political opponents. However, under the *Elrod-Branti* exception, certain public employees can be terminated for political association in order to give effect to the democratic process. *See Branti v. Finkel*, 445 U.S. 507 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976).

The second doctrine is known as the *Pickering-Connick* doctrine. The First Amendment's right to freedom of speech generally prohibits dismissals of employees in retaliation for the exercise of protected speech. However, under the *Pickering-Connick* doctrine, the First Amendment does not protect public employees from termination when their free speech interests are outweighed by the government's interest in providing efficient and effective services to the public. *See Connick v. Myers*, 461 U.S. 138 (1983); *Pickering v. Board of Education*, 391 U.S. 563 (1968).

As noted above, the district court dismissed McCaffrey's complaint finding that Chapman's decision to not re-appoint McCaffrey did not violate the First Amendment because it fell within the *Elrod-Branti* exception. The district court did not address the *Pickering-Connick* doctrine. We address these doctrines in turn.

C.

Turning to the *Elrod-Branti* exception, we first review the case law that establishes and interprets the exception. Then, we consider whether Sheriff Chapman's dismissal of McCaffrey for supporting his political rival fell within the exception. Last, we address McCaffrey's specific challenges to the district court's findings regarding the exception.

1.

The *Elrod-Branti* exception to the First Amendment's protection against political affiliation dismissals was created from two Supreme Court cases. In *Elrod*, a plurality of the Supreme Court established the general rule that dismissing public employees for political affiliation violates their First and Fourteenth Amendment rights by limiting their political belief and association. However, the Supreme Court simultaneously carved out a narrow exception to this general rule prohibiting patronage dismissals. A government official does not violate a public employee's First Amendment rights when the employee is dismissed for

political association if the employee holds a policymaking position. *Elrod*, 427 U.S. at 367. In creating this exception, the Supreme Court recognized the dangers of the government's interests being "undercut by tactics obstructing the implementation of policies of the new administration, policies presumably sanctioned by the electorate." *Id*.

In *Branti*, the Supreme Court clarified the exception announced in *Elrod*. The Court explained that "the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518. The Court reasoned that "if an employee's private political beliefs would interfere with the discharge of his public duties, his First Amendment rights may be required to yield to the State's vital interest in maintaining governmental effectiveness and efficiency." *Id*. at 517.

Interpreting *Elrod* and *Branti*, this Court established a two-step inquiry for determining when party affiliation is an appropriate job requirement. *Stott v. Haworth*, 916 F.2d 134 (4th Cir. 1990). First, a court must examine whether the position at issue relates to partisan political interests. *Id*. at 141. If the "first inquiry is satisfied, the next step is to examine the particular responsibilities of the position to determine whether it resembles . . . [an] office holder whose function is such that party affiliation is an equally appropriate requirement." *Id*. at 142 (citing *Jimenez Fuentes*

*v. Torres Gaztambide*, 807 F.2d 236, 241-42 (1st Cir. 1986)).

On several occasions, this Court has applied the *Elrod-Branti* exception in the context of a sheriff dismissing a deputy for supporting the sheriff's opponent. Most notably, in *Jenkins v. Medford*, 119 F.3d 1156, 1164 (4th Cir. 1997), this Court, sitting en banc, held that under the *Elrod-Branti* exception a North Carolina sheriff could terminate his deputy sheriffs for political affiliation. In determining that political affiliation was an appropriate job requirement, this Court first recognized that the electorate generally chooses a candidate based on policies and goals espoused by that candidate. *Id*. at 1162. Thus, a sheriff owes a duty to the electorate to ensure that those policies are implemented. *Id*.

This Court also found that deputy sheriffs play a special role in implementing the sheriff's policies and goals. *Id*. Deputy sheriffs on patrol exercise significant discretion and make decisions that create policy. *Id*. The sheriff relies on his deputies "to foster public confidence in law enforcement" and "to provide the sheriff with the truthful and accurate information he needs to do his job." *Id*.

Next, this Court examined the specific roles of sheriffs and deputies under North Carolina law. *Id*. at 1163. The North Carolina legislature has declared that the offices of sheriff and deputy sheriff are of special concern and prescribed a mandatory procedure for filling a sheriff vacancy. *Id*. Under North Carolina law, the

sheriff may not delegate his duties but is able to appoint deputies to assist him. *Id*. For those appointed deputies, the sheriff is liable for their misbehavior. *Id*. Because a sheriff is liable for his deputies' actions, the legislature created deputies as at-will employees "who 'shall serve at the pleasure of the appointing officer.'" *Id*. at 1164 (quoting N.C. Gen. Stat. § 153A-103(2) (1996)).

After examining the role of deputy sheriffs, this Court determined that a deputy sheriff could appropriately be terminated for political affiliation under the *Elrod-Branti* exception.

> We hold that newly elected or re-elected sheriffs may dismiss deputies either because of party affiliation or campaign activity. Either basis serves as a proxy for loyalty to the sheriff.
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> We can think of no clearer way for a deputy to demonstrate opposition to a candidate for sheriff, and thus actual or potential disloyalty once the candidate takes office, than to actively campaign for the candidate's opponent. . . . "It was never contemplated that . . . sheriffs . . . must perform the powers and duties vested in them through deputies or assistants selected by someone else," and we do not believe it was ever contemplated that a sheriff must implement his policies and perform his duties through deputies who have expressed clear opposition to him.

*Id*. at 1164-65 (footnotes omitted).

This Court then explained that our holding was not based simply on a deputy sheriff's title. Instead courts look to the actual duties of the position of deputy sheriff. Specifically, we held:

> We limit dismissals based on today's holding to those deputies actually sworn to engage in law enforcement activities on behalf of the sheriff. We issue this limitation to caution sheriffs that courts examine the job duties of the position, and not merely the title, of those dismissed. Because the deputies in the instant case were law enforcement officers, they are not protected by this limitation.

*Id*. at 1165 (footnotes omitted).[4]

Subsequently, in *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), this Court applied *Jenkins* and held that the exception did not apply when a deputy sheriff merely holds the title of deputy without engaging in law enforcement activities. In *Bland*, three of the plaintiffs were uniformed jailers with the title of deputy sheriff. *Id*. at 377. They were terminated for supporting the sheriff's electoral opponent. *Id*. at 371. This Court held that the *Elrod-Branti* exception to the First Amendment did not apply to them because the deputies in *Bland* had very different duties from the deputies in *Jenkins*. In *Bland*, the jailers' authority was

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[4] It is clear our good colleague disapproves of *Jenkins.* He says so directly in the first paragraph of his dissent and then attempts to explain away its plain language. However, in relying on *Jenkins*, we are merely following the precedent of this Court, as we must.

more circumscribed, and their training was more concentrated on matters of custodial care and supervision than the deputy sheriffs in *Jenkins*. Additionally, the jailers in *Bland* did not have arrest power, did not take the core law enforcement course and were not out in the county engaging in law enforcement activities on behalf of the sheriff. *Id*. at 379.[5]

Likewise, in *Knight v. Vernon*, this Court held that political allegiance to an employer was not an appropriate job requirement for a low-level jailer position. 214 F.3d 544 (4th Cir. 2000). This Court found that a jailer's duties were "essentially custodial." *Id*. at 551. As a result, this Court held that the *Elrod-Branti* exception did not apply.

Our precedent, when considered together, provides the framework for our *Elrod-Branti* analysis. We first

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[5] *Bland* clarifies that *Jenkins* was not "cabined" to North Carolina sheriffs and deputy sheriffs as the dissent suggests. *Bland* applied *Jenkins* to deputy sheriffs in Virginia, like we have in this case. Although *Bland* concluded the *Elrod-Branti* exception did not apply in that case, its conclusion was based on the duties of those deputy sheriffs. In *Bland*, the deputy sheriffs' duties were those of uniformed jailers rather than sworn law enforcement officers. *Bland*'s conclusion was not based on any differences in the law of North Carolina and Virginia concerning sheriffs and deputy sheriffs. If *Jenkins* was "cabined" as the dissent suggests, *Bland* would have so indicated and decided the case accordingly. Instead, *Bland* noted that the dispositive issue in *Jenkins* was "the deputies' role as sworn law enforcement officers" and that *Jenkins* indicated its "result might have been different had the deputies' duties consisted of working as dispatchers." *Bland*, 730 F.3d at 377. McCaffrey's duties were those of a sworn law enforcement officer, not duties like those of a dispatcher. Accordingly, *Bland* supports, not conflicts, with our conclusion.

look to the electorate's approval of the policies on which the sheriff ran and the duties and responsibilities of the deputy sheriff in implementing those policies and priorities. We then examine the law of Virginia concerning the relationship between sheriffs and their deputies.

2.

Using this framework, we now turn to the facts of this case. Sheriff Chapman won an election for sheriff after espousing positions on how the LCSO should be run. As we have said before, "[e]lections mean something. Majorities bestow mandates." *Borzilleri v. Mosby*, 874 F.3d 187, 192 (4th Cir. 2017). Thus, Sheriff Chapman should be entitled, and indeed *Jenkins* provides that he has a duty, to carry out the policies the voters approved in the election.

Next, the allegations in McCaffrey's complaint indicate his duties and responsibilities involved carrying out Sheriff's Chapman's policies and priorities. McCaffrey was a sworn deputy sheriff. He was a lead investigator of high-profile crimes including rape, robbery and homicide investigations. McCaffrey received the Loudoun County Investigator of the Month Award three times and was part of the "Team of the Month" three times. In 2015, McCaffrey was recognized for closing violent crime cases at a rate that significantly exceeded the national average. McCaffrey also received the Victim Services award from the Loudoun County Commonwealth Attorney's office. Like the

deputy sheriffs in *Jenkins* and unlike the deputies in *Bland* and *Knight*, McCaffrey engaged in law enforcement functions on behalf of the sheriff. Under our precedent, a deputy sheriff with these duties and responsibilities falls within the *Elrod-Branti* exception.

As this Court has made clear, a sworn deputy sheriff like McCaffrey had a special role in carrying out the law enforcement policies, goals and priorities on which Sheriff Chapman campaigned and prevailed. *Jenkins*, 119 F.3d at 1162. Sheriff Chapman was entitled to carry out the policies on which he ran and won with deputy sheriffs who did not oppose his re-election. To repeat what this Court said in *Jenkins*, "we do not believe it was ever contemplated that a sheriff must attempt to implement his policies and perform his duties through deputies who have expressed clear opposition to him." *Id*. at 1165.

McCaffrey's complaint illustrates the rationale behind the *Elrod-Branti* exception. An entire section of the complaint reads as a political attack ad against Sheriff Chapman. McCaffrey attacks Sheriff Chapman's character by accusing him of questionable fund raising, expenditures and hiring practices. McCaffrey alleges that Sheriff Chapman's treatment of employees was abusive and malicious and that Sheriff Chapman acted unprofessionally. McCaffrey also accuses Sheriff Chapman of mismanagement in the operations of the LCSO. Requiring a sheriff to employ deputies who have displayed the level of hostility portrayed in this complaint could reasonably impede a sheriff's

obligation to his electorate to implement the platform on which he campaigned.

This does not mean that law enforcement responsibilities are or should be handled in a political manner. That, of course, should never be the case. Instead, our decision is based on the reality, recognized in *Jenkins*, that sheriffs do and should carry out the policies, goals and priorities on which they ran. *Id.* at 1162. Sheriffs, by virtue of their executive roles, do not set policy in the same way as those performing legislative roles. But, in attempting to faithfully enforce the law, they must make policy-oriented decisions about the allocation of manpower and financial resources. A deputy sheriff necessarily carries out the sheriff's policies, goals and priorities which were approved by the electorate in a political election. *Id*. at 1162-63.

Virginia law concerning the roles of sheriffs and their deputies confirms that deputies performing law enforcement functions have a policymaking role. Virginia's legislature passed laws specific to the role of the sheriff as a constitutional, elected officer. *See* Va. Code §§ 15.2-1609-15.2-1625 (1997). Virginia law prescribes a mandatory procedure for filling a vacancy in the sheriff's office. *See* Va. Code § 15.2-1600. Virginia law also specifies that sheriffs may appoint deputies to "discharge any of the official duties of their principal during his continuance in office. . . ." Va. Code § 15.2-1603. It further mandates that deputies "before entering upon the duties of his office, shall take and prescribe the oath. . . ." *Id*. Virginia law also provides that "any such deputy may be removed from office by his

principal." *Id*. Additionally, a sheriff in Virginia is civilly and criminally liable for the acts of his deputy. *See Whited v. Fields*, 581 F. Supp. 1444, 1455 (W.D. Va. 1984) (finding that "not only is the sheriff liable civilly for the acts of his deputy in Virginia, but he also is liable criminally and can be fined for the conduct of his deputy"). Similar to North Carolina law discussed in *Jenkins*, the law of Virginia supports the conclusion that a sworn deputy sheriff is the type of employee to whom the *Elrod-Branti* exception applies.[6]

3.

Before concluding our *Elrod-Branti* analysis, we address McCaffrey's argument that the complaint, at a minimum, states a plausible claim for relief. Specifically, McCaffrey alleges in the complaint that he was not a policymaker for the LCSO, was not a spokesman for the LCSO, and did not represent the sheriff or

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[6] The dissent emphasizes that *Jenkins* hinged on this Court's finding that in North Carolina, deputy sheriffs are alter egos of sheriffs. The comparison of North Carolina and Virginia law herein illustrates the laws of the two states on this point are substantially similar. However, Virginia case law is even more clear. In Virginia, "the relationship between the sheriff and his deputy is such that he is not simply the 'alter ego' of the sheriff, but he is one and the same as the sheriff." *Whited*, 581 F. Supp. at 1454 (citing *Mosby's Adm'r v. Mosby's Adm'r*, 50 Va. (9 Gratt.) 584, 602-05 (1853)). *See also Bd. of Sup'rs of Rockingham Cty. v. Lucas*, 142 Va. 84, 128 S.E. 574, 576 (1925) (finding that "[i]n contemplation of [Virginia] law, both organic and statutory, a sheriff and a deputy sheriff are one."). Thus, to the extent it is necessary for a deputy sheriff to be the alter ego of the sheriff to fall within *Jenkins*, that is clearly the case under Virginia law.

speak on his behalf. McCaffrey further alleges that he was far down the chain of command under Sheriff Chapman's para-military structure that governed the LCSO's 600 deputy sheriff force.

Since we are reviewing an order granting a Rule 12(b)(6) motion, we accept these allegations as true. However, these allegations do not save the complaint. In determining whether the deputy sheriff's duties and responsibilities fall within the *Elrod-Branti* exception, *Jenkins* instructs that we look to whether McCaffrey was a deputy sheriff "actually sworn to engage in law enforcement activities on behalf of the sheriff." *Jenkins*, 119 F.3d at 1166. Here, the allegations of the complaint leave no doubt that he was a deputy sheriff engaged in law enforcement activities and was not performing "custodial" duties like the deputies in *Bland* and *Knight*. Therefore, even accepting the allegations to which McCaffrey points as true, the *Elrod-Branti* exception applies to McCaffrey and the allegations of the complaint do not assert a plausible claim.

McCaffrey also argues that his allegations about Sheriff Chapman's post-termination downward adjustment of McCaffrey's evaluation scores and interference with McCaffrey's efforts to obtain other employment removes this case from our precedent. However, those allegations are not material to the *Elrod-Branti* analysis. Such conduct might support a state law claim such as interference with prospective contractual relationship or other similar theories. But we must look to the nature of the deputy sheriff's duties, not the way in which he was terminated.

Therefore, the post-termination allegations are of no import here. Even accepting these post-termination allegations as true, we find that the *Elrod-Branti* exception applies and McCaffrey has failed to state a claim that his First Amendment rights were violated.[7]

D.

Last, we turn to the *Pickering-Connick* doctrine. McCaffrey argues that his complaint states a claim of unconstitutional retaliation in response to McCaffrey's exercise of his free speech rights under *Pickering-Connick*. McCaffrey asserts that the district court erred by not addressing this issue and by dismissing the lawsuit. However, even when applied, the *Pickering-Connick* doctrine does not create a plausible claim for which relief can be granted.

The Supreme Court in *Pickering* recognized that a cause of action exists for government employees who suffered retaliation by an employer for the exercise of the right guaranteed by the First Amendment to speak as a citizen on a matter of public concern. *Pickering*, 391 U.S. at 574. *Pickering* established a balancing test

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[7] While we must faithfully apply the appropriate standard for considering a Rule 12(b)(6) motion, this Court has previously decided *Elrod-Branti* decisions at the pleading stage. For example, in *Jenkins*, this Court reversed the district court's denial of the sheriff's motion to dismiss and remanded the case to the district court to enter an order of dismissal. *Jenkins*, 119 F.3d at 1165. Further, in *Borzilleri*, we recently reviewed a district judge's grant of a motion to dismiss and found that the *Elrod-Branti* exception applied. 874 F.3d at 189.

where the government's interest in the efficiency of the public service it performs is weighed against the community's interest in hearing the employees' informed opinions on important public issues. *Borzilleri*, 874 F.3d at 193-194 (citing *Pickering*, 391 U.S. at 568).

There are two threshold issues that must be met to proceed to the balancing inquiry. *Id.* "First, we determine whether public employees' statements can 'be fairly characterized as constituting speech on a matter of public concern.'" *Id*. at 194 (citing *Connick v. Myers*, 461 U.S. 138, 146 (1983)). If so, then "we ask whether public employees were speaking 'pursuant to their official duties.'" *Id*. (citing *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006)). We must answer the first question in the affirmative and the second in the negative to proceed to the balancing of interests. *Id*.

There is no dispute that the second threshold question can be answered in the negative. McCaffrey was not speaking pursuant to his official duties as a deputy sheriff. As for the first threshold question, there may be some question as to whether McCaffrey's actions in supporting Sheriff Chapman's opponent can be characterized as "speech on a matter of public concern." *Connick*, 461 U.S. at 146. However, we decline to find that McCaffrey's actions were not such speech. Considering the action to be qualifying speech, the balancing inquiry nevertheless weighs in favor of Sheriff Chapman, and thus we need not determine whether McCaffery's actions were the type of speech protected in *Pickering*.

As stated by this Court in *Borzilleri*, "[o]nce we have found that the *Elrod-Branti* policymaker exception applies, the *Pickering* balance generally tips in favor of the government because of its overriding interest in ensuring an elected official's ability to implement his policies through his subordinates." *Id*. at 194. This Court in *Bland* similarly found that "in cases in which the *Elrod-Branti* exception applies, and an employer therefore does not violate his employee's association rights by terminating him for political disloyalty, the employer also does not violate his employee's free speech rights by terminating him for *speech* displaying that political disloyalty." 730 F.3d at 394. We see no reason to depart from that conclusion here. We find that Sheriff Chapman had an overriding interest in ensuring his ability to implement his policies through his deputies. Therefore, the *Pickering-Connick* does not save McCaffrey's lawsuit from dismissal.

## III.

In conclusion, we hold that under the *Elrod-Branti* exception, Sheriff Chapman's decision not to re-appoint McCaffrey did not violate his First Amendment right to freedom of political association. We also hold that Sheriff Chapman's decision not to reappoint McCaffrey did not violate his First Amendment right to freedom of speech under the *Pickering-Connick* doctrine because the balancing test weighs in favor of

Sheriff Chapman. For the reasons given, the district court's ruling dismissing the case is

*AFFIRMED.*

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KING, Circuit Judge, dissenting:

Two decades ago, in *Jenkins v. Medford*, our en banc majority concluded that the plaintiff North Carolina deputy sheriffs were the "alter ego" of the elected sheriff and thus could be terminated for political reasons under the *Elrod-Branti* exception. *See* 119 F.3d 1156, 1164 (4th Cir. 1997) (en banc). The *Jenkins* dissenters protested — quite rightfully, in my view — that the majority "ma[de] the *Elrod-Branti* exception into the rule" and thereby "eviscerate[d] the First Amendment protections those cases guaranteed to government workers like the [plaintiffs]." *Id.* at 1169 (Motz, J., dissenting). At least, however, *Jenkins* must be read as predicated on specifics of North Carolina law and limited to North Carolina deputy sheriffs engaged in law enforcement activities. Unfortunately, that has not constrained my esteemed colleagues from ruling today — purportedly in reliance on *Jenkins* but actually going much farther — that any deputy sheriff tasked with law enforcement anywhere is subject to political firing. As explained further herein, I respectfully dissent.

I.

In demonstrating that my friends have gone too far, I begin with a discussion of the settled legal principles concerning the political firings of public employees and the considerations that undergird the *Elrod-Branti* exception, with emphasis on the controlling Supreme Court authority. I also outline this Court's two-prong test for conducting a proper *Elrod-Branti* analysis and then carefully examine our *Jenkins v. Medford* decision.

A.

The Supreme Court has underscored that, in most situations, adverse employment actions based on political considerations "impermissibly encroach on First Amendment freedoms." *See Rutan v. Republican Party of Ill.*, 497 U.S. 62, 74 (1990). The Constitution's prohibition against political firings is thus the default rule. Politically motivated employment terminations, however, are permissible — under the *Elrod-Branti* exception — if those "practices are narrowly tailored to further vital government interests." *Id.*

In *Elrod v. Burns* in 1976, the Supreme Court recognized that the First Amendment protects public employees from being fired "solely for the reason that they were not affiliated with" a certain political party or candidate. *See* 427 U.S. 347, 350 (1976) (plurality opinion). According to the Court, conditioning the employment of a public servant on political loyalty "unquestionably inhibits protected belief and association,"

and terminations of public employees for a lack of political loyalty penalize the exercise of those protected rights. *Id.* at 359. Consistent with that principle, the Court concluded that the *Elrod* plaintiffs — one of whom was a chief deputy sheriff — had successfully alleged claims for violations of their First Amendment rights by specifying that they were fired by the sheriff because of their party affiliations. *Id.* at 350, 373. But the Court carved out the exception that, for certain policymaking positions, terminations based on political allegiance — and the corresponding restraint on those employees' freedoms of belief and association — are justified to safeguard our form of representative government. *Id.* at 367-68.

Just four years later, in *Branti v. Finkel*, the Court refined *Elrod*'s policymaker exception and clarified that political terminations are only permissible where "the hiring authority can demonstrate that [political loyalty] is an appropriate requirement for the effective performance of the public office involved." *See* 445 U.S. 507, 518 (1980). Accordingly, as the Court explained, the labels that may be applied to a public employee, such as "policymaker" or "confidential," are not dispositive of whether that employee may be fired because of political loyalty. *Id.*

Adhering to Supreme Court precedent, this Court and our sister courts of appeals have recognized that the *Elrod-Branti* exception is "narrow" and must always be applied with caution. *See Bland v. Roberts*, 730 F.3d 368, 374 (4th Cir. 2013) ("*Elrod* created a narrow exception. . . ."); *Stott v. Haworth*, 916 F.2d 134, 140

(4th Cir. 1990) (explaining that *Elrod* and *Branti* were "specific, narrow application[s] of" exception to principle against infringement of First Amendment rights (internal quotation marks omitted)); *see also Thompson v. Shock*, 852 F.3d 786, 793 (8th Cir. 2017) (describing application of "narrow *Elrod-Branti* justification test" (alteration and internal quotation marks omitted)); *Hunt v. Cnty. of Orange*, 672 F.3d 606, 611 (9th Cir. 2012) ("[W]e have held that the [*Elrod-Branti*] exception is 'narrow' and should be applied with caution." (quoting *DiRuzza v. Cnty. of Tehama*, 206 F.3d 1304, 1308 (9th Cir. 2000))); *Assaf v. Fields*, 178 F.3d 170, 177 (3d Cir. 1999) (giving guidance as to when a position will "meet the narrow *Branti-Elrod* exception").

Again, the *Elrod-Branti* exception must always be applied narrowly, to prevent the coercion of the beliefs and associations of public servants. *See O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 718 (1996) ("*Elrod* and *Branti* establish that patronage does not justify the coercion of a person's political beliefs and associations."). At bottom, the *Elrod-Branti* exception is reserved for those exceptional and "high-level" government positions for which interference with the "employees' freedom to believe and associate" is justified by the effective implementation of government policy. *See Rutan*, 497 U.S. at 74-76.

B.

In *Stott v. Haworth* in 1990, our Judge Russell identified the two-prong test for conducting the

*Elrod-Branti* analysis. *See* 916 F.2d at 141-43. The threshold inquiry is whether the position at issue implicates "partisan political interests or concerns." *Id.* at 141 (alterations and internal quotation marks omitted). Thus, pursuant to the first prong of the *Stott* test, we inspect whether "the position involve[s] government decisionmaking on issues where there is room for political disagreement on goals or their implementation." *Id.* (internal quotation marks omitted). If that question is answered in the affirmative, we turn to the *Stott* test's second prong, under which we "examine the particular responsibilities of the position to determine whether it resembles a policymaker, a privy to confidential information, a communicator, or some other office holder whose function is such that [political loyalty] is an equally appropriate requirement." *Id.* at 142 (internal quotation marks omitted).

Although the first *Stott* prong "requires us to examine the issues dealt with by the employee 'at a very high level of generality,' " the second prong " 'requires a much more concrete analysis of the specific position at issue.' " *See Bland*, 730 F.3d at 375 (quoting *Fields v. Prater*, 566 F.3d 381, 386 (4th Cir. 2009)). Significantly, the Supreme Court and our Court have consistently emphasized that we are obliged to examine the specific duties of a "particular position," not merely the general nature thereof. *See Branti*, 445 U.S. at 518 (explaining that the ultimate inquiry assesses whether politics is "an appropriate requirement for the effective performance of the public office involved"); *Stott*, 916 F.2d at 142 (describing dispositive inquiry as "particular

responsibilities" "of the public office in question" (internal quotation marks omitted)).

C.

In *Jenkins v. Medford* in 1997, our en banc majority acknowledged the *Stott* test and ruled that the *Elrod-Branti* exception permitted the political firings of North Carolina deputy sheriffs engaged in law enforcement activities. *See Jenkins*, 119 F.3d at 1162-65. As broad as that holding was, we have recognized that *Jenkins* can be read even more broadly, to allow the political firings of any and all deputy sheriffs in North Carolina. *See id.* at 1166 (Motz, J., dissenting) (protesting that "the majority broadly holds that *all* deputy sheriffs in North Carolina — regardless of their actual duties — are policymaking officials"); *see also Bland*, 730 F.3d at 377 (confronting "a significant amount of language in [*Jenkins*] seemingly indicating that all North Carolina deputies could be terminated for political reasons regardless of the specific duties of the particular deputy in question"). In the face of the "very mixed signals" sent by *Jenkins*, however, we have resolved "that *Jenkins* is best read as analyzing the duties of the particular deputies before the court," i.e., North Carolina deputies tasked with law enforcement. *See Bland*, 730 F.3d at 391. Indeed, that is the only way to read *Jenkins* in a manner even arguably consistent with the controlling Supreme Court precedent.

Although it did not explicitly refer to the first *Stott* prong in doing so, the *Jenkins* majority began its

*Elrod-Branti* analysis with what was apparently an inquiry into how the position of deputy sheriff relates to partisan political interests or concerns. *See Jenkins*, 119 F.3d at 1162-63. Invoking decisions of other courts of appeals, *Jenkins* determined that a sheriff's election by popular vote "indicates voter approval of [the sheriff's] espoused platform and general agreement with [his] expressed political agenda"; "[t]he sheriff owes a duty to the electorate and the public at large to ensure that his espoused policies are implemented"; and "[d]eputy sheriffs play a special role in implementing the sheriff's policies and goals." *Id.* at 1162 (internal quotation marks omitted). As examples of the "special role" that may be played by deputies in implementing the sheriff's policies and goals, *Jenkins* specified that deputies may be included in the sheriff's "core group of advisors," may "work autonomously" while "exercising significant discretion," and may "make some decisions that actually create policy." *Id.* (internal quotation marks omitted). *Jenkins* further noted that the sheriff may rely "on his deputies to foster public confidence in law enforcement" and expect them to provide "the truthful and accurate information he needs to do his job." *Id.* Finally, *Jenkins* observed that, "[i]n some jurisdictions, the deputy sheriff is the general agent of the sheriff, and the sheriff is civilly liable for the acts of his deputy." *Id.* at 1162-63.

The *Jenkins* majority only then turned, albeit without naming the second *Stott* prong, to the *Elrod-Branti* inquiry concerning the particular responsibilities of the plaintiff North Carolina deputy sheriffs. *See*

*Jenkins*, 119 F.3d at 1163 ("[W]e now consider the specific political and social roles of sheriffs and their deputies in North Carolina."). That examination led to the following holding:

> [We] conclude that in North Carolina, the office of deputy sheriff is that of a policymaker, and that deputy sheriffs are *the alter ego of the sheriff generally*, for whose conduct he is liable. We therefore hold that such North Carolina deputy sheriffs may be lawfully terminated for political reasons under the *Elrod-Branti* exception to prohibited political terminations.

*Id.* at 1164 (emphasis added).

The North Carolina deputy sheriffs' role as "the alter ego of the sheriff generally" was plainly crucial to the *Jenkins* majority and an explicit part of its succinct holding. In designating North Carolina deputy sheriffs as the sheriff's alter ego, *Jenkins* relied on a combination of factors. Of obvious and exceptional importance, *Jenkins* highlighted that the North Carolina legislature had "recognized the special status of sheriffs' deputies in the eyes of the law." *See* 119 F.3d at 1163. Specifically, *Jenkins* pointed to the legislature's findings related to sheriffs and their deputies. As part of those findings, as quoted in *Jenkins*, the legislature related that "'[t]he deputy sheriff has been held by the Supreme Court of this State to hold an office of special trust and confidence, acting in the name of and with powers coterminous with his principal, the elected sheriff.'" *Id.* (quoting N.C. Gen. Stat. § 17E-1).

The *Jenkins* majority elaborated that, although "[t]he sheriff may not delegate final responsibility for his official duties, . . . he may appoint deputies to assist him [and] can be held liable for the misbehavior of the deputies." *See* 119 F.3d at 1163 (citing, inter alia, N.C. Gen. Stat. § 162-24). Additionally, *Jenkins* cited the North Carolina legislature's declaration "that '[t]he offices of sheriff and deputy sheriff are . . . of special concern to the public health, safety, welfare and morals of the people of the State,'" as well as the legislature's mandatory procedure for filling a vacancy in the office of sheriff by accepting the recommendation of the elected sheriff's political party. *Id.* (citing N.C. Gen. Stat. §§ 17E-1, 162-5.1). *Jenkins* also recognized that — presumably due to the special status of North Carolina deputy sheriffs — "the legislature has made deputies at-will employees, who 'shall serve at the pleasure of the appointing officer.'" *Id.* at 1163-64 (quoting N.C. Gen. Stat. § 153A-103(2)).

Notwithstanding the language indicating that all North Carolina deputy sheriffs are policymakers subject to political firings, the *Jenkins* majority eventually cabined its decision to those deputies whose particular functions rendered them "the alter ego of the sheriff generally," i.e., "those deputies actually sworn to engage in law enforcement activities on behalf of the sheriff." *See* 119 F.3d at 1165. Moreover, *Jenkins* is replete with language that limits its pronouncements to *North Carolina* deputies tasked with law enforcement. *See*, *e.g.*, *id.* at 1163 (turning to analysis of "specific political and social roles of sheriffs and their deputies *in*

*North Carolina*" (emphasis added)); *id.* at 1164 (concluding that "*in North Carolina*, the office of deputy sheriff is that of a policymaker, and that deputy sheriffs are the alter ego of the sheriff generally, for whose conduct he is liable" (emphasis added)); *id.* ("hold[ing] that such *North Carolina* deputy sheriffs may be lawfully terminated for political reasons" (emphasis added)).

Although it did not explicitly peg its analysis to the two *Stott* prongs, the *Jenkins* majority also underscored the applicability of the *Stott* test and the need to examine the particular position at issue. *See Jenkins*, 119 F.3d at 1164 (instructing that "the district courts are to engage in a *Stott*-type analysis, examining the specific position at issue, as we have done here today"); *id.* at 1165 (explaining "that courts examine the job duties of the position, and not merely the title, of those dismissed").

After announcing its core holding, the *Jenkins* majority considered what bases may "serve[] as a proxy for loyalty to the sheriff" and further "h[eld] that newly elected or re-elected sheriffs may dismiss deputies either because of party affiliation or campaign activity." *See* 119 F.3d at 1164. The *Jenkins* majority then took the opportunity to suggest that all deputy sheriffs everywhere *should* be subject to political firing, remarking:

> We can think of no clearer way for a deputy to demonstrate opposition to a candidate for sheriff, and thus actual or potential

> disloyalty once the candidate takes office, than to actively campaign for the candidate's opponent. . . . It was never contemplated that sheriffs must perform the powers and duties vested in them through deputies or assistants selected by someone else, and we do not believe it was ever contemplated that a sheriff must attempt to implement his policies and perform his duties through deputies who have expressed clear opposition to him.

*Id.* at 1164-65 (alterations and internal quotation marks omitted). Nevertheless, it was at that point that the *Jenkins* majority "limit[ed] dismissals based on today's holding" — the holding that North Carolina deputy sheriffs are subject to political firings as "the alter ego of the sheriff generally" — "to those deputies actually sworn to engage in law enforcement activities on behalf of the sheriff." *Id.* at 1165. In other words, the *Jenkins* majority recognized that it was constrained to place some limitations on the *Elrod-Branti* exception, despite its apparent desire to apply the exception to all deputy sheriffs everywhere.

Indeed, that *Jenkins* limited its holding to North Carolina deputy sheriffs engaged in law enforcement activities as "the alter ego of the sheriff generally," and that it insists upon a position-specific *Elrod-Branti* analysis, is ultimately supported by not only *Jenkins* itself, but also more recent decisions of this Court. Those decisions include *Bland*, wherein we explained that, "to be true to *Jenkins*, we too must consider whether requiring political loyalty was an appropriate requirement for the effective performance of the public

employment of the deputies before us *in light of the duties of their particular positions*." *See* 730 F.3d at 377. They also include *Lawson v. Union County Clerk of Court*, wherein we clarified that — in assigning the "alter-ego" designation to the *Jenkins* plaintiffs — the *Jenkins* majority's "analysis focused on the fact that deputy sheriffs held a special position under North Carolina law, in that they 'act[ed] in the name of and with powers coterminous with [their] principal, the elected sheriff.'" *See* 828 F.3d 239, 249 (4th Cir. 2016) (alterations in original) (quoting *Jenkins*, 119 F.3d at 1163).

II.

As the foregoing discussion shows, there is simply no basis in precedent — including the *Jenkins v. Medford* decision on which my good colleagues almost exclusively rely — to properly conclude that the *Elrod-Branti* exception allowed the political firing of plaintiff Mark McCaffrey from his position as a deputy sheriff in Virginia by Loudoun County Sheriff Michael Chapman. Indeed, any valid effort to analogize this matter to *Jenkins* would have to end with this: Nothing in McCaffrey's complaint or Virginia law establishes that McCaffrey was "the alter ego of [Sheriff Chapman] generally" and thus a policymaker who could lawfully be terminated for political reasons. *See Jenkins v. Medford*, 119 F.3d 1156, 1164 (4th Cir. 1997) (en banc).

Specifically, McCaffrey's complaint relates that he was a "major crimes detective" and "lead" investigator

who was "highly successful" and repeatedly awarded for his service. *See McCaffrey v. Chapman*, No. 1:17-cv-00937, at ¶¶ 6, 12 (E.D. Va. Aug. 21, 2017), ECF No. 1-2, (the "Complaint").[1] The Complaint explicitly disclaims, however, that McCaffrey was either "a policymaker" or "a spokesperson" for the sheriff's office. *Id.* ¶¶ 13-14. As the Complaint explains, the sheriff's office maintained "a strict, paramilitary chain-of-command structure," with Sheriff Chapman at the top and his seven "Senior Commanders" as the "Command Staff" tasked with supporting Chapman and advising him on policy matters. *Id.* ¶¶ 55-57. Employees like McCaffrey lower in the chain of command were "not policymakers" and did not "advise the Sheriff and the Command Staff on matters of policy." *Id.* ¶ 57. Moreover, Chapman insisted on being "the only 'voice' and 'face' of the [sheriff's department] to the outside world." *Id.* ¶ 58. Chapman imposed limitations on the authority and discretion of his deputies — including McCaffrey — through the Sheriff's General Orders. *Id.* ¶ 37.[2]

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[1] In his Complaint, McCaffrey alleges four claims, each premised upon his termination by Sheriff Chapman due to McCaffrey's support of Chapman's political opponent. McCaffrey pursues two claims against Chapman, primarily a 42 U.S.C. § 1983 claim for contravention of McCaffrey's rights under the First Amendment, plus an equivalent state claim for violation of the Virginia Constitution. McCaffrey also alleges derivative claims against Loudoun County and its Board of Supervisors.

[2] Because the Sheriff's General Orders are incorporated into the Complaint by reference, they are properly considered here. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007).

The Sheriff's General Orders confirm that McCaffrey's position was near the bottom of the chain of command. Criminal cases were assigned to McCaffrey and other lead detectives only after having been screened by a section supervisor. *See* General Order 411.9(III)(E)(2). Once assigned, McCaffrey had the authority to conduct routine investigative tasks, such as interviewing witnesses and collecting evidence. *Id.* 411.12. But such investigative work was subject to "continuous screening" by supervisors in the sheriff's office in order for those supervisors to "better control the investigative efforts, workload and potential for success of their personnel and section." *Id.* 411.9(III)(E)(2)(d).

Meanwhile, there simply is no Virginia law that, like the North Carolina law crucial to the *Jenkins* holding, confers a "special status" on deputy sheriffs and accords them "'powers coterminous with . . . the elected sheriff.'" *See Jenkins*, 119 F.3d at 1163 (quoting N.C. Gen. Stat. § 17E-1). That is, there is no Virginia law that renders deputies "the alter ego of the sheriff generally." *See id.* at 1164. Rather, Virginia statutes enacted in 1997 permit the sheriff to appoint deputies "who *may* discharge any of the official duties of their principal," *see* Va. Code Ann. § 15.2-1603 (emphasis added), but empower the sheriff to set "the terms and conditions" for the appointment of his deputies, *see id.* § 15.2-1600(B). As the Complaint and the General Orders establish, Sheriff Chapman did not opt to make McCaffrey his alter ego by exercising discretion to give McCaffrey powers coterminous with his. *Cf. Lawson v.*

*Union Cnty. Clerk of Court*, 828 F.3d 239, 249 (4th Cir. 2016) (explaining that *Elrod-Branti* exception did not apply under *Jenkins* where statute authorized deputy to perform all functions of court clerk, but court clerk did not assign deputy policymaking duties).

Remarkably, today's panel majority does not even mention "coterminous" powers and barely discusses the "alter ego" language of *Jenkins*. In a footnote, the majority observes that this "dissent emphasizes that *Jenkins* hinged on this Court's finding that in North Carolina, deputy sheriffs are alter egos of sheriffs." *See ante* 16 n.6. Relying on an outdated federal district court decision and two even older decisions of the Supreme Court of Appeals of Virginia, the majority then declares that "Virginia case law" is "clear" that a deputy sheriff "'is not simply the "alter ego" of the sheriff, but he is one and the same as the sheriff.'" *Id.* (quoting *Whited v. Fields*, 581 F. Supp. 1444, 1454 (W.D. Va. 1984), and citing *Bd. of Supervisors v. Lucas*, 142 Va. 84, 128 S.E. 574 (1925), and *Mosby's Adm'r v. Mosby's Adm'r*, 50 Va. (9 Gratt.) 584 (1853)). Critically, the decisions invoked by the majority long pre-date the 1997 Virginia statutes authorizing sheriffs to decide which of their powers to confer upon — and to withhold from — their deputies. Moreover, neither of the Virginia decisions ruled or contemplated that Virginia deputy sheriffs ever possessed powers that would render them the "alter ego" of the sheriff under *Jenkins*, i.e., powers coterminous with those of the sheriff. *See Lucas*, 128 S.E. at 576 (concluding that a deputy was subject to an elected sheriff's exclusion from the

Virginia Workmen's Compensation Act, in that "[a] deputy can only come into being by virtue of the appointment of a sheriff" and thus "a sheriff and a deputy sheriff are one" under the law); *Mosby's Adm'r*, 50 Va. (9 Gratt.) at 602-05 (explaining when sheriff may, and may not, be considered "one" with his deputy and thereby held liable for deputy's acts).

Aside from its cursory and unsound "alter ego" discussion, the majority cherry picks other language from *Jenkins* and distorts that decision to even more broadly hold that any deputy sheriff tasked with law enforcement anywhere may be terminated for political reasons. *See ante* 12 n.5 (asserting that "*Jenkins* was not 'cabined' to North Carolina sheriffs and deputy sheriffs as the dissent suggests"). The majority particularly relies on the discussion in *Jenkins* that began, "We hold that newly elected or re-elected sheriffs may dismiss deputies either because of party affiliation or campaign activity," and that included the commentary, "[W]e do not believe it was ever contemplated that a sheriff must attempt to implement his policies and perform his duties through deputies who have expressed clear opposition to him." *See Jenkins*, 119 F.3d at 1164-65.

To be sure, that passage in *Jenkins* conveyed the message that all deputy sheriffs everywhere *should* be subject to political firings. *Jenkins* simply gave that commentary, however, in the course of explaining that — where a deputy sheriff falls within the *Elrod-Branti* exception based on his particular functions — he *can* be terminated for either his "party affiliation" or his

"campaign activity." Contrary to the majority, that discussion did not constitute a "holding" that each and every deputy sheriff who has " 'expressed clear opposition to [the sheriff]' " may be fired. *See ante* 11 (quoting *Jenkins*, 119 F.3d at 1165); *see also id.* at 14 (asserting that "Sheriff Chapman was entitled to carry out the policies on which he ran and won with deputy sheriffs who did not oppose his re-election").

The majority further misrepresents *Jenkins* to simply instruct that, "[i]n determining whether the deputy sheriff's duties and responsibilities fall within the *Elrod-Branti* exception, . . . we look to whether [the] deputy sheriff [was] 'actually sworn to engage in law enforcement activities on behalf of the sheriff.' " *See ante* 16 (quoting *Jenkins*, 119 F.3d at 1165). According to the majority, *Jenkins* "made clear" that "a sworn deputy sheriff like McCaffrey had a special role in carrying out the law enforcement policies, goals and priorities on which Sheriff Chapman campaigned and prevailed." *Id.* at 14. That is, all that matters to the majority's *Elrod-Branti* analysis is that the allegations of the Complaint — indicating that McCaffrey "was a lead investigator of high-profile crimes" and received awards and recognition for his work — establish that "McCaffrey engaged in law enforcement functions on behalf of the sheriff." *Id.* at 13. The majority expressly discounts the fact that, under the Complaint, McCaffrey was neither a policymaker nor a spokesperson for the sheriff's office, and that, pursuant to the Sheriff's General Orders, McCaffrey had circumscribed powers

and was not high enough in the chain-of-command to have a policymaking role. *Id.* at 16.[3]

Of course, as *Jenkins* itself emphasized and our Court has repeatedly recognized over the years, *Jenkins* did not hold that law enforcement responsibilities render any deputy sheriff eligible for political firing. Rather, *Jenkins* actually held that North Carolina deputy sheriffs tasked with law enforcement are policymakers who fall within the *Elrod-Branti* exception because, under North Carolina law, they are "the alter ego of the sheriff generally." *See* 119 F.3d at 1164. Before today, the chief criticism of *Jenkins* was that it could be read to authorize the political firings of any and all North Carolina deputy sheriffs, no matter their job responsibilities. But now, *Jenkins* has been interpreted even more broadly and egregiously, to allow the political firings of any and all deputy sheriffs

[3] As the majority would have it, *Jenkins* and our subsequent precedent have established a test under which a deputy sheriff is either subject to political firing because he is tasked with law enforcement, or protected from political firing because he is a low-level jailer whose duties are "custodial." *See ante* 16-17 (reasoning that "the *Elrod-Branti* exception applies to McCaffrey" because his Complaint "leave[s] no doubt that he was a deputy sheriff engaged in law enforcement activities and was not performing 'custodial' duties like the deputies in [*Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), and *Knight v. Vernon*, 214 F.3d 544 (4th Cir. 2000)]"); *see also id.* at 12 n.5. Nonetheless, there is no support for such a simplistic test in *Jenkins*, *Bland*, or *Knight*, which all recognize that the *Elrod-Branti* analysis requires an examination of the specific duties of the particular position at issue to assess whether political loyalty is an appropriate job requirement.

anywhere, so long as they are simply tasked with law enforcement.

In ruling as it does, the majority not only misreads *Jenkins*, but also disregards other controlling precedent of this Court and the Supreme Court. Contrary to our instruction that "low-level policymaking authority does not outweigh an employee's First Amendment rights of political affiliation," the majority has made political firings a possibility for middle- and lower-level government employees. *See Fields v. Prater*, 566 F.3d 381, 387 (4th Cir. 2009) (alterations and internal quotation marks omitted). Merely by performing "law enforcement activities," any beat cop in our bailiwick can now be fired for not having the right political association. Such a result was never contemplated by the Supreme Court in developing what is supposed to be the narrow *Elrod-Branti* exception. *See Rutan v. Republican Party of Ill.*, 497 U.S. 62, 74, 76 (1990) (explaining that the narrow *Elrod-Branti* exception applies to only "certain high-level employees," as "[t]he First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate"). And it should not be countenanced by our Court.

## III.

Conducting a proper assessment of McCaffrey's deputy sheriff position, we can assume under the first prong of our *Stott* test that — "at a very high level of

generality," *see Fields v. Prater*, 566 F.3d 381, 386 (4th Cir. 2009) — the position implicates "partisan political interests or concerns." *See Stott v. Haworth*, 916 F.2d 134, 141 (4th Cir. 1990) (alterations and internal quotation marks omitted). That is, we can rely here on what was apparently the first *Stott* prong analysis in *Jenkins v. Medford*, 119 F.3d 1156, 1162-63 (4th Cir. 1997) (en banc) (explaining, inter alia, that deputy sheriffs generally "play a special role in implementing the sheriff's policies and goals," as espoused by the sheriff on the campaign trail).[4]

Turning to the second *Stott* prong, however, the allegations of the Complaint reveal that McCaffrey did not act as "a policymaker, a privy to confidential information, a communicator, or some other office holder"

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[4] My willingness to assume that the first *Stott* prong has been satisfied should not be interpreted as an endorsement of the *Jenkins* analysis. I have serious doubts as to whether that analysis was too general, and whether it should have focused more on deputies with the job responsibilities of the plaintiffs. Here, that would mean looking at boots-on-the-ground investigators of violent crimes like McCaffrey. I question whether such a deputy can ever make decisions that leave room for political disagreement, as we should always adhere to the principle that "[p]olitics should not be an active ingredient of good law enforcement." *See Mitchell v. Thompson*, 18 F.3d 425, 428 (7th Cir. 1994) (Wood, J., dissenting). In any event, I certainly do not sanction the panel majority's analysis, which focused on McCaffrey specifically but invented facts in so doing. Notwithstanding the Complaint's silence as to Sheriff Chapman's campaign platform, the majority pronounces that "Chapman won an election for sheriff after espousing positions on how the [sheriff's office] should be run," and that McCaffrey's "duties and responsibilities involved carrying out . . . Chapman's policies and priorities." *See ante* 13.

for whom political considerations are appropriate job requirements. *See Stott*, 916 F.2d at 142 (internal quotation marks omitted). McCaffrey's limited realm of investigative duties, although important, neither required nor benefitted from "a particular political philosophy." *See Lawson v. Union Cnty. Clerk of Court*, 828 F.3d 239, 248 (4th Cir. 2016). Furthermore, given the constraints on his job performance and his position at the bottom of Sheriff Chapman's chain of command, McCaffrey's duties did not involve "setting or implementing a policy agenda." *See id.* at 249.

That McCaffrey worked on important cases in a "lead" role does not mean that his employment was subject to political considerations. *See Lawson*, 828 F.3d at 249 (explaining that supervisory title does not establish that employee was policymaker). Indeed, as we have consistently made clear, "a supervisory employee does not automatically hold a position that is subject to the *Elrod-Branti* exception." *See id.*; *see also Fields*, 566 F.3d at 387 (recognizing that supervisory responsibilities alone do not permit application of *Elrod-Branti* exception). A managerial role over a limited number of employees and decisions does not necessitate that a person in such a position has "broad policy setting power." *See Lawson*, 828 F.3d at 249. And because of the strict hierarchy in Sheriff Chapman's office, as well as the levels of approval and screening incorporated therein, McCaffrey merely performed routine investigative tasks and lacked any "broad policy setting power." Although those responsibilities involved "some discretion," discretion does not alone

make a deputy a "policymaker," for which political allegiance is an appropriate job requirement. *See Bland v. Roberts*, 730 F.3d 368, 378 (4th Cir. 2013). To conclude otherwise would leave "only the most low-level government employees" protected from political firings. *See Fields*, 566 F.3d at 387.

McCaffrey's achievements and commendations for his exemplary service also do not render him subject to political firing. In 2015 — the year that McCaffrey was terminated because of politics — he received the "Loudoun County Investigator of the Month Award" three times, and also was part of a team designated as "Team of the Month" on three occasions. *See* Complaint ¶ 12. And it was not just his coworkers at the sheriff's office who recognized McCaffrey's good work; the local commonwealth's attorney awarded McCaffrey the "Victim Services Award" in 2014. *Id.* Those commendations show McCaffrey's effectiveness, which was also illustrated by his case closure rate that greatly exceeded the national average. *Id.* But McCaffrey's stellar work does not establish that he possessed the broad discretion that would remove his First Amendment protections and render him subject to the *Elrod-Branti* exception. A law enforcement officer can excel in his duties without becoming a policymaker. Indeed, it would be odd to permit a law officer to be fired for political reasons because of his success. If anything, the commendations for good work received by McCaffrey show that he performed his duties as a deputy sheriff without exceeding his authority, responded appropriately to his supervisors, and adhered to their orders.

On the other hand, McCaffrey's awards fail to show that "there is a rational connection between shared [political] ideology and job performance." *See Stott*, 916 F.2d at 142 (internal quotation marks omitted).

Finally, the statutory provisions governing Virginia law enforcement support the conclusion that the *Elrod-Branti* exception does not apply here. As we have recognized, "whether state law prohibits politically-based hiring for a particular position is relevant to whether political [allegiance] is necessary for effective job performance." *See Fields*, 566 F.3d at 388 (internal quotation marks omitted). And the Virginia Code explicitly prohibits "law-enforcement officers [from] discriminat[ing] against any employee or applicant for employment because of that person's political affiliations or political activities." *See* Va. Code Ann. § 15.2-1512.2(D). Virginia law also provides that a deputy sheriff may not be prohibited from "voting"; "expressing opinions, privately or publicly, on political subjects and candidates"; "displaying a political picture, sign, sticker, badge, or button"; "participating in the activities of . . . a political candidate or campaign"; or "attending or participating in a political convention." *Id.* § 15.2-1512.2(B)-(C). Virginia law thus confirms the impermissibility of McCaffrey being fired for a lack of political loyalty. In these circumstances, McCaffrey is entitled to proceed with his claims.[5]

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[5] As a final point, the majority has implicitly ruled that the district court erred in failing to assess McCaffrey's claims under the *Pickering* and *Connick* decisions. *See Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).

IV.

Pursuant to the foregoing, I would vacate the district court's dismissal of McCaffrey's Complaint and remand for further proceedings.

I therefore respectfully dissent.

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Rather than remand to rectify that error, however, the majority itself has conducted the fact-intensive *Pickering-Connick* analysis and resolved the issue in favor of the defendants. It bears emphasizing that "we are a court of review, not of first view." *See Lovelace v. Lee*, 472 F.3d 174, 203 (4th Cir. 2006) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)).

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v.
Michael L. CHAPMAN, et al., Defendants.

Civil Action No. 1:17–cv–937 (AJT/IDD)
|
Signed 10/12/2017

Robert J. Cynkar, Patrick Michael McSweeney, McSweeney Cynkar & Kachouroff PLLC, Great Falls, VA, for Plaintiff.

Alexander Francuzenko, Michael David Arena, Cook Craig & Francuzenko PLLC, Fairfax, VA, Courtney Renee Sydnor, Office of the County Attorney, Leesburg, VA, for Defendants.

## MEMORANDUM OPINION

Anthony J. Trenga, United States District Judge

Plaintiff Mark F. McCaffrey was a Deputy Sheriff in the Loudoun County Sheriff's Office ("LCSO") until December 31, 2015. In this action, he alleges that Defendant Michael L. Chapman, the incumbent Sheriff of Loudoun County, failed to reappoint him in retaliation for McCaffrey's support of Chapman's political opponent and that Loudoun County and its Board of Supervisors ("County Defendants") had an obligation to intervene and failed to do so. More specifically,

McCaffrey alleges that Defendants' actions infringed his rights under the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983 as well as his rights under Article I, Section 12 of the Virginia Constitution ("Section 12"), which he asserts creates a common law cause of action for damages.

Presently pending before the Court are Defendant Chapman's Motion to Strike [Doc. No. 5]; Defendant Chapman's Motion to Dismiss [Doc. No. 7]; Defendants Loudoun County and the Board of Supervisors of Loudoun County's ("County Defendants") Motion to Dismiss Counts II and IV of the Complaint [Doc. No. 9]; and Plaintiff McCaffrey's Motion for Partial Summary Judgment [Doc. No. 17]. For the reasons set forth below, McCaffrey, by virtue of the nature of his position as Deputy Sheriff, as alleged in his Complaint, falls within the *Elrod–Branti* exception to the general rule that public employees may not be terminated in retaliation for political speech. Accordingly, Defendants' Motions to Dismiss will be GRANTED, McCaffrey's Motion DENIED, all other motions DENIED as moot and this action DISMISSED.

## I. FACTUAL BACKGROUND

McCaffrey alleges the following facts, which the Court accepts as true for the purposes of the pending motions.

Prior to December 31, 2015, McCaffrey was a detective in the LCSO major crimes unit. Complaint [Doc. No. 1, Exhibit 2] ("Compl.") ¶ 11. Before coming

to the LCSO in 2005, McCaffrey was a police officer for twenty years in Westchester County, New York and New York City. Compl. ¶ 11. In the course of his duties in the major crimes unit at LCSO, McCaffrey "served as the lead detective in complex, high-profile cases, including rape, robbery and homicide investigations." Compl. ¶ 12. McCaffrey's duties as deputy sheriff and lead investigator included communicating with the Commonwealth's Attorney and the Medical Examiner's Office on behalf of the LCSO and coordinating their resources with those of the LCSO. Comp. ¶ 74h.

Chapman has been Sheriff of Loudoun County, Virginia since January 2012. Compl. ¶ 15. Sheriffs in the Commonwealth of Virginia are elected to four year terms. While in office, sheriffs are authorized to appoint deputy sheriffs to assist in the conduct of the sheriff's duties. These deputies' appointments last only as long as the sheriff's term. At the end of a sheriff's term, even if the sheriff is reelected, all the sheriff's deputies must be reappointed and re-sworn to keep their positions in the new term. It is customary in the LCSO that all of the approximately 600 deputies are re-sworn at the beginning of each term. Compl. ¶ 34.

During Chapman's first term as Sheriff of Loudoun County, McCaffrey became concerned about Chapman's competence and fitness for the office of sheriff. Compl. ¶ 65. The Complaint alleges, *inter alia*, that Chapman used his position as sheriff to do favors for friends, family, and campaign contributors, Compl. ¶ 67, discriminated against minority deputies in

assigning undesirable work, Compl ¶ 69, was verbally abusive of the deputies in the LCSO, Compl. ¶ 74, and mismanaged the LCSO to the detriment of the Office's effectiveness, Compl. ¶¶ 75–78. For these reasons, McCaffrey supported Eric Noble, rather than Chapman, for the Republican nomination for the office of Sheriff of Loudoun County in the 2015 election cycle. Compl. ¶ 79. McCaffrey's support of Noble consisted of placing a sign in front of his house supporting Noble and serving as a delegate for Noble at the Republican nominating convention. Compl. ¶ 80.

Chapman won the Republican nomination at the convention and ultimately won the general election to keep his seat as sheriff. Upon learning of McCaffrey's support for Noble, Chapman allegedly told McCaffrey's Division Chief, Captain Marc Caminitti, to "keep his shop" in line. Compl. ¶ 86. The Complaint also alleges that Chapman told LCSO Public Affairs Officer, Liz Mills, that "Mark [McCaffrey] was there with Eric [Noble]. I'm going to get him," in reference to McCaffrey's support for Noble at the nominating convention. Compl. ¶ 87. Additionally, Major Richard Fiano, a Senior Commander in the LCSO, told McCaffrey that he should not have been a delegate for Noble and "[y]ou live by the sword; you die by the sword." Compl. ¶ 89. On December 10, 2015, McCaffrey received a letter from Chapman advising that his appointment as deputy sheriff "ends at midnight on December 31, 2015," and not indicate that he was to be reappointed. Compl. ¶ 90. The letter did not indicate why McCaffrey was not to be re-appointed to his position. Compl. ¶ 91.

McCaffrey was in fact not re-sworn as a deputy sheriff after his prior appointment ended December 31, 2015. Additionally, the Complaint alleges that Chapman ordered McCaffrey's supervisors to lower the score of his final evaluation, preventing McCaffrey from receiving a performance bonus. Compl. ¶ 94.

McCaffrey further alleges that the County Defendants "assumed responsibility to ensure the protection of [constitutional rights] of LCSO employees." Compl. ¶ 123. The Complaint alleges that Chapman and the County Defendants entered into a Cooperative Agreement, which applies certain regulations otherwise only applicable to County employees to LCSO employees.[1] Compl. ¶ 39. The Cooperative Agreement provides that the Sheriff Chapman could only take personnel actions consistent with the County's "personnel policies and regulations," Compl. ¶ 41, and that all personnel actions must be submitted to and approved by the County's Human Resources Department 30 days before they become effective, Compl. ¶ 42.

Despite the County Defendants' alleged obligations under the Cooperative Agreement, McCaffrey alleges they "followed (a) a practice of deliberate indifference to defendant Chapman's abuse of his power and (b) failed to act to carry out their responsibility under the Cooperative Agreement to halt the retaliation against Mr. McCaffrey." Compl. ¶ 123. McCaffrey

[1] Under Virginia law, the sheriff is an independent constitutional officer and not an employee or agent of the county he serves. Va. Const. Art. 7, Section 4. Therefore, LCSO employees are not employees of Loudoun County.

alleges that the County Defendants had ample means to intervene on his behalf against Chapman in light of the fact that the they provide 75% of the budget for the LCSO and that the County Defendants have aggressively enforced its personnel rules against the LCSO under past sheriffs. Compl. ¶¶ 124–25. The Complaint additionally alleges that Laurie Hunter, a Senior Management Analyst in the Loudon County Department of Human Resources, knew of Chapman's intent not to reappoint McCaffrey and approved it pursuant to the County Defendants' Obligations under the Cooperative Agreement.

## II. LEGAL STANDARD

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the complaint. *See Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994); *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1994). In considering a motion to dismiss, "the material allegations of the complaint are taken as admitted," *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted), and the court may consider exhibits attached to the complaint, *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F. 2d 1462, 1465 (4th Cir. 1991). Moreover, "the complaint is to be liberally construed in favor of plaintiff." *Id.*; *see also Bd. of Trustees v. Sullivant Ave. Properties, LLC*, 508 F. Supp. 2d 473, 475 (E.D. Va. 2007). A motion to dismiss must be assessed in light of Rule 8's liberal pleading standards, which require only "a short and plain statement of the claim showing that the pleader is entitled to

relief." Fed. R. Civ. P. 8. Nevertheless, while Rule 8 does not require "detailed factual allegations," a plaintiff must still provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (the complaint "must be enough to raise a right to relief above the speculative level" to one that is "plausible on its face"); *see also Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008). As the Supreme Court stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2008), "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw a reasonable inference that the defendant is liable for the conduct alleged."

## III. ANALYSIS

McCaffrey's Complaint contains the following four counts:

- Count I: Infringement of McCaffrey's First Amendment rights, in violation of 42 U.S.C. § 1983 (against Defendant Chapman);
- Count II: Infringement of McCaffrey's First Amendment rights, in violation of 42 U.S.C. § 1983 (against County Defendants);
- Count III: Violation of McCaffrey's rights under Article I, Section 12 of the Virginia Constitution (against Defendant Chapman);
- Count IV: Violation of McCaffrey's rights under Article I, Section 12 of the Virginia Constitution (against County Defendants).

### A. The *Elrod–Branti* Doctrine

Generally, public employees cannot be fired "solely for the reason that they were not affiliated with a particular political party or candidate." *Knight v. Vernon*, 214 F.3d 544, 548 (4th Cir. 2000). However, the Supreme Court in *Elrod v. Burns*, 427 U.S. 347 (1976) and *Branti v. Finkel*, 445 U.S. 507 (1980) recognized an exception to this general rule. The Court in *Elrod* recognized that certain public employees may be terminated for partisan reasons without offending the First Amendment where doing so would "further some vital government end by a means that is least restrictive of freedom of belief and association in achieving that end, and the benefit gained . . . outweigh[s] the loss of constitutionally protected rights." *Elrod*, 427 U.S. at 363. The Court expanded upon this in *Branti*, noting that "if an employee's private political beliefs would interfere with the discharge of his public duties, his First Amendment rights may be required to yield to the States' vital interest in maintaining governmental effectiveness and efficiency." 445 U.S. at 517. The ultimate question in this inquiry is "whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Id.* at 518.

The Fourth Circuit has established a two-step test to determine whether partisan affiliation is an acceptable basis for termination of a public employee. First, a court must "examin[e] whether the position at issue, no matter how policy-influencing or confidential it may be, relates to partisan interests or concerns.

That is, does the position involve government decisionmaking on issues where there is room for political disagreement on goals or their implementation?" *Stott v. Haworth*, 916 F.2d 134, 141 (4th Cir. 1990) (internal citations, quotation marks, and alterations omitted). If the position is sufficiently "partisan," "the next step is to examine the particular responsibilities of the position to determine whether it resembles a policy-maker, a privy to confidential information, a communicator, or some other office holder whose function is such that party affiliation is an equally appropriate requirement." *Id.* at 142. The goal of this test is to determine whether "'there is a rational connection between shared ideology and job performance'" and therefore that "'political affiliation is an appropriate requirement'" for a given position. *Id*. (quoting *Savage v. Gorski*, 850 F.2d 64, 68 (2d Cir. 1988)). If a public employee's position is both partisan and that of a policymaker under this test, that employee is exempt from the traditional bar on partisan termination and therefore cannot state a claim alleging violation of his First Amendment rights.

### 1. McCaffrey's Position in the LCSO was Partisan

"The law in this circuit is clear that sheriffs in Virginia have the right to lawfully terminate their deputies for political affiliation reasons." *Pike v. Osborne*, 301 F.3d 182, 186 (4th Cir. 2002) (Hamilton, J., concurring) (citing *Jenkins v Medford*, 119 F.3d 1156, 1163–65 (4th Cir. 1997) (en banc)). In that regard, the Fourth

Circuit has held that the deputies of elected sheriffs are "partisan" under the *Stott* test. In *Jenkins*, the Fourth Circuit, en banc, noted with respect to a claim similar to McCaffrey's by a North Carolina sheriff's deputy that where sheriffs are elected "[t]he sheriff owes a duty to the electorate and the public at large to ensure that his espoused policies are implemented" and that "[d]eputy sheriffs play a special role the sheriff's policies and goals." 119 F.3d at 1162. In *Knight*, the Fourth Circuit explained that the election of a particular candidate for sheriff over another presumably acts as the electorate's ratification of one candidate's policies and priorities over the other's. *Knight*, 214 F.3d at 549 ("[W]hen sheriffs are elected by popular vote, as they are in North Carolina, they have an obligation to the voters to implement their espoused policies."). These policies and priorities are not implemented by the sheriff acting alone, but through the sheriff's deputies. *Jenkins*, 119 F.3d at 1162. The First Amendment's protection against partisan retaliatory termination does not require "that a sheriff must attempt to implement his policies and perform his duties through deputies who have expressed clear opposition to him." *Id.* at 1165.

None of the allegations in the complaint distinguishes Virginia deputy sheriffs from their North Carolina counterparts held to be "partisan" in *Jenkins*. A Virginia deputy sheriff, like those in North Carolina, has "powers coterminous with his principal, the elected sheriff." *Jenkins*, 119 F.3d at 1163 (quoting N.C. Gen. Stat. § 17E–1); *compare* Va. Code § 15.2–1603 ("[the

sheriff may] appoint one or more deputies, who may discharge any of the official duties of their principal during his continuance in office, unless it is some duty the performance of which by a deputy is expressly forbidden by law."). Virginia deputies, like those in *Jenkins*, are agents of their principal, the elected sheriff, who can be held liable for the actions of his deputies. *Compare Jenkins*, 119 F.3d at 1163 ("Our circuit and North Carolina state courts agree that the sheriff can be held liable for the misbehavior of the deputies.") *with Whited v. Fields*, 581 F. Supp. 1444, 1455 (W.D. Va. 1984) ("[N]ot only is the sheriff liable civilly for the acts of his deputy in Virginia, but he also is liable criminally and can be fined for the conduct of his deputy."). Under the decisions of the Fourth Circuit, the facts alleged in the Complaint indicate that the office of deputy sheriff in Virginia is partisan and "involve[s] government decisionmaking on issues where there is room for political disagreement on goals or their implementation[.]" *Stott*, 916 F.2d at 141.

**2. McCaffrey was a Policymaker**

Having determined that the office of deputy sheriff in Virginia is partisan, "the next step is to examine the particular responsibilities of the position to determine whether it resembles a policy-maker, a privy to confidential information, a communicator, or some other office holder whose function is such that party affiliation is an equally appropriate requirement." *Id.* at 142. The allegations in the complaint, taken as true and with all inferences drawn in favor of the Plaintiff, indicate that

McCaffrey's role as deputy sheriff was that of a "policymaker." As reflected in this Circuit's cases, the greater the autonomy and decisionmaking ability an individual has in his or her position, the more likely that individual is to be a policymaker for the purposes of the *Elrod–Brati* exception. *Compare Knight v. Vernon*, 214 F.3d 544 (4th Cir. 2000) (holding that a low-level jailer who is not a sworn deputy is not a policymaker) *and Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013) (same) *with Claridy v. Anderson*, No. ELJ–13–2600, 2015 WL 1022401 (D. Md. Mar. 9, 2015) (holding that a former Lieutenant with the Baltimore City Sheriff's Office was a policymaker); *see also Stott*, 926 F.2d at 140 ("'An employee with responsibilities that are not well defined or are of broad scope more likely functions in a policymaking position.'") (quoting *Elrod*, 426 U.S. at 368).

In his Complaint, McCaffrey describes himself as "the lead detective in complex, high-profile cases, including rape, robbery, and homicide investigations." Compl. ¶ 12. McCaffrey was by no means a junior deputy in the LCSO, but rather someone who had served twenty years in other departments before joining the LCSO in 2005. Compl. ¶ 11. The Complaint also alleges that McCaffrey had the discretion to contact directly the Commonwealth's Attorney's Office and the Medical Examiner's Office and to request the resources of those offices in support of the LCSO's law enforcement mission. Compl. ¶ 74h. Even after drawing all reasonable inferences in Plaintiff's favor, under *Jenkins* and the Fourth Circuit's subsequent pronouncements, a deputy

with McCaffrey's alleged experience, seniority and responsibilities within a sheriff's office is a policymaker.

Accordingly, McCaffrey meets the *Elrod–Branti* exception to the general rule against partisan terminations of public employees. Chapman's failure to reappoint McCaffrey in retaliation for his support of Chapman's political rival therefore did not violate the First Amendment. McCaffrey fails to state a claim under 42 U.S.C. § 1983 against either Chapman or the County Defendants.

### B. Article I, Section 12 of the Virginia Constitution

Counts II and IV of the Complaint allege a violation of McCaffrey's rights under Article I, Section 12 of the Virginia Constitution and assert an implied cause of action to vindicate those rights. The Supreme Court of Virginia has made clear that "constitutional provisions in bills of rights [such as Article I, Section 12] are usually considered self-executing." *Robb v. Schockoe Slip Fdn.*, 228 Va. 678, 682 (1985). The scope of relief under these "self-executing" provisions of the Virginia Constitution is an unsettled question, as the Supreme Court of Virginia has never recognized an implied cause of action for damages under Article I, Section 12. Although it has recognized a common law cause of action for damages under certain provisions of the Bill of Rights,[2] it has never directly held whether all such

[2] For example, in *Kitchen v. City of Newport News*, 275 Va. 378 (2008), the court upheld an action for damages arising under

self-executing provisions necessarily provide a damages remedy or whether in some circumstances they are simply limitations on state power enforceable only by injunctive relief.[3] In any event, the Court finds no need to predict how the Supreme Court of Virginia would decide that issue, *but see Draego v. City of Charlottesville*, No 3:16–cv–57, 2016 WL 6834025 at *23 n.20 (W.D. Va. Nov. 18, 2016), as it has on multiple occasions noted that the federal right in the First Amendment and the state right in Article I, Section 12 of the Virginia Constitution "are virtually identical." *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 444 n.7 (2013); *see also Black v. Commonwealth*, 262 Va. 764, 787 (2001) ("The freedom of speech guaranteed by Article I, § 12 of the Constitution of Virginia is coextensive with the protections guaranteed by the First Amendment of the Constitution of the United States.") *vacated in part on other grounds*, 538 U.S. 343 (2003).

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the self-executing provision of Article I, Section 11. *Id.* at 392. However, Section 11 provides that private property shall not be taken or damaged for public use *without just compensation*. Therefore it was clear from the text of Section 11 that the right established necessarily includes a right to damages for its violation. Section 12 lacks this clarity regarding damages.

[3] Plaintiff argues that because the Supreme Court of Virginia has held that self-executing provisions of the State Constitution waive sovereign immunity, "the waiver of sovereign immunity effected by the Virginia Bill of Rights fully opens the State to liability for compensatory damages for violations of its citizens' rights." Pl.'s Chapman Resp. [Doc. No. 28] 13. However, under *Robb* and its progeny, the Virginia Bill of Rights simply waives the Commonwealth's sovereign immunity to the extent that it creates a self-executing right. That waiver, however, does not define the scope of the available remedies.

Therefore, Plaintiff's state and federal constitutional free speech claims rise and fall together. Because Plaintiff meets the *Elrod–Branti* exception and cannot pursue a First Amendment claim for retaliation, the Court predicts that the Supreme Court of Virginia would conclude he has no valid claim under Article I, Section 12 of the Virginia Constitution, even were there an implied cause of action for damages.[4]

## IV. CONCLUSION

For the above reasons, plaintiff has failed to state a claim for a violation of the First Amendment or Article I, Section 12 of the Virginia Constitution. Accordingly, Defendants' motions to dismiss for failure to state a claim will be GRANTED and Plaintiff's motion for partial summary judgment DENIED. All other motions will be denied as moot.

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[4] McCaffrey has asserted only federal and state constitutional claims. Because there has been no infringement of McCaffrey's constitutional rights, state or federal, the Court need not consider whether the Complaint adequately pleads municipal liability for its § 1983 claim against the County Defendants or whether the Cooperative Agreement renders the County Defendants liable for Chapman's actions. It also need not consider whether the Cooperative Agreement creates in McCaffrey's favor rights in addition to those prescribed by the United States and Virginia Constitutions, as any such rights would be contractual in nature and this Court lacks both federal question and diversity subject matter jurisdiction to consider a claim based on any such contractual rights.

The Court will issue an appropriate order

The Clerk is directed to forward a copy of this Memorandum Opinion to all counsel of record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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| MARK F. McCaffrey,<br>Plaintiff,<br>v.<br>MICHAEL L. CHAPMAN, *et al.*<br>Defendants. | ) | Civil Action No. 1:17-cv-937 (AJT/IDD) |

**ORDER**

(Filed Oct. 12, 2017)

Presently pending before the Court are Defendant Chapman's Motion to Strike [Doc. No. 5]; Defendant Chapman's Motion to Dismiss [Doc. No. 7]; Defendants Loudoun County and the Board of Supervisors of Loudoun County's ("County Defendants") Motion to Dismiss Counts II and IV of the Complaint [Doc. No. 9]; and Plaintiff McCaffrey's Motion for Partial Summary Judgment [Doc. No. 17]. Upon consideration of the Motions, the memoranda in support thereof and opposition thereto, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that Defendant Chapman's Motion to Dismiss [Doc. No. 7] and the County Defendants' Motion to Dismiss Counts II and IV of the Complaint [Doc. No. 9] be, and the same hereby are, GRANTED and

this case be, and the same hereby is, DISMISSED; and it is further

ORDERED that Plaintiff McCaffrey's Motion for Partial Summary Judgment [Doc. No. 17] be, and the same hereby is, DENIED; and it is further

ORDERED that Defendant Chapman's Motion to Strike [Doc. No. 5] be, and the same hereby is, DENIED AS MOOT.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter judgment in favor of Defendants pursuant to Fed. R. Civ. P. 58.

/s/ [Illegible]
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
October 12, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 17-2198
(1:17-cv-00937-AJT-IDD)

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MARK F. MCCAFFREY

Plaintiff - Appellant

v.

MICHAEL L. CHAPMAN, in his personal capacity and in his official capacity as Sheriff of Loudoun County; BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, in their official capacities; LOUDOUN COUNTY, VIRGINIA

Defendants - Appellees

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SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION

Amicus Supporting Rehearing Petition

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ORDER

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Upon consideration of appellant's petition for rehearing en banc and appellees' response, and upon a poll of the court pursuant to Fed. R. App. P. 35(f), the court denies the petition for rehearing en banc.

Judges Wilkinson, Niemeyer, Agee, Keenan, Diaz, Thacker, Richardson, Quattlebaum, and Rushing voted to deny rehearing en banc. Chief Judge Gregory and Judges Motz, King, Wynn, Floyd, and Harris voted to grant rehearing en banc.

Entered at the direction of Judge Quattlebaum for the court.

For the Court

/s/ Patricia S. Connor, Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF LOUDOUN

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| MARK F. MCCAFFREY,<br>Plaintiff,<br>v.<br>MICHAEL L. CHAPMAN, in his personal capacity and in his official capacity as Sheriff of Loudoun County,<br>SERVE: Michael L. Chapman<br>Sheriff of Loudoun County<br>803 Sycolin Road, S.E.,<br>Leesburg, Virginia 20175;<br>the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, in their official capacities,<br>SERVE: Leo Rogers<br>County Attorney<br>Loudoun County<br>1 Harrison Street, S.E.,<br>Leesburg, Virginia 20175<br>and | Civil Action No.<br>COMPLAINT FOR VIOLATION OF CIVIL RIGHTS<br>Jury Trial Demanded |

LOUDOUN COUNTY, VIRGINIA,

SERVE: Leo Rogers
County Attorney
Loudoun County
1 Harrison Street, S.E.,
Leesburg, Virginia
20175

Defendants.

**THE NATURE OF THE CASE**

1. This case seeks to vindicate an elementary principle of our law: the men and women who go into law enforcement – or governmental service of any kind – do not surrender their constitutional rights when they put on a uniform, or when they get a badge or government I.D.

2. This case is about Defendant Michael L. Chapman's malicious and callous abuse of his status and authority, and his breach of the public trust placed in him, as Sheriff of Loudoun County, a "constitutional officer" under Virginia law, as well as the complicity of Defendants Loudoun County and its Board of Supervisors in the actions taken against the Plaintiff, Mark McCaffrey, in December 2015. Defendant Chapman's conduct is animated by a single-minded passion to advance his own interests, magnify his own stature and self-importance, and diminish subordinates, which conduct violated Mr. McCaffrey's constitutional rights.

3. Defendants Loudoun County and its Board of Supervisors had the authority and power to constrain Defendant Chapman's conduct and prevent the violation of Mr. McCaffrey's constitutional rights, but they did not do so.

4. Defendant Chapman manages the Loudoun County Sheriff's Office ("LCSO") by a dynamic of intimidation generated by rudeness, lies, and insulting behavior towards his colleagues, punctuated by screaming and fits of rage, capped by campaigns of unrelenting retaliation, by any means, against the perpetrators of every perceived slight or difference of opinion. As Defendant Chapman put it to one of his Senior Commanders, "People challenge me. I'm going to crush them. They'll never work in law enforcement. I'm going to ruin their career." It is hardly surprising that his Senior Commanders privately concluded that Defendant Chapman is a "malignant narcissist," even as they continued to do his bidding.

5. This case is also about how Mr. McCaffrey could have been protected from the gross violation of this fundamental constitutional rights by Defendant Chapman's "malignant narcissism" had Defendants Loudoun County and its Board of Supervisors fulfilled the responsibilities and exercised the powers they had voluntarily assumed to protect the rights of LCSO employees.

6. In December, 2015, Defendant Chapman, in concert with Loudoun County officials, refused to reappoint Mr. McCaffrey to his position in the LCSO for

Defendant Chapman's new term, notwithstanding the fact that it is a long-standing, general practice in the LCSO that the approximately 600 deputies of the LCSO are automatically re-appointed at the beginning of each term. . Mr. McCaffrey, then a highly successful major crimes detective with 30 years of service as a law enforcement professional, had committed a single offense in the eyes of Defendant Chapman to justify severing him from the LCSO in this way. He had supported Defendant Chapman's opponent for the Republican nomination for Sheriff, retired LCSO Major Eric Noble, during Defendant Chapman's campaign for a second term in 2015. Defendant Chapman has expressly conceded that Mr. McCaffrey's work performance was not an issue, and that he could trust Mr. McCaffrey's investigative work. Moreover, Mr. McCaffrey's support for Maj. Noble was expressed in complete compliance with all rules and orders of the LCSO and Loudoun County.

7. Defendant Chapman, in consultation with the Loudoun County Human Resources Department, did not re-appoint Mr. McCaffrey solely in retaliation for his "disloyalty" to Defendant Chapman manifested simply by Mr. McCaffrey lawfully exercising his constitutionally protected right to participate in political expression. Such retaliation violated the Federal and Virginia Constitutions, the public policy of Virginia, and the express terms of an agreement between the LCSO and Defendants Loudoun County and its Board of Supervisors. None of the Defendants was justified in taking the actions or failing to prevent the actions that

resulted in Mr. McCaffrey's termination by any concern about potential or actual disruption of the LCSO. To the contrary, each of the Defendants was aware or should have been aware that Mr. McCaffrey's termination would cause serious disruption in the LCSO. Because Defendants Loudoun County and its Board of Supervisors failed to act when they had the responsibility to do so, Defendant Chapman was able to "crush" Mr. McCaffrey simply because he properly exercised his constitutional rights.

8. It is axiomatic that an individual officer who occupies an office created by a constitution does not have the authority to violate rights expressly protected by that constitution and that he is sworn to defend. There is nothing about the fact that Defendant Chapman's position as Sheriff was created by the Virginia Constitution instead of an act of the General Assembly that excuses him from obedience to the fundamental protections of rights guaranteed by the Federal and Virginia Constitutions. Indeed, in his oath of office, every sheriff swears to support the Federal and Virginia Constitutions.

9. This action seeks compensatory damages for this violation of Mr. McCaffrey's rights, for which all the Defendants are jointly and severally liable. This action also seeks punitive damages for which Defendant Chapman is liable.

**THE PARTIES**

10. Mark F. McCaffrey is the Plaintiff in this action. Mr. McCaffrey resides with his wife and three children in Purcellville, Virginia.

11. Mr. McCaffrey came to the LCSO in 2005 after serving two years in the New York City Police Department and 18 years as a police officer, sergeant, and then lieutenant in the Greenburgh Police Department in Westchester County, New York. Mr. McCaffrey served as a deputy in the LCSO from 2005 to 2008, and as a major crimes detective from 2008 until the end of 2015 when he was not re-appointed by Defendant Chapman.

12. In the LCSO, Mr. McCaffrey served as the lead detective in complex, high-profile cases, including rape, robbery, and homicide investigations. In that capacity, Mr. McCaffrey significantly exceeded the national closure rate of 48.1% for violent crimes. In 2015, he was recognized for achieving a closure rate for his cases of 72%. Mr. McCaffrey received the Loudoun County Investigator of the Month Award three times and was part of the Team of the Month three times. In 2014, Mr. McCaffrey also received the Victim Services Award from the Loudoun County Commonwealth Attorney's Office. During his time in the LCSO, Mr. McCaffrey has consistently received outstanding performance evaluations.

13. As a detective in the Criminal Investigations Division, Mr. McCaffrey was not a policymaker for the

LCSO nor did he in any way act as a counselor to the Sheriff on policy matters.

14. As a detective in the Criminal Investigations Division, Mr. McCaffrey was not a spokesperson for the LCSO nor did he in any way represent the Sheriff to the public or speak on the Sheriff's behalf.

15. Michael L. Chapman is a Defendant in this action. Defendant Chapman has served as Sheriff of Loudoun County, Virginia since January 2012.

16. The Board of Supervisors of Loudoun County, Virginia is the governing body of Loudoun County and a Defendant in this action.

17. Loudoun County, Virginia is a Defendant in this action. The Loudoun County Department of Human Resources is a component of the government of Defendant Loudoun County.

## JURISDICTION AND VENUE

18. This Court has jurisdiction over this action under VA. CODE § 17.1-513.

19. Venue is proper in this Court because the conduct and events giving rise to the Plaintiff's claims occurred in Loudoun County, Virginia.

## GENERAL ALLEGATIONS

### A. THE GOVERNING LAW, POLICY AND AGREEMENTS.

#### i. The Constitutional and Statutory Protection of Political Activity

20. The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

21. The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV §1. The First Amendment is incorporated in the Fourteenth Amendment.

22. Article I, section 12, of the Bill of Rights of the Virginia Constitution provides that "the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances." VA. CONST.

art I, §12. This free speech guarantee of the Virginia Constitution is co-extensive with that of the Federal Constitution. *Willis v City of Virginia Beach*, 90 F.Supp. 3d 597, 607 (E.D.Va. 2015); *Elliott v. Commonwealth*, 267 Va. 464, 473-74, 593 S.E.2d 263, 269 (2004).

23. In VA. CODE § 15.2-1512.2, the General Assembly explicitly codified the Commonwealth's policy to vigorously protect every citizen's freedom to participate in political activity as guaranteed by the Virginia Constitution. Section 15.2-1512.2(B) provides:

> Notwithstanding any contrary provision of law, general or special, no locality shall prohibit an employee of the locality, including firefighters, emergency medical services personnel, or law-enforcement officers within its employment, or deputies, appointees, and employees of local constitutional officers as defined in § 15.2-1600, from participating in political activities while these employees are off duty, out of uniform and not on the premises of their employment with the locality.

24. The General Assembly went on to detail the range of "political activity" it is the policy of the Commonwealth to protect. Section 15.2-1512.2(C) in pertinent part provides:

> the term "political activities" includes, but is not limited to, voting; registering to vote; soliciting votes or endorsements on behalf of a political candidate or political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a

> political picture, sign, sticker, badge, or button; participating in the activities of, or contributing financially to, a political party, candidate, or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering;. . . .

25. Moreover, the General Assembly underscored that the term "'[l]aw-enforcement officer' means any person who is employed within the police department, bureau, or force of any locality, including the sheriff's department of any city or county, and who is authorized by law to make arrests." VA. CODE § 15.2-1512.2(A).

26. "[P]olitical belief and association constitute the core of those activities protected by the First Amendment." *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69 (1990) (quoting *Elrod v. Burns*, 427 U.S. 347, 356 (1976)). "Not only does the First Amendment protect freedom of speech, it also protects the right to be free from retaliation by a public official for the exercise of that right." *Bland v. Roberts*, 730 F.3d 368, 373 (4th Cir. 2013) (internal quotations omitted). Accordingly, "[w]ith a few exceptions, the Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate." *Heffernan v. City of Paterson, N.J.*, 136 S.Ct. 1412, 1417 (2016).

27. So rigorous are the constitutional protections for protected political activity that a government

employer may be held liable even when it discharges an employee on the mistaken belief that an employee had engaged in protected activity when in fact that employee had not. *Id.* at 1418-19. It is the government employer's motive to punish the constitutionally protected activity of one employee that causes the constitutional harm of inhibiting the protected belief and association of that employee and his fellow employees. *Id.* at 1419.

28. The narrow exception to the constitutional ban on patronage dismissals arises solely in the particular context of "public employees occupying policymaking positions." *Bland*, 730 F.3d at 374. In that specific context, patronage dismissals are tolerated only when it can be shown in a "particularized inquiry" that there is a "rational connection" between party affiliation or political allegiance and job performance. *Grutzmacher v. Howard County* 851 F.3d 332, 348 (4th Cir. 2017); *Stott v. Haworth*, 916 F.2d 134, 142 (4th Cir. 1990).

29. To create an effective federal remedy for those in the posture of Mr. McCaffrey, Congress enacted 42 U.S.C. § 1983, which "creates a species of liability in favor of persons deprived of their federal civil rights by those wielding state authority." *Felder v. Casey*, 487 U.S. 131, 139 (1988). This statute "provides a uniquely federal remedy against incursions . . . upon rights secured by the Constitution and laws of the Nation." *Id.* (internal quotations omitted). This liability extends to local governments. *See Collins v. City of Harker Heights*, 503 U.S. 115 (1992); *Liverman v. City of Petersburg*, 844 F.3d 400, 413 (4th Cir. 2016). Thus

§ 1983 "was designed to expose state and local officials to a new form of liability." *City of Newport v. Fact Concerts*, 453 U.S. 247, 259 (1981). Under § 1983, punitive damages may be imposed on local government officials, which are not subject to Virginia's cap on punitive damages. *See Smith v. Wade*, 461 U.S. 30 (1983), *Felder v. Casey*, 487 U.S. 121 (1988); J. Beermann, *Why Do Plaintiffs Sue Private Parties Under Section 1983?*, 26 Cardozo L. Rev. 9, 17 (2004).

30. A county may be liable for damages under § 1983 under several distinct theories, under which a county can be said to be a distinct wrongdoer in inflicting a constitutional violation. *See Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 122 (1992); *The Albemarle County Land Use Handbook*, at 31-4 (July 2015) ("*Albemarle Handbook*". Thus a county may be liable under § 1983 when a practice, custom, or usage of the county was a "moving force" behind a constitutional violation. *See Monell v. New York Dept. of Social Services*, 436 U.S. 658 (1978); *Albemarle Handbook* at 31-4. Another avenue to § 1983 liability for a county occurs when a constitutional violation is inflicted by "the county's failure to do something." *Id.* A common example of this theory is a county's failure to control or supervise a county employee. *See id. See also Brown v. Mitchell*, 308 F.Supp.2d 682, 701 (E.D.Va. 2004) (city's inaction to relieve overcrowding in jail supported § 1983 liability).

31. Virginia provides a remedy for those in the posture of Mr. McCaffrey by recognizing that the provisions of Virginia's Bill of Rights are self-executing

and constitute a waiver of sovereign immunity. *Gray v. Virginia Secretary of Transportation*, 276 Va. 93, 105, 662 S.E.2d 66, 72 (2008). Accordingly, an action may be brought against a local government or its officials directly under the Virginia Constitution for a violation of the rights guaranteed by Article I, section 12.

32. Because the rights guaranteed by Article I, section 12 of the Virginia Constitution are co-extensive with those protected by the First Amendment, a county may be liable for damages for violating these rights on the same basis as it may be liable under § 1983.

**ii. The Status of a Sheriff as a "Constitutional Officer."**

33. A sheriff, along with a county's treasurer, clerk of the court of record, commissioner of revenue, and Commonwealth's Attorney, is called a "constitutional officer" because his office is created directly by the Virginia Constitution rather than by legislative enactment. *See* VA. CONST. art 7, § 4; *Roop v. Whitt*, 289 Va. 274, 280, 768 S.E.2d 692, 695 (2015); *Doud v. Commonwealth*, 282 Va. 317, 321-22, 717 S.E.2d 124, 126 (2011). As a result, though a sheriff is elected by the voters of a county, a sheriff is not an employee or agent of county or municipal government and is independent of them. *See Roop*, 289 Va. at 280, 758 S.E.2d at 695-96; *Caraway v. Hill*, 265 Va. 20, 24, 574 S.E.2d 274, 276 (2003).

34. The duties and compensation of constitutional officers, however, are prescribed by the General

Assembly. *See* VA. CONST. art 7, § 4; VA. CODE § 15.2-1600(A). Constitutional officers may consent to perform duties for localities not prescribed by the General Assembly. *See* VA. CODE § 15.2-1600(B). Constitutional officers also have "the power to organize their offices and to appoint such deputies, assistants and other individuals as are authorized by law upon the terms and conditions specified by such officers." VA. CODE § 15.2-1600(B). *See also* VA. CODE § 15.2-1603 (a "deputy may be removed from office by his principal [constitutional officer]"). Those appointments technically expire at the end of a sheriff's four-year term, even if the sheriff is re-elected. It is a longstanding, general practice that the approximately 600 deputies of the LCSO are automatically reappointed, or "re-sworn," at the beginning of each term to avoid the chaos of having to fully re-staff the LCSO every four years.

35. A constitutional officer is not superior to either the Federal or Virginia Constitutions. A constitutional officer must exercise his powers and authority in compliance with the Bills of Rights of the Federal and Virginia Constitutions. Moreover, a constitutional officer may not discharge an employee in violation of "the policy underlying existing laws designed to protect the property rights, personal freedoms, health, safety, or welfare of the people in general." *Willis*, 90 F.Supp.3d at 606 (quoting *Miller v. SEVAMP*, 234 Va. 462, 468, 362 S.E.2d 915, 918 (1987)). Specifically, a sheriff may not make employment decisions "in retaliation for constitutionally protected political expression." *Harris v.*

*Wood*, 888 F.Supp. 747, 751 (W.D.Va. 1995), *aff'd*, 89 F.3d 828 (4th Cir. 1996).

**iii. The Terms and Conditions of Mr. McCaffrey's Employment.**

36. Mr. McCaffrey's employment as a deputy in the LCSO was initiated by a letter dated August 22, 2005 from then-Chief Deputy Ronald J. Gibson offering him the job. This letter legally constituted the offer of an employment contract, the terms of which were set out in the letter. Right above the line for Mr. McCaffiey's signature at the end of the letter was this statement: "I accept this appointment and the terms and conditions outlined in this letter." Mr. McCaffrey signed the letter on August 25, 2005. With Mr. McCaffrey's acceptance of the LCSO's offer, a contract of employment came into existence between the LCSO and Mr. McCaffrey.

37. This letter-contract included this provision: "Your terms and conditions of employment will be governed by the provisions of the County's Human Resources Handbook and the Sheriff's General Orders in effect at the time of your employment."

38. The Handbook expressly contemplates that its policies and regulations may be applied to employees of constitutional officers such as the Sheriff. Section 1.3(B) of the Handbook provides:

> Employees not under the Board of Supervisors' control and supervision, including officers and employees of Constitutional Officers,

> are not covered by this policy and these regulations except by agreement between the department/agency director, supervisor, or Constitutional Officer and the Board of Supervisors.

39. Defendant Chapman and Defendant Board of Supervisors have entered such a Cooperative Agreement relevant to this action signed by Defendant Chapman and, pursuant to the approval of the Defendant Board of Supervisors, by the Chair of the Board of Supervisors and the County Administrator in May, 2012.

40. The Cooperative Agreement, Article I – Scope of Agreement (emphases added) states its purpose clearly:

> This Agreement extends coverage of the County Personnel Policies and Regulations to all deputies and employees of the Sheriff. This Agreement recognizes that employees of the Sheriff serve all residents of Loudoun County. This Agreement, therefore, seeks to establish a uniform personnel system ***so that the employees of the Sheriff will have the same rights and benefits and will be subject to the same procedures and regulations as County employees***, except as otherwise provided herein.
>
> It is the intent of the parties to this Agreement that the ***employees and deputies of the Sheriff will be subject to all***

> ***County personnel policies and regulations***, except that deputies shall have no access to the County grievance procedure.

41. Consistent with that intent, under the Cooperative Agreement the Sheriff can take personnel actions, like any County Department Head, only in compliance with the County's "personnel policies and regulations." *Id. See also* Handbook § 1.0.02, *Department Head Authority* ("Department Heads implement and enforce these policies and regulations. . . ."); § 1.3, *Scope* ("Should these regulations become applicable to officers and employees of those agencies, the director or Constitutional Officer having appointing authority over such officers and employees is vested with the powers and ***duties*** delegated to Department Heads except as otherwise specifically provided.") (emphasis added).

42. Consistent with that intent, the Cooperative Agreement provides that the Sheriff shall "submit[] General Orders to County staff for review prior to their publication." Cooperative Agreement, Article I – Scope of Agreement. Similarly, the Cooperative Agreement provides that the Sheriff shall submit personnel actions to the County Human Resources Division (now the Human Resources Department) 30 days before they become effective. Cooperative Agreement, Article V – Personnel Actions, Records and Reports.

43. The Cooperative Agreement establishes the responsibility of Defendants Loudoun County and its Board of Supervisors to ensure Defendant Chapman's

compliance with County personnel policies and regulations, and gives them an effective enforcement mechanism to fulfill that responsibility. In the Cooperative Agreement "[t]he parties acknowledge that one of the express purposes for the execution of this Agreement is to continue supplementation of funds to the Office of the Sheriff by Loudoun County that are in excess of those funds provided by the Virginia Compensation Board." Cooperative Agreement, Article I – Scope of Agreement. The critical importance of that "supplementation" from Defendant Loudoun County cannot be overstated, as it pays for approximately 75% of the budget of the LCSO.

44. If one party breaches the Cooperative Agreement, the non-breaching party can give notice of the breach and "suspend performance of any or all of its corresponding obligations under this Agreement." Cooperative Agreement, Article IV – Termination. Thus Defendant Board of Supervisors could halt the "supplementation of funds" it provides to Defendant Chapman's Office if he breaches the Cooperative Agreement by failing to give his employees "the same rights and benefits . . . as County employees" or violates "County personnel policies and regulations."

45. The Handbook, Chapter 1, *General Principles and Governing Policies*, begins with a statement of purpose: "These Loudoun County policies and regulations *ensure* a system of personnel management based on merit principles. . . . These policies and regulations are intended to be in compliance with all

applicable Federal and State laws and regulations." (Emphasis added.)

46. Section 1.4 of the Handbook sets out the six merit principles that govern employment by Loudoun County, and, by agreement of Defendant Chapman, the employment of Mr. McCaffrey. Merit Principle V states, in pertinent part: "Fair treatment of applicants and employees in all aspects of personnel management . . . with proper regard for their privacy and constitutional rights as citizens will be assured." Merit Principle VI states, in pertinent part: "Employees will be protected against coercion for partisan political purposes. . . ."

47. By agreement of Defendant Chapman, Section 1.4 of the Handbook applied to Mr. McCaffrey's employment by the LCSO.

48. Section 1.5 of the Handbook, entitled "Equal Employment Opportunity," provides in pertinent part: "The Board of Supervisors has also declared that the county does not discriminate against employees . . . based on political affiliation."

49. By agreement of Defendant Chapman, Section 1.5 of the Handbook applied to Mr. McCaffrey's employment by the LCSO.

50. Section 3.5 of the Handbook provides:

> Employees have every right to vote as they choose, to express their opinion, and to join political organizations. County employees have the right to not be forced to take a political position as a condition of employment due to

> particular job duties. Nothing contained in this policy shall be interpreted to apply to duly elected or appointed constitutional officers.

Participation in political activities is permitted unless:

> 1. Such activities take place during assigned working hours, or
>
> 2. Involvement adversely affects the employee's ability to do his/her job or adversely affects the employee's department.

51. By agreement of Defendant Chapman, Section 3.5 of the Handbook applied to Mr. McCaffrey's employment by the LCSO.

52. The Sheriff's General Order § 203, ¶ 16, "Political Activity" provides:

> No employee shall use his or her position in the Sheriff's Office to endorse political candidates, nor shall he/she use such position to solicit, directly or indirectly, funds or other services in support of any political issue. No employee shall use his or her official capacity in any manner that might influence the outcome of any political issue. This order is not intended to prevent an employee of the Sheriff's Office from exercising his/her rights under the United States Constitution or the Code of Virginia.

53. Sheriff's General Order § 203, ¶ 16 thus mandates that neither the sheriff nor any other official

of the LCSO will take action that has the effect of preventing employees of the LCSO from exercising their rights under the United States Constitution or Virginia law.

54. By agreement of Defendant Chapman, and by its own terms, Sheriff's General Order § 203, ¶ 16 applied to Mr. McCaffrey's employment by the LCSO.

### B. The Structure of the Loudoun County Sheriff's Office and Its Relationship to Loudoun County.

55. The LCSO maintains a strict, paramilitary chain-of-command structure that is viewed as an essential foundation for the effective operation of a high performance law-enforcement organization.

56. At the top of the chain-of-command is the Sheriff. Immediately below him are two Chief Deputies who hold the rank of colonel. Below those Chief Duties are five majors, each of whom is in charge of one of the LCSO's five divisions – Field Operations, Administrative and Technical Services, Criminal Investigations, Operational Support, and Corrections and Court Services. Those seven Senior Commanders are considered the Command Staff.

57. The Sheriff is the ultimate policymaker for the LCSO, and the Command Staff may support and advise him on policy matters. Employees in the chain-of-command below the sheriff and the Command Staff

are not policymakers, nor do they advise the Sheriff and the Command Staff on matters of policy.

58. As Sheriff, Defendant Chapman sought exclusive control of the communications of the LCSO to the outside world. Defendant Chapman sought to be the only "voice" and "face" of the LCSO to the outside world, whether in dealings with the press, public service communications, or in any other forum. Indeed, Defendant Chapman would become enraged if any other employee of the LCSO happened to be mentioned in the media.

59. The Loudoun County Department of Human Resources (previously known as the Human Resources Division), in conjunction with the Loudoun County Department of Financial Services, effectively serves as the human resources department of the LCSO. *See* Cooperative Agreement, Article V – Personnel Actions, Records and Reports ("The Loudoun County Human Resources Division shall maintain the official written records of all employment actions for employees of the Sheriff except that that those records pertaining solely to benefits and leave shall be maintained by the Department of Financial Services.").

60. Laurie Hunter is a Senior Management Analyst in the Loudoun County Department of Human Resources. She has worked in that position for over 10 years. By her own description, she "[p]rovide[s] consultative services to Department Heads and Constitutional Officers." In providing such services, again by

her own description, she employs a "[t]horough knowledge of the theories, principles and practices of Human Resources management to include employee relations, HR policies, Virginia State Code and interpretation, Federal employment law such as FMLA, ADA, USERRA and EEO compliance."

61. In providing "consultative services" to constitutional officers in her official capacity, Ms. Hunter customarily provided advice to Defendant Chapman on personnel matters and in that capacity represented to Defendant Chapman the official policy of Defendants Loudoun County and its Board of Supervisors. In so doing, Ms. Hunter acted as a delegee of the responsibilities assumed by Defendants Loudoun County and the Board of Supervisors in the Cooperative Agreement and purportedly in furtherance of those responsibilities.

62. In fact, Ms. Hunter was Defendant Chapman's close confidante regarding personnel matters; she was his "go-to" person for any issue involving human resources. She was involved in every hiring and firing decision made by Defendant Chapman. However, Ms. Hunter executed her responsibilities vis-à-vis the LCSO as a partisan of Defendant Chapman, acting to allow him to achieve whatever goal he wanted to achieve, irrespective of the requirements of Defendant Loudoun County's personnel regulations and policies and the interests of the employees of the LCSO.

63. Ms. Hunter reports to Geneva Douglas, a Human Resources Manager of the Loudoun County Department of Human Resources. Their superior, and the person responsible for the conduct of the Department of Human Resources, is Jeanette Green, the Department's Director. Ms. Green in turn reports to Tim Hemstreet, the County Administrator, who is ultimately responsible for their conduct in giving advice regarding, or in applying, Defendant Loudoun County's personnel policies. Mr. Hemstreet was one of the Loudoun County signatories to the Cooperative Agreement.

64. "The County Administrator implements and enforces these rules and regulations [of the Handbook] in adherence to the purpose and intent of the County's personnel policies." Handbook, § 1.1. *See also* Handbook, § 1.0.02. The Handbook's "regulations cover personnel management questions and actions for which the County Administrator is responsible and are interpreted accordingly by the County Administrator or his/her designee in keeping with the intent of these regulations." Handbook, § 1.2. In turn, "[t]he Chairman of the Board of Supervisors on behalf of the corporate board provides direction to the County Administrator and other employees who are assistants to the Board of Supervisors." *Id.*, § 1.0. The Chairman of the Board of Supervisors was the other Loudoun County signatory to the Cooperative Agreement.

### C. The Conduct of Defendant Chapman That Lead Mr. McCaffrey to Support His Opponent for the Republican Nomination for Sheriff.

65. Mr. McCaffrey voted for Defendant Chapman is his first election to the office of Sheriff of Loudoun County. Defendant Chapman's conduct in the following years raised serious concerns in the mind of Mr. McCaffrey about the competence of Defendant Chapman and his fitness for the office of Sheriff, all of which are substantial public concerns. Accordingly, when an alternative candidate with whom Mr. McCaffrey had worked and whom he greatly respected – now-retired Major Noble – became a candidate for Sheriff, Mr. McCaffrey decided to support him.

66. Various aspects of Defendant Chapman's conduct moved Mr. McCaffrey to conclude that the public interest would best be served if former-Major Noble were elected Sheriff.

#### i. Defendant Chapman's Questionable Fund Raising, Official Expenditures and Hiring Practices.

67. Mr. McCaffrey became aware that Defendant Chapman had appeared to have done favors for campaign contributors, such as awarding County or LCSO contracts to them or hiring their family members. Examples of such conduct include:

a. Mr. Rick Bazaco made a total of $6,000 of in-kind contributions to Defendant Chapman in late

2010 and early 2011. On July 20, 2012, Mr. Bazaco's company, eFederal Systems, was awarded a $14,500 from Defendant Loudoun County to produce a "technology assessment for the Loudoun County Sheriffs Office." Not one recommendation made by the report produced by eFederal Systems was acted upon.

b. Mr. Dan Wright contributed a total of $500 to Defendant Chapman in 2011 and 2012. In 2012, his company, DBA National Consulting & Investigative Services received $2,500 from Defendant Loudoun County for a "comprehensive assessment, training, and executive summary briefing in support of the LCSO recruiting and applicant investigations unit and applicant background investigation program."

c. Mr. Chuck Manning made a total of $4,250 of in-kind contributions to Defendant Chapman in 2011. Defendant Chapman subsequently appointed him to the LCSO as a Second Lieutenant even though he had no prior supervisory law enforcement experience.

d. Mr. Kevin Brock, a neighbor of Defendant Chapman's, contributed a total of $475 to Defendant Chapman in 2010 and 2013. In August, 2012, Mr. Brock lobbied the LCSO via email to hire his daughter. In October, 2012, Defendant Chapman pressured the LCSO staff in charge of recruitment and hiring to alter the hiring process to accommodate Mr. Brock's daughter so she could submit an application. She was subsequently hired.

e. Mr. Martin Pracht contributed a total of $350 to Defendant Chapman in 2010 and 2012. His son was hired by the LCSO, and after graduation from the Academy, abruptly resigned after only three days in the field training program. His performance suggests that he was an unqualified candidate.

f. Mr. Douglas Satterwhite contributed a total of $3,500 to Defendant Chapman in 2011 and 2012. On July 3, 2013, Mr. Satterwhite was at fault in a car crash that caused property damage. Defendant Chapman exerted significant pressure to get Mr. Satterwhite cleared.

g. During his first election campaign, Defendant Chapman promised Deputy Chris Ahlmann, whose father was the pastor of a large Baptist church in Loudoun County, that if his father's congregation supported him as Republican delegates to the nominating convention, or voted for him, Defendant Chapman would promote him from a traffic safety deputy to Captain. Ahlmann got the votes for Defendant Chapman and he was promoted.

h. Right after he was first elected Sheriff, Defendant Chapman ordered that all deputies should have new business cards, and could get them only from Design B, a company to which Defendant Chapman had just given a $14,000 no-bid contract to print business cards. Design B was owned by his campaign manager, Brian Reynolds. Defendant Chapman also relies on Reynolds to execute his retaliation schemes,

described below, such as making anonymous calls to smear targets of Defendant Chapman's ire.

68. Mr. McCaffrey became aware that Defendant Chapman regularly violated County policy by using his personal vehicle to go to out-of-the-area training meetings and conferences so he can make a vacation out of it with his family, and then charging the County for mileage. Examples of these violations include: going with his family to new sheriff training in Richmond, Virginia, submitting mileage charges of $146.52; going with his family to the National Sheriffs Association Conference in Nashville, Tennessee, submitting mileage charges of $708.18; and going with his family to the National Sheriffs Association Conference in Charlotte, North Carolina, submitting mileage charges of $463.86. Ironically, shortly after the Charlotte conference (in October, 2013), Defendant Chapman announced, as a cost-cutting measure, that the LCSO would no longer support homecoming parades for Loudoun County high schools without charging the schools.

69. Mr. McCaffrey also observed that Defendant Chapman, who personally interviewed each deputy, assigned a disproportionate number of deputies who were members of minority groups to the Corrections and Court Services Division, which was generally considered a "punishment assignment." The deputies in field operations were disproportionately white. As a result, Mr. McCaffrey believed that Defendant Chapman was following a discriminatory practice in the

assignments and professional opportunities of the LCSO's deputies.

### ii. Defendant Chapman's Abusive and Malicious Treatment of Employees and Unprofessional Personal Comportment.

70. Mr. McCaffrey became aware that Defendant Chapman exhibited a pattern of verbally abusing employees of the LCSO. This behavior appeared to be triggered by anything Defendant Chapman perceived to be negative with respect to himself – whether representing a different point of view, "stealing" the limelight, in some way slighting Defendant Chapman's stature, or failing to gratify some desire of Defendant Chapman. Defendant Chapman's maliciousness was evident in his subsequent retaliation against the employee involved, often extending to his schemes to torpedo the employee's efforts to secure a new job after leaving the LCSO. Indeed, Defendant Chapman even boasted to Liz Mills, at the time the Public Affairs Officer of the LCSO, of his ability to retaliate, telling her, "They know I can pick up the phone and they'll never work in law enforcement again."

71. Defendant Chapman's abusive behavior caused the LCSO to lose senior employees with years of experience, training, and knowledge who would not tolerate such treatment. This disruptive behavior by Defendant Chapman caused the morale of the remaining employees at the LCSO to plummet, sowing discord even among the senior employees. Senior employees,

including Maj. Eric Noble, Maj. Ricky Frye, and Liz Mills, made complaints against Defendant Chapman to the Loudoun County Human Resources Department. On information and belief, other employees complained to the County Attorney and the County Administrator.

72. The dysfunction in the LCSO caused by Defendant Chapman's conduct is illustrated by the fact that even Senior Commanders who have done Defendant Chapman's bidding to stay in his good graces to preserve their careers loathe him. For example, Lt. Col. Robert Buckman, now the third-highest ranked official in the LCSO, has demonstrated contempt for Defendant Chapman. Buckman even sent around a picture of Defendant Chapman portrayed as Adolf Hitler. In late 2013 or early 2014 Mr. McCaffrey had drinks with then-Captain, now-Lieutenant Colonel, Mark Poland and Lt. Bobby Miller. Poland went on at length how much he detested Defendant Chapman, recounting instances of Defendant Chapman treating LCSO employees terribly and behaving erratically and bizarrely in meetings. Poland called Defendant Chapman an arrogant, unstable guy, and complained that his blood pressure was elevated from the stress of dealing with him.

73. Yet this abusive behavior was bizarrely coupled with Defendant Chapman's inflated view of his leadership abilities. For example, Defendant Chapman repeatedly told the senior staff of the LCSO that he was "the best leader since Abraham Lincoln." Nevertheless, whenever a problem occurred due to

Defendant Chapman's mismanagement of the LCSO he would deny knowledge of the underlying facts and try to shift blame to his subordinates.

74. Examples of this behavior of Defendant Chapman include:

a. Within weeks of his taking office, Defendant Chapman reduced a civilian property clerk to tears by screaming at her when a delivery of a pair of shoes did not arrive on time through no fault of hers.

b. In 2013, when Michelle Draper, a budget analyst for the LCSO who assisted Maj. Noble, raised questions in a meeting with Defendant Chapman about his use of his expense account, he blew up at her. Among other things, Defendant Chapman frequently sought reimbursement from Loudoun County for alcoholic beverages even though he had been repeatedly advised that the County does not reimburse for alcohol. Ms. Draper refused to be cowed by such intimidation and continued to politely but firmly press her concerns. Nothing concerning those expenses was resolved in that meeting. But afterwards, Defendant Chapman tried to get Maj. Noble to summarily fire Ms. Draper with no impartial investigation of the matter. When Maj. Noble refused, Defendant Chapman turned to Ms. Hunter, who wrote a letter of reprimand of Ms. Draper for Maj. Noble's signature. Maj. Noble protested to Ms. Hunter that the reprimand was baseless, but Ms. Hunter just shrugged, saying words to the effect, "You know how Sheriff Chapman is." Shortly thereafter, Ms. Draper left the LCSO. In another

spiteful gesture of retaliation, Defendant Chapman had another baseless letter of reprimand placed in her file just days before she left.

c. Defendant Chapman often reacted violently, perhaps irrationally, when his subordinates offered divergent views, reported back factual developments that indicated one of his initiatives was not working, or simply tried to explain some event. For example, when Defendant Chapman and the Senior Commanders were considered a new schedule for shifts, three of the Commanders, including Maj. Noble, offered reasons why in the particular context of Loudoun County (covering over 560 square miles) the change Defendant Chapman was considering would not work. A couple of days later, out of the blue, Defendant Chapman called Maj. Noble into his office to berate him, saying "I think you're lazy, dishonest, and I don't trust you."

d. Defendant Chapman excoriated Lt. Chris Athey, whose job was emergency management, when Defendant Chapman did not like a promotional video Lt. Athey had helped prepare. When Lt. Athey tried to explain that he was not in charge of the project, which was not part of his normal responsibilities, but was only assisting the Public Affairs Officer, Defendant Chapman did not listen, but repeatedly screamed at him, "I am the Sheriff What part of that don't you understand?" As a result of such treatment, Lt. Athey left the LCSO for a job in the private sector.

e. Early on in his first term, Defendant Chapman, in civilian clothes and off duty, pulled up to a traffic accident that a deputy was working. Though traffic accidents are within the jurisdiction of the Virginia State Police, the deputy had happened on the accident before any State Trooper had arrived. Following LCSO policy, the deputy stopped to see if there were any injuries and generally began working the accident until a State Trooper arrived. When the deputy explained all this to Defendant Chapman, Defendant Chapman, who apparently was unfamiliar with the LCSO policy, started screaming at the deputy and poking the deputy in the chest with his finger. It is unclear whether Defendant Chapman thought the deputy should not have stopped, or should not turn over the accident to the State Police.

f. On September 9, 2014, after the 8:30 a.m. Command Staff meeting, Defendant Chapman disappeared. Later, when Lt. Col. Buckman and Maj. Brown were leaving for lunch, they bumped into Defendant Chapman coming off the elevator. He reeked of alcohol. Upon seeing them, Defendant Chapman turned away and went back down the elevator. Lt. Col. Buckman and Maj. Brown reported the incident to the Loudoun County Human Resources Department, but no action was taken.

g. Defendant Chapman from the outset failed to manage the LCSO budget properly, resulting, in 2013, in the LCSO running $1.5 – $2 million over-budget. This caused a major uproar in the County, stiff criticism from the Board of Supervisors, and negative

media coverage. Defendant Chapman defended himself in part with a lie – that his staff had not kept him apprised of budget issues. In fact, Defendant Chapman and the Command Staff had a number of documented meetings on the budget and he was fully informed.

h. Defendant Chapman has no compunction in lying in order to inflate the appearance of his own professional abilities. Mr. McCaffrey was the lead investigator in the successful prosecution of Braulio Castillo for the brutal, first-degree murder of his wife, Michelle. Castillo arranged Michelle's body so her death would appear to have been a suicide. Mr. McCaffrey went to the scene, and then spoke briefly to Braulio Castillo. Mr. McCaffrey promptly requested more investigative support from his office; contacted the Commonwealth Attorney's Office to invite them to the scene; and requested that an investigator from the Medical Examiner's Office come to the scene. Each of these steps is not consistent with a belief that Michelle committed suicide. Eighteen months later, Defendant Chapman told the prosecutors on the case that Mr. McCaffrey initially thought that Michelle had committed suicide, but that Defendant Chapman's observations of the scene immediately led him to think Michelle was murdered. This was a lie. Defendant Chapman was never at the scene of Michelle's murder.

i. Defendant Chapman cannot countenance his subordinates excelling in their professional endeavors when that excellence comes to the attention of the broader community. For example, when Defendant Chapman came into office, Deputy Dale Spurlock had

been giving classes to the public on internet crimes against children for years, dating back to when he was a Leesburg police officer before joining the LCSO. The classes were very well received, and Deputy Spurlock had copyrighted some of his materials when he was still a Leesburg police officer. Deputy Spurlock had kept Lt. Col. Buckman – Defendant Chapman's second-in-command – fully informed about these classes, including the fact that he had copyrighted some of his materials. When Defendant Chapman heard about Deputy Spurlock's classes, he started an internal investigation against Spurlock (who was well-regarded and highly decorated), claiming that he was "gaming the system," and trying to profit from his work as a deputy. Deputy Spurlock insisted that he had kept Buckman fully informed, but Buckman lied, denying he had any knowledge of Spurlock's classes. When Deputy Spurlock provided all the emails between him and Buckman that showed Buckman was lying, Defendant Chapman closed the investigation and did nothing to Buckman. Since that time, Defendant Chapman has tried to take credit for the internet crimes against children classes in the press and in posts on social media, going so far as to give Deputy Spurlock a plaque for this work. Deputy Spurlock has since left the LCSO. From Mr. McCaffrey's perspective, this was another example of Defendant Chapman's malignant narcissism jeopardizing a good deputy's career (and ultimately costing the LCSO the services of a good deputy) while maintaining his sleazy staff.

j. During the local election campaigns of 2015, the Board of the Loudoun Chapter of the Virginia Police Benevolent Association (the "PBA") screened candidates for various offices to determine whom they might endorse. Defendant Chapman was running for his second term. During his interview with the PBA, he was asked about his refusal to re-swear an assortment of 12 lieutenant colonels, majors, captains, and a detective at the beginning of his first term, and whether he intended to do something like that again if he were re-elected. Defendant Chapman was adamant that he would not, stressing that in his first term all the terminated employees were already going to retire. Both were lies. The individuals Defendant Chapman did not re-appoint in his first term were not going to retire, but were terminated as pay-backs on behalf of Defendant Chapman's political supporters and friends. And Defendant Chapman did not re-appoint five employees at the beginning of his second term, including Mr. McCaffrey.

k. Maj. Ricky Frye was the Commander of the Corrections and Court Services Division, who did not get along with Defendant Chapman, in part because, as a Senior Commander, Maj. Frye did not believe he was supposed to be a "yes-man" to the Sheriff, but was supposed to give him his best judgment on LCSO matters, which often produced a volatile and hostile reaction from Defendant Chapman. Not willing to put up with this friction with Defendant Chapman, Maj. Frye retired from the LCSO, becoming an employee of a contractor providing security-related

services to the Fairfax County Courts. Maj. Frye's departure did not end the matter for Defendant Chapman, who sought to further retaliate by smearing Maj. Frye with Fairfax County so he would lose his job there. Lt. Col. Chris Harmisson and Public Affairs Officer Liz Mills both refused Defendant Chapman's requests for them to write anonymous letters to Fairfax County smearing Maj. Frye. So Defendant Chapman contacted Fairfax County and Maj. Frye's employer himself, threatening to contact the newspapers with negative stories if they did not fire Maj. Frye. Maj. Frye lost his job as a result.

l. After he retired from the LCSO after too many confrontations with Defendant Chapman, Maj. Noble became Chief of Police in Haymarket As he did with Maj. Frye, Defendant Chapman had anonymous emails sent to the Mayor of Haymarket smearing Maj. Noble. The Mayor ignored them.

### iii. Defendant Chapman's Mismanagement and Malfeasance in the Operations of the LCSO.

75. Mr. McCaffrey became aware that, when a deputy ticketed a friend or supporter of Defendant Chapman, he regularly called in the deputy's superiors to berate them and order them to get rid of the ticket. For example, Defendant Chapman called in Sergeant Lee Williams and Captain Marc Caminitti to excoriate them for a parking ticket given to the commercial van of one of Defendant Chapman's friends who ran a

martial arts business. Defendant Chapman ordered Sgt. Williams to get rid of the ticket.

76. Defendant Chapman made unilateral, arbitrary, and peremptory changes to the structure, shifts, and staffing arrangements of the LCSO that have undermined the effectiveness of the LCSO's operations and the morale of its employees.

a. For example, Defendant Chapman dissolved the LCSO's gang intelligence unit even as gang violence, especially from extremely dangerous groups like MS13, was on the rise in Loudoun County. This move effectively blinded the LCSO in any effort to proactively address gang violence. As a result, the LCSO was caught flat-footed in September 2015 when 17-year-old Danny Centeno-Miranda was gunned down on his way to school. While Defendant Chapman initially represented to the media that the LCSO was uncertain whether the murder was gang-related, the LCSO knew at the outset that it was.

b. In response to an inquiry from Defendant Chapman shortly after he took office, a deputy who was also President of the local PBA advised Defendant Chapman that the deputies believed that the patrol shifts as they were currently structured were effective and worked well. Six months later, with no further consultation or warning, Defendant Chapman abruptly made a wholesale change in the patrol shifts that had a variety of serious negative consequences.

i. On a personal level, for the many deputies who are working parents with small

children, this abrupt change caused a major disruption in childcare arrangements, which left deputies frantically scrambling to make new arrangements. This maneuver was a serious blow to the morale of the LCSO.

ii. Operationally, Defendant Chapman's overhaul of the patrol shifts left shifts continually short-staffed. For the midnight shift, for example, only 10 to 12 deputies had to cover the more than 560 square miles of Loudoun County. Coverage at malls – an obvious target of potential terrorist activity – was reduced or electively eliminated as deputies were sent to cover other incidents. In several instances, deputies had no backup for extended periods in dangerous circumstances, with catastrophic results. For example, two deputies responding to a complaint concerning a rowdy party were surrounded, assaulted, and injured with no backup anywhere nearby. Another deputy had to respond alone to a family dispute at 5 a.m. one morning and had to shoot and kill an emotionally disturbed person because there was no backup available who could have assisted in deploying a nonlethal alternative.

77. Defendant Chapman's failure to properly manage the LCSO budget, especially failing to properly account for the LCSO's overtime needs, resulted in the LCSO running seriously over budget and Defendant Chapman receiving much public criticism. He responded by erratic, extreme efforts to save money, including ill-considered denials of overtime that

compromised the LCSO's ability to fulfill its law-enforcement mission.

a. Tasers are non-lethal weapons used to subdue belligerent or dangerous people without resort to lethal firearms. The Taser fires two dart-like electrodes which stay connected to the main unit by a conductive wire that delivers an electric current to disable the target by temporary neuromuscular incapacitation. Both the Taser's software and hardware require maintenance, which is recommended by the manufacturer and was specifically requested by the LCSO's training unit. Nevertheless, Defendant Chapman failed to have the LCSO's Tasers maintained or tested, mainly for cost-cutting reasons. The devastating consequences of this decision were manifest in 2014 at the Costco in Sterling when a disturbed woman brandished a knife at deputies who had been called to the scene. One of the deputies fired a Taser at the woman while the other deputy simultaneously approached to disarm her once she was incapacitated. However, the Taser's conductive wire disconnected from the darts before the electric charge could be delivered, leaving both deputies in unexpected close quarters with a woman charging them with a knife. In the melee that followed, the woman was fatally shot and one of the deputies was wounded by a ricochet.

b. In April 2013, the Fairfax County Police Department (the "Fairfax PD") arrested three people in Fair Oaks Mall with one pound of marijuana and a firearm. They learned that the supplier of these people was at an apartment in Leesburg with additional

drugs. The Fairfax PD alerted the LCSO Narcotics Unit, which set up surveillance of the apartment. The suspected supplier, David Russell, left the apartment and drove off. When the LCSO stopped the vehicle, Russell ran, leaving an additional pound of marijuana and $10,000 in cash. Another $6,000 in cash was found in a satchel Russell discarded as he ran, before he was taken into custody. The LCSO Narcotics Detectives began writing a search warrant for the apartment from which Russell had left. Before the warrant could be completed, the LCSO Narcotics Units were ordered to clear the scene and secure it for the night because overtime was not authorized. The LCSO detectives advised the Fairfax PD lieutenant on the scene that they were going to cut Russell loose and get search warrants at another time. Letting a dangerous criminal such as Russell loose had the predictable result. Several months later, he was arrested as the ringleader of a home invasion armed robbery in which the robbers bound the victims, held them at gunpoint, and threatened to cut their fingers off with a machete.

c. In 2015, LCSO detectives had information that a man from Maryland who was out on bond for attempted murder was selling stolen guns. The detectives wanted to pick him up on a warrant, but were told to wait until he went to his probation officer in Maryland. As a result, a possibly armed and dangerous suspect was allowed to freely roam Loudoun County for nearly two weeks.

d. In a 2014 investigation of an on-going criminal enterprise involving trafficking in stolen

all-terrain vehicles, it was determined that several buildings in western Loudoun County would have to be searched and that the inhabitants of the buildings were possibly "preppers" – people preparing for an apocalyptic event by stocking food and assembling a cache of weapons for hunting and defense. Defendant Chapman called it off because he felt it was too "resource intensive" because it required overtime and was possibly dangerous. Then-Captain, now-Lieutenant Colonel, Mark Poland observed at the time that it was a crazy decision and that he had never seen anything like it. This decision by Defendant Chapman was consistent with what appears to be his drive to avoid bad publicity generated by any violent confrontation, irrespective of the demands of the LCSO's law-enforcement mission.

78. The way in which Defendant Chapman conducted himself as Sheriff convinced Mr. McCaffrey that Defendant Chapman's prime professional consideration was self-promotion rather than advancing the critical mission that the LCSO undertakes in law enforcement, and rather than his stewardship of the men and women who serve and protect the Loudoun County community as employees of the LCSO.

a. Grandstanding with the media regularly trumps law enforcement concerns in Defendant Chapman's conduct as Sheriff. In the Costco shooting described above, for example, Defendant Chapman stayed out in the parking lot giving out supposed details of the event to the gathered press. However, the scene – through which Defendant Chapman did only a

cursory walk – was still being processed and Defendant Chapman's public explanations concerning what had happened were incorrect. More fundamentally, Defendant Chapman never went to the hospital to check on his injured deputy, while he was able to devote plenty of time to appearing before TV cameras.

b. Defendant Chapman has diverted LCSO resources for his own personal purposes. For example, Defendant Chapman ordered the computer forensic unit to drop what they were doing – working on a high profile murder case and numerous child pornography cases – to investigate negative comments about him on social media and in the newspaper. In another example, Defendant Chapman has used the LCSO's Internal Affairs Unit to investigate political rivals, such as former candidate for sheriff Ron Speakman, to dig up embarrassing information on them.

c. The Loudoun Sheriff's Child Safety Day is a publicity event held on a Saturday in May. One person who was assigned a booth there was the father of a 14-year-old girl whose murder had never been solved in the dozen years since it had occurred. The father handed out flyers seeking information about possible suspects. In 2014, Detective Wayne Promisel, who had been assigned to work the cold case, identified a suspect, who shortly thereafter killed himself. Defendant Chapman told the detectives not to tell the father that the suspect had killed himself until after Child Safety Day because the father was an attraction for the press, and he might not attend if he knew his daughter's case was resolved. When Det. Promisel, who was deeply

offended by this plan to keep the father in the dark, refused to go along, Defendant Chapman changed course and the father was told. Defendant Chapman then approached the father to try to give him talking points to convey to the press how well he had been treated by the Sheriff and how much had been done for him. The father resented this blatant effort by Defendant Chapman to manipulate him.

d. Another example of Defendant Chapman's grandstanding trumping the most elementary practices of effective law enforcement occurred in 2014, when the body of a newborn baby was found in a drainage pond in Ashburn. Early in the investigation, Defendant Chapman gave far too much information to the press, including his speculation and preliminary opinions about the case. The Medical Examiner called to complain about releasing so much information and indulging in such speculation, in part because, with all the details known to the general public, it would be difficult for detectives to verify a suspect's confession. Even some defense attorneys ridiculed the LCSO for such excessive disclosures so early in an investigation.

### D. Mr. McCaffrey's Exercise of His Constitutional Rights and Defendants' Unconstitutional Retaliation Against Him.

79. Defendant Chapman's conduct as Sheriff, as described above – a matter of public concern and implicating the public's interest in effective and honest law enforcement by the LCSO – motivated Mr.

McCaffrey to support Defendant Chapman's opponent in the contest for the Republican nomination for Sheriff in the 2015 campaign, Eric Noble.

80. Mr. McCaffrey's support for Mr. Noble took the form of a sign in his yard supporting Mr. Noble and acting as a delegate to the Republican convention in which the Republican candidate for Sheriff was chosen. In so doing, Mr. McCaffrey was exercising his constitutional rights as a private citizen.

81. Mr. McCaffrey was also invited by the Board of Directors of the local PBA to participate as an outside advisor in the screening of local candidates for potential PBA endorsements, described above. The Board decided not to endorse any candidate for Sheriff in the 2015 general election.

82. Mr. McCaffrey's support for Mr. Noble fully complied with all statutes, rules, regulations, and orders of the Commonwealth, of Loudoun County, and of the LCSO. As a delegate to the Republican convention, Mr. McCaffrey simply voted for Mr. Noble. Mr. McCaffrey never spoke publicly about the election nor did he in any other way campaign for Mr. Noble. Mr. McCaffrey did not wear any election-related buttons, shirts, or display any other campaign paraphernalia.

83. Mr. McCaffrey did not use his position in the LCSO to endorse political candidates.

84. Mr. McCaffrey did not use his position in the LCSO to solicit, directly or indirectly, funds or other services in support of any political issue.

85. Mr. McCaffrey did not use his official capacity in any manner that might influence the outcome of any political issue.

86. Defendant Chapman tried to pressure Capt. Marc Caminitti, then-head of the Criminal Investigations Division to which Mr. McCaffrey was assigned, to "keep his shop" in line regarding deputies voting for Eric Noble. Capt. Caminitti advised Defendant Chapman that he did not believe it was his responsibility to tell people for whom to vote. Defendant Chapman was annoyed by this response, and told Capt. Caminitti that he did not see it that way. Capt. Caminitti was transferred out of the Criminal Investigations Division soon after.

87. The fact that the PBA did not endorse him and that Mr. McCaffrey was a delegate for Eric Noble infuriated Defendant Chapman. After the 2015 Loudoun County Republican Convention, Defendant Chapman told Liz Mills, "Mark was there with Eric. I'm going to get him."

88. Maj. Richard Fiano, a Senior Commander and a former co-worker of Defendant Chapman at the DEA, told Mr. McCaffrey that he should not have become a delegate, warning him, "You live by the sword; you die by the sword."

89. Defendant Chapman made good on his threat to punish Mr. McCaffrey for exercising his constitutional rights to support Mr. Noble by not reappointing Mr. McCaffrey as a deputy for Defendant Chapman's second term. In undertaking this

retaliation, Defendant Chapman consulted with Ms. Hunter, who gave him her approval for this scheme.

90. On December 10, 2015, Maj. Fiano delivered a letter (dated that same day) to Mr. McCaffrey simply advising him that his appointment as a deputy "ends at midnight on December 31, 2015." The letter was signed by Defendant Chapman, and advised Mr. McCaffrey to contact Ms. Hunter should he "have any questions regarding the details of this letter."

91. The letter gave no reasons why Mr. McCaffrey was not being reappointed. However, it is clear that no performance issues motivated or justified Mr. McCaffrey's termination. Mr. McCaffrey had received uniformly outstanding reviews during his service at the LCSO.

92. Indeed, Mr. McCaffrey's final performance review, completed after the December 10, 2015 letter had been delivered, was effusive in its praise of Mr. McCaffrey's work. Below are some of the comments his supervisors made in that review.

a. "Detective McCaffrey has established a strong reputation as a detective who will stop what he's doing, on-duty or off-duty, and respond to handle an investigation in a thorough and professional manner."

b. "Detective McCaffrey keeps his supervisor informed on developments in cases as they happen – typically updating within 24 hours of developments. He takes the initiative, and it is rarely necessary for

supervisors to reach out to him for updates on the status of cases."

c. "Detective McCaffrey's closure rate of 71.4 percent greatly exceeds the target closure rate, and also significantly exceed the average closure rate for the same period for the Robbery-Homicide section (67.2 percent.)"

d. "Detective McCaffrey listens to the needs of citizens and works to meet those needs."

e. "Detective McCaffrey excels at making a strong personal connection with virtually anyone to facilitate favorable resolution of his assigned cases. He is highly consistent and truly leads by example in this area."

f. "Detective McCaffrey leads by example through a strong work ethic in working towards the fulfillment of agency goals."

g. "Detective McCaffrey draws on his extensive experience as a detective and law enforcement officer to make sound decisions and solve problems."

h. "Detective McCaffrey is very self-sufficient He follows through on assigned tasks and can be counted on to handle the most mission critical tasks."

i. "Detective McCaffrey maintains a professional, positive attitude in working with others. His sense of humor frequently puts his coworkers at ease in otherwise stressful situations."

93. The "Performance Summary" at the end of this review, dated December 22, 2015, reads:

> Detective McCaffrey has done excellent work on a wide range of cases at CID during this evaluation period. He takes a lot of pride in his role as a detective and always makes his work a priority – often coming in to work on his day off, or staying late to follow-up on cases. He keeps a positive attitude and always has something to say to lighten the mood, even under the most stressful circumstances. Detectives and attorneys look forward to continuing to work with Detective McCaffrey on his remaining court cases, and are hopeful that a professional relationship continues as he moves on to his next job.

94. In a further mean-spirited gesture of retaliation, Defendant Chapman ordered Mr. McCaffrey's supervisors to lower the numerical score of his final evaluation so he would not get the performance bonus to which he was entitled. At the same time, Defendant Chapman did not force any changes to the substance of the evaluation. Indeed, in a subsequent meeting, Defendant Chapman told Assistant Commonwealth Attorneys ("ACAs") Nicole Whitman and Alex Rueda that the review of Mr. McCaffrey was "relatively reflective of performance."

95. In addition to the threats made by Defendant Chapman and his Senior Commanders before Mr. McCaffrey lost his job, the statements made by Defendant Chapman and his Senior Commanders after

he was not reappointed made clear that Mr. McCaffrey's support for Eric Noble was the sole reason for that action.

96. For example, Maj. Fiano warned PBA Vice President Det. Jeff Cichocki that he should learn the lesson of Mr. McCaffrey's termination and "stay the f**k out of politics."

97. Similarly, the day after Mr. McCaffrey received notice that he was not being reappointed, Maj. Fiano told Liz Mills, "Tough about Mark McCaffrey, but you live by the sword, you die by the sword."

98. Defendant Chapman made his reason for not reinstating Mr. McCaffrey unmistakably clear in a January 20, 2016 meeting with ACAs Wittman and Rueda. ACAs Wittman and Rueda sought the meeting because Mr. McCaffrey was the lead investigator in their prosecution of Braulio Castillo for the murder of his wife, which was a very high-profile case in Loudoun County scheduled for trial in June, 2016. They were concerned that the defense would use Mr. McCaffrey's termination to create an issue over his work on the case. In addition, they realized that new job opportunities might require him to move out of Virginia, limiting his availability to help in the Castillo trial. In the meeting, Defendant Chapman insisted that Mr. McCaffrey was a good detective, and that he would recommend him to anyone who was hiring.

99. Instead, Defendant Chapman did not reinstate Mr. McCaffrey because, according to Defendant Chapman, Mr. McCaffrey's support for Eric Noble

undermined the agency as a whole. Defendant Chapman did not provide any information as to how this was true, nor had Defendant Chapman ever previously mentioned to Mr. McCaffrey any concern that Mr. McCaffrey's support for Mr. Noble was in some way undermining the LCSO. Defendant Chapman dodged the questions of ACA Wittman as to why Mr. McCaffrey's supposed undermining of the agency simply by voting for Eric Noble was not noted in his personnel file or recent evaluation. Indeed, Mr. McCaffrey's exercise of his right to support a candidate other than Defendant Chapman did not undermine the LCSO in any way, as his outstanding final evaluation indicates. Rather, Defendant Chapman did not reinstate Mr. McCaffrey as yet another manifestation of his malignant narcissism.

100. Indeed, the malice animating Defendant Chapman was evident several months after Mr. McCaffrey's dismissal. At that point, Purcellville Police Chief Cynthia McAlister had a possible position for a domestic-violence coordinator in her Department as part of a new program being supported by the Purcellville Police Department and the LCSO. When Defendant Chapman heard a rumor that Mr. McCaffrey might be considered for the position, Defendant Chapman had Lt. Col. Mark Poland call Chief McAlister to deliver the threat that the LCSO would withdraw its resources from the program if Mr. McCaffrey were given that position. The position was left unfilled. This demonstrated that Defendant Chapman's insistence to ACAS Wittman and Rueda that he would recommend Mr. McCaffrey to anyone who was hiring was a lie, and

that malicious, continuing retaliation for Mr. McCaffrey's exercise of his constitutional rights was Defendant Chapman's scheme.

### E. The Consequences of the Retaliation Against Mr. McCaffrey.

101. At the time of his termination, Mr. McCaffrey and his wife, Vicki, were the parents of three young girls, Emily (15 years old), Alyssa (13 years old), and Leah (7 years old). Mr. McCaffrey was the sole source of support for his family. Vicki was an elementary school teacher who had left teaching in 2001 to devote herself to her responsibilities as a mother.

102. Mr. McCaffrey got the news that he was going to lose his job as of December 31, 2015 on the day, December 10, that he and his family were going to leave for a Christmas-time trip to Williamsburg.

103. Mr. McCaffrey's loss of his job at the LCSO was a crushing blow economically, professionally, and emotionally.

104. The loss of the source of Mr. McCaffrey's income was the immediate economic consequence of the loss of his job at the LCSO. As discussed above, his termination also threatened to be a serious blow to the high-profile first-degree murder prosecution of Braulio Castillo, which was set to go to trial shortly. Because Mr. McCaffrey was the lead investigator for that case, and the prosecution could not afford to lose his services on the eve of trial, the Loudoun Commonwealth

Attorney's Office hired Mr. McCaffrey temporarily as an investigator from February through June 2016 so he could continue to work on the case.

105. Once that temporary position ended, Mr. McCaffrey could not secure another position until March 2017, when he was hired as an investigator for the Public Defender's Office in Winchester, the position he currently holds.

106. In his current position, Mr. McCaffrey's salary is less than half of his base salary at the LCSO. The economic benefits Mr. McCaffrey has lost include cost-of-living adjustments to his salary, overtime, and bonuses over the reasonable remaining time span of his career at the LCSO. Mr. McCaffrey also lost his health insurance and retirement benefits from the LCSO. Without health insurance from the LCSO, Mr. McCaffrey had to return to the health insurance benefits he still had available from his prior job in New York. By doing so, however, he lost the annual "buyback" that the Greenburgh Police Department paid him to not use that source of insurance.

107. Professionally, the loss of his job at the LCSO was an overwhelming humiliation and embarrassment to Mr. McCaffrey. His firing made the local news. Even people who should have known better suspected that Mr. McCaffrey "must have done something wrong" to not be reappointed in an office in which reappointment for well-performing deputies was supposedly routine.

108. Emotionally, the economic pressure on him, his professional humiliation, and the impact of all this on his wife was the cause of severe mental anguish and anxiety for Mr. McCaffrey. Sleepless nights and hypertension became the norm for him. Vicki got a job as a long-term substitute teacher to try to break back into teaching, but she was so behind the new advances in technology that had occurred since she last worked as a teacher that she was overwhelmed, often coming home crying in frustration. Mr. McCaffrey's anxiety was made all the more acute by the emotional toll his dismissal took on his wife, who at one point had to be hospitalized for chest pains arising from her worry over their situation.

109. More broadly, the retaliation taken against Mr. McCaffrey for exercising his most basic constitutional rights caused the LCSO to lose one of its top deputies, in addition to immediately jeopardizing the Castillo prosecution.

## CAUSES OF ACTION

### COUNT I

*Violation of Plaintiff's Rights under the United States Constitution by Defendant Chapman*

110. The allegations in the foregoing paragraphs of this Complaint are incorporated here by reference.

111. In placing a sign in his yard supporting Eric Noble as a Republican candidate for Sheriff of Loudoun County, and in voting for Eric Noble in the

Republican State Convention to be the Republican candidate for Sheriff of Loudoun County in the 2015 election, Mr. McCaffrey was properly exercising his rights to political belief, association, and expression protected by the First Amendment to the United States Constitution.

112. In exercising his First Amendment rights to political expression, Mr. McCaffrey was expressing himself as a private citizen upon a matter of public concern, specifically, who should hold the important position of Sheriff of Loudoun County.

113. In exercising his First Amendment rights to political expression as he did, Mr. McCaffrey did not in any way jeopardize or diminish the providing of effective and efficient services by the LCSO to the public. To the contrary, as the examples of Defendant Chapman's conduct described above illustrate, Mr. McCaffrey supported the candidacy of Eric Noble because he believed that Defendant Chapman's conduct as Sheriff undermined and diminished the ability of the LCSO to provide effective and efficient law enforcement services to the public. Accordingly, Mr. McCaffrey's interest in expressing himself on this matter of public concern outweighed any governmental interest in providing effective and efficient services to the public.

114. Mr. McCaffrey was not reappointed to his position at the LCSO in 2016, and was the target of a broader campaign of retaliation thereafter, solely in retaliation for Mr. McCaffrey's political expression in support of Defendant Chapman's primary election

opponent in 2015. This retaliation was undertaken by Defendant Chapman with malice and callous disregard for Mr. McCaffrey's constitutional and contractual rights.

115. The failure to reappoint Mr. McCaffrey to the LCSO was action taken by Defendant Chapman under color of State law. Specifically, Defendant Chapman purportedly justified the termination of Mr. McCaffrey in retaliation for his political expression as within the discretion of the sheriff because he is a "constitutional officer" under Virginia law. In fact, such retaliation is impermissible under Virginia law, nor does the sheriff have absolute discretion, unconstrained by the most fundamental constitutional norms, over the hiring and firing of LCSO employees.

116. The termination of Mr. McCaffrey in retaliation for his political expression deprived him of his rights, privileges, and immunities secured by the First and Fourteenth Amendments of the United States Constitution. Specifically, this retaliation against Mr. McCaffrey deprived him of his constitutional rights to political expression.

117. The retaliation against Mr. McCaffrey was a scheme effected at the command of Defendant Chapman and allowed to occur by Defendants Loudoun County and the Board of Supervisors.

118. The Defendants are jointly and severally liable for this deprivation of Mr. McCaffrey's rights.

119. This deprivation of Mr. McCaffrey's rights was undertaken with malice and callous disregard of Mr. McCaffrey's federally protected rights.

120. As a direct, actual, and proximate result of the retaliation taken by Defendant Chapman against Mr. McCaffrey in violation of his federally protected rights, Mr. McCaffrey has suffered significant pecuniary and non-pecuniary damages, including loss of future pay and benefits, loss of back pay and benefits, loss of promotion opportunities, loss of retirement benefits, as well as mental anguish, anxiety, pain, suffering, embarrassment, and humiliation.

121. Pursuant to 42 U.S.C. § 1983, Mr. McCaffrey is entitled to an award of compensatory damages, punitive damages, and the costs of this action against Defendant Chapman. Pursuant to 42 U.S.C. § 1988, Mr. McCaffrey is also entitled to an award in the amount of his attorney's fees incurred in prosecuting this action against Defendant Chapman.

**COUNT II**

*Violation of Plaintiff's Rights under the United States Constitution by Defendants Loudoun County, and Its Board of Supervisors*

122. The allegations in the foregoing paragraphs of this Complaint are incorporated here by reference.

123. Defendants Loudoun County and its Board of Supervisors are jointly and severally liable with Defendant Chapman for the violation of Mr. McCaffrey's

constitutional rights because in the Cooperative Agreement they assumed the responsibility to ensure the protection of those rights of LCSO employees and to enforce a "uniform personnel system" governing the employees of the LCSO and Loudoun County. Yet Defendants Loudoun County and its Board of Supervisors followed (a) a practice of deliberate indifference to Defendant Chapman's abuse of his power and (b) failed to act to carry out their responsibility under the Cooperative Agreement to halt the retaliation against Mr. McCaffrey taken by Defendant Chapman because of Mr. McCaffrey's exercise of his rights to political expression, which was itself part of Defendant Chapman's campaign to intimidate LCSO employees and chill their exercise of their rights to political expression.

124. Indeed, Defendants Loudoun County and its Board of Supervisors had at their disposal a powerful enforcement measure to defeat Defendant Chapman's systemic abuse of his powers, of which the retaliation against Mr. McCaffrey was an egregious example – the suspension or termination of their performance of the Cooperative Agreement, thereby cutting off the money paying for 75% of the LCSO's budget. Yet Defendants Loudoun County and its Board of Supervisors have failed, and continue to fail, to act.

125. In contrast, during the administration of the prior sheriff, Steve Simpson, the Defendant Loudoun County, through its Human Resources Department, followed a policy and practice of aggressive enforcement of its personnel rules and regulations vis-à-vis

the LCSO. Representatives of the Human Resources Department regularly reminded former Sheriff Simpson of the Defendant Board of Supervisors' power to withdraw Loudoun County's all-important funding under the terms of the Cooperative Agreement. As a result, personnel actions in the LCSO at that time were thoroughly vetted by officials of the Human Resources Department, culminating in meetings of officials of the LCSO and the Human Resources Department to make the final decision in a personnel action.

126. With the advent of the administration of Defendant Chapman, Defendants Loudoun County and the Board of Supervisors markedly changed their policy and practice vis-à-vis the LCSO to a completely hands-off approach, thereby abdicating their responsibilities under the Cooperative Agreement and the Handbook and allowing Defendant Chapman to take whatever personnel actions he wished to take, for whatever reasons he wished to take them.

127. The County Administrator, Mr. Hemstreet, under the direction of the Chairman of the Board of Supervisors, implements and enforces the personnel rules and regulations of Loudoun County for all employees governed by it. The County Administrator, in turn, exercised those responsibilities through the hierarchy of the County's personnel structure, that is, through Ms. Green, Director of the Department of Human Resources, through Ms. Douglas, a Human Resources Manager of that Department, down to Ms. Hunter, a Senior Management Analyst of that Department, who became the official liaison of that

Department and a key adviser to Defendant Chapman on all personnel matters.

128. Ms. Hunter exhibited unwavering loyalty to Defendant Chapman, acting solely to achieve his goals irrespective of whether those goals complied with the personnel rules set out in the Handbook or respected the rights of employees. Indeed, Ms. Hunter never acted as a representative of the interests of LCSO employees. Instead she worked solely to advance the schemes and desires of Defendant Chapman. The result of Ms. Hunter's practices in that regard was that the kind of behavior by Defendant Chapman described above went unchecked. The Human Resources chain of command and all relevant Loudoun County officials were fully aware of what Defendant Chapman was doing. On information and belief, a number of LCSO employees complained to the Human Resources Department and the County Attorney about Defendant Chapman's behavior, but nothing was ever done to rein him in. Indeed, when Liz Mills made her complaint to the Human Resources Department, both Ms. Douglas and Ms. Green, Ms. Hunter's superiors, admitted to her that they knew what was going on in the LCSO. Nevertheless, following their practice throughout the Chapman Administration of the LCSO, they did nothing to remedy the situation there.

129. Because of the responsibilities they had assumed under the terms of the Cooperative Agreement, Defendants Loudoun County and its Board of Supervisors were in a position to stop any personnel action proposed by Defendant Chapman if that action

violated the rights of the employee involved under the personnel rules and policies of Loudoun County or the United States Constitution. Defendants Loudoun County and its Board of Supervisors never used that power under the Cooperative Agreement, and so demonstrated deliberate indifference to the rights of LCSO employees that were violated or chilled by the abusive actions of Defendant Chapman. The unconstitutional retaliation inflicted on Mr. McCaffrey was one egregious consequence of that failure to act.

130. On information and belief, Ms. Hunter advised Defendant Chapman that he could lawfully terminate the employment of Mr. McCaffrey for any reason whatsoever, including terminating Mr. McCaffrey solely because he had supported Defendant Chapman's primary election opponent.

131. As a human resources professional, and as a Senior Management Analyst in the Loudoun County Human Resources Department, Ms. Hunter knew or should have known that Defendant Chapman's discretion to terminate any employee such as Mr. McCaffrey was limited by the Federal Constitution, the Virginia Constitution, the Virginia Code, by Defendant Chapman's own General Orders, and by the obligations Defendant Chapman voluntarily assumed in the Cooperative Agreement to apply the personnel policies of Defendants Loudoun County and its Board of Supervisors as set out in the Handbook.

132. Defendant Loudoun County, whose Administrator "implements and enforces" the County's

personnel rules and regulations and signed the Cooperative Agreement, and Defendant Board of Supervisors, which "establishes" the County's personnel policies and whose Chairperson signed the Cooperative Agreement, knew or should have known that Defendant Chapman's discretion to terminate any employee like Mr. McCaffrey was limited by the Federal Constitution, the Virginia Constitution, the Virginia Code, by Defendant Chapman's own General Orders, and by the obligations Defendant Chapman voluntarily assumed in the Cooperative Agreement to apply the personnel policies of Defendants Loudoun County and its Board of Supervisors as set out in the Handbook.

133. Defendant Loudoun County and its Board of Supervisors knew or should have known of the failure of Ms. Hunter and the Human Resources Department to correctly advise Defendant Chapman concerning his planned illegal retaliation against Mr. McCaffrey and of their failure to take effective steps to stop it.

134. Specifically, Ms. Hunter knew or should have known, and should have so advised Defendant Chapman, that even as a sheriff he cannot lawfully terminate or retaliate against an employee such as Mr. McCaffrey because of the employee's race, gender, religion or private political activity outside of work. At bottom, Ms. Hunter should have advised Defendant Chapman that he could not refuse to reappoint an excellent detective such as Mr. McCaffrey simply because Defendant Chapman was angered by the fact that Mr. McCaffrey had supported Defendant Chapman's

opponent for the 2015 Republican nomination. Ms. Hunter should have exercised her responsibility under the Cooperative Agreement and the Handbook to prevent Defendant Chapman from retaliating against Mr. McCaffrey. By failing to do so and by affirmatively approving Defendant Chapman's retaliation against Mr. McCaffrey, Ms. Hunter violated his rights under the Federal Constitution, the Virginia Constitution, the Virginia Code.

135. Specifically, Defendants Loudoun County and its Board of Supervisors knew or should have known, and should have so directed Ms. Hunter to advise Defendant Chapman, that even as Sheriff he could not lawfully terminate or retaliate against an employee such as Mr. McCaffrey because of the employee's race, gender, religion or private political activity outside of work. At bottom, Defendants Loudoun County and its Board of Supervisors should have directed Ms. Hunter to advise Defendant Chapman that he could not refuse to reappoint an excellent detective such as Mr. McCaffrey simply because Defendant Chapman was angered by the fact that Mr. McCaffrey supported Defendant Chapman's opponent for the 2015 Republican nomination. Defendants Loudoun County and its Board of Supervisors should have employed the full extent of their authority under the Cooperative Agreement to prevent the retaliation against Mr. McCaffrey. In failing to exercise that responsibility, they violated Mr. McCaffrey's rights under the Federal Constitution, the Virginia Constitution, the Virginia Code, by Defendant Chapman's own General Orders,

and by their personnel policies as set out in the Handbook.

136. Nevertheless, consistent with their failure to exercise their responsibilities under the Cooperative Agreement and the Handbook to protect the rights of the employees of the LCSO, Defendants Loudoun County and its Board of Supervisors did nothing to stop Defendant Chapman's unconstitutional retaliation against Mr. McCaffrey. That is, Defendants Loudoun County and its Board of Supervisors never used their supervisory authority over Ms. Hunter or their authority under the Cooperative Agreement to stop the retaliatory termination of Mr. McCaffrey by Defendant Chapman.

137. As a direct, actual, and proximate result of the failure of Defendants Loudoun County and its Board of Supervisors to exercise their power under the Cooperative Agreement to fulfill their responsibility to prevent the retaliation against Mr. McCaffrey, they are jointly and severally liable with Defendant Chapman for the deprivation of Mr. McCaffrey's federally protected rights under color of State law by his retaliatory termination, as described above.

138. As a direct, actual, and proximate result of the failure of Defendants Loudoun County and its Board of Supervisors to exercise their power under the Cooperative Agreement to fulfill their responsibility to prevent the retaliation against Mr. McCaffrey, Mr. McCaffrey has suffered significant pecuniary and non-pecuniary damages, including loss of future pay and

benefits, loss of back pay and benefits, loss of promotion opportunities, loss of retirement benefits, as well as mental anguish, anxiety, pain, suffering, embarrassment, and humiliation.

139. Pursuant to 42 U.S.C. § 1983, Mr. McCaffrey is entitled to an award of compensatory damages and the costs of this action against Defendants Hunter, Loudoun County, and its Board of Supervisors, jointly and severally, and to punitive damages against Ms. Hunter. Pursuant to 42 U.S.C. § 1988, Mr. McCaffrey is also entitled to an award in the amount of his attorney's fees incurred in prosecuting this action against Defendants Hunter, Loudoun County, and its Board of Supervisors, jointly and severally.

**COUNT III**

*Violation of Plaintiff's Rights under the Virginia Constitution by Defendant Chapman*

140. The allegations in the foregoing paragraphs of this Complaint are incorporated here by reference.

141. Section 12 of Article I of the Virginia Constitution is co-extensive with the First Amendment of the United States Constitution.

142. Accordingly, for the reasons set out above, the conduct of Defendant Chapman retaliating against Mr. McCaffrey for his political expression deprived Mr. McCaffrey of his rights secured by section 12 of the Virginia Constitution.

143. This deprivation of Mr. McCaffrey's rights was undertaken with malice and callous disregard of Mr. McCaffrey's rights protected by the Virginia Constitution.

144. As a direct, actual, and proximate result of the retaliation taken by Defendant Chapman against Mr. McCaffrey in violation of his rights protected by the Virginia Constitution, Mr. McCaffrey has suffered significant pecuniary and non-pecuniary damages, including loss of future pay and benefits, loss of back pay and benefits, loss of promotion opportunities, loss of retirement benefits, as well as mental anguish, anxiety, pain, suffering, embarrassment, and humiliation.

145. Mr. McCaffrey is entitled to an award of compensatory damages, punitive damages, and the costs of this action against Defendant Chapman.

**COUNT IV**

*Violation of Plaintiff's Rights under the Virginia Constitution by Defendants Loudoun County and Its Board of Supervisors*

146. The allegations in the foregoing paragraphs of this Complaint are incorporated here by reference.

147. Section 12 of Article I of the Virginia Constitution is co-extensive with the First Amendment of the United States Constitution.

148. Accordingly, for the reasons set out above, as a direct, actual, and proximate result of the failure

of Defendants Loudoun County, and its Board of Supervisors to exercise their power under the Cooperative Agreement to fulfill their responsibility to prevent the retaliation against Mr. McCaffrey, Defendants Loudoun County, and its Board of Supervisors are jointly and severally liable with Defendant Chapman for the retaliation against Mr. McCaffrey for his political expression which deprived him of his rights secured by section 12 of the Virginia Constitution.

149. As a direct, actual, and proximate result of the retaliation taken against Mr. McCaffrey in violation of his rights protected by the Virginia Constitution, Mr. McCaffrey has suffered significant pecuniary and non-pecuniary damages, including loss of future pay and benefits, loss of back pay and benefits, loss of promotion opportunities, loss of retirement benefits, as well as mental anguish, anxiety, pain, suffering, embarrassment, and humiliation.

150. Mr. McCaffrey is entitled to an award of compensatory damages and the costs of this action against Defendants Loudoun County and its Board of Supervisors, jointly and severally . . .

**PRAYER FOR RELIEF**

Therefore, Plaintiff demands judgment against Defendants and prays for relief as follows:

a) That Plaintiff recover compensatory economic and non-economic damages against the Defendants, jointly and severally, in the amount of THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS ($3,000,000);

b) That Plaintiff recover punitive damages against Defendant Chapman under Count I in the amount of TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS ($1,500,000);

c) That Plaintiff recover punitive damages against Defendant Chapman under Counts III and IV in the statutory maximum amount of THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000);

d) That Plaintiff recover his attorneys' fees under 42 U.S.C. § 1988 against the Defendants, jointly and severally;

e) That Plaintiff recover the costs of this litigation against the Defendants, jointly and severally;

f) That the Plaintiff recover both pre- and post-judgment interest at the statutory rate; and

g) That the Plaintiff receive such further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of any and all issues in this action so triable by right.

Dated: July , 2017

Respectfully submitted,

MARK F. MCCAFFREY

By:_____

Patrick M. McSweeney
McSweeney, Cynkar & Kachouroff, PLLC
3358 John Tree Hill Road
Powhatan, VA 23139
(804) 937-0895
patrick@mck-lawyers.com

Robert J. Cynkar
McSweeney, Cynkar & Kachouroff, PLLC
10506 Milkweed Drive
Great Falls, VA 22066
(703) 621-3300
rcynkar@mck-lawyers.com

Christopher I. Kachouroff
McSweeney, Cynkar & Kachouroff, PLLC
13649 Office Place, Suite 101
Woodbridge, VA 22192
(703) 853-0160
chris@mck-lawyers.com

*Counsel for Plaintiff*

## CONSTITUTIONAL PROVISIONS

### U.S. CONST. amend. I

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### U.S. CONST. amend. XIV §1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

### VA. CONST. art. I, §12

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

### VA. CONST. art. VII, § 4

There shall be elected by the qualified voters of each county and city a treasurer, a sheriff, an attorney for the Commonwealth, a clerk, who shall be clerk of

the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law or special act.

## Statutory Provisions

### 42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

### VA. CODE § 15.2-1512.2 (Excerpt)

A. For the purposes of this section:

. . .

"Law-enforcement officer" means any person who is employed within the police department, bureau, or force of any locality, including the sheriff's department of any city or county, and who is authorized by law to make arrests.

. . .

"Locality" means counties, cities, towns, or special districts.

. . .

B. Notwithstanding any contrary provision of law, general or special, no locality shall prohibit an

employee of the locality, including firefighters, emergency medical services personnel, or law-enforcement officers within its employment, or deputies, appointees, and employees of local constitutional officers as defined in § 15.2-1600, from participating in political activities while these employees are off duty, out of uniform and not on the premises of their employment with the locality.

C. For purposes of this section, the term "political activities" includes, but is not limited to, voting; registering to vote; soliciting votes or endorsements on behalf of a political candidate or political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a political picture, sign, sticker, badge, or button; participating in the activities of, or contributing financially to, a political party, candidate, or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering; initiating, circulating, or signing a political petition; engaging in fund-raising activities for any political party, candidate, or campaign; acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party, candidate, or campaign; or becoming a political candidate.

D. Employees of a locality, including firefighters, emergency medical services personnel, law-enforcement officers, and other employees specified in subsection B are prohibited from using their official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political

party, candidate, or campaign, or to discriminate against any employee or applicant for employment because of that person's political affiliations or political activities, except as such affiliation or activity may be established by law as disqualification for employment.

E. Employees of a locality, including firefighters, emergency medical services personnel, law-enforcement officers, and other employees specified in subsection B are prohibited from discriminating in the provision of public services, including but not limited to firefighting, emergency medical, and law-enforcement services, or responding to requests for such services, on the basis of the political affiliations or political activities of the person or organization for which such services are provided or requested.

F. Employees of a locality, including firefighters, emergency medical services personnel, law-enforcement officers, and other employees specified in subsection B are prohibited from suggesting or implying that a locality has officially endorsed a political party, candidate, or campaign.

## Regulatory & Administrative Rules

### LOUDOUN COUNTY SHERIFF'S GENERAL ORDERS

### Foreword
### (Excerpt)

These General Orders set forth responsibilities and standards of conduct expected of all employees of the Loudoun County Sheriff's Office, both sworn and unsworn. They apply to all divisions of the agency.

. . .

All General Orders, as well as referenced divisional directives, are issued under the authority of the Sheriff pursuant to the provisions of Article VII, Section 4, of the Constitution of Virginia. These General Orders will be updated regularly to reflect any changes in law, procedures or policies in order to accommodate agency needs and the needs of the citizens we serve.

### General Order 101 (IV) & (A)
### Organizational Structure
### (Excerpt)

The Sheriff's Office is organized into five divisions in addition to the Office of the Sheriff. These structured components are further divided into units, shifts and individuals as depicted in the organizational chart. Each area is assigned specific functional areas of responsibility that include activities directly related to carrying out the objectives of the Sheriff's Office. The five divisions and Office of the Sheriff are under the

direct command of an Operations Bureau Commander or Administrative Bureau Commander.

. . .

A. Office of the Sheriff

This office is responsible for establishing policy and working with the County Board of Supervisors and departments of the County government to ensure that the resources necessary to accomplish agency responsibilities are provided. Additionally, this office is the arbiter of all complaints/grievances from or regarding agency employees.

Policy is issued in the form of guidance to division commanders who, in turn, are responsible for the formulation and continuing update of specific directives for their respective divisions. The directives must reflect the most up-to-date procedures and techniques to provide for the safety of all employees and to meet all legal mandates. Therefore, the commanders must review directives at least annually. The Sheriff must approve all division directives, changes or updates before they become effective.

This office consists of the Sheriff, Bureau Commanders (Chief Deputies), Internal Affairs Unit, Public Information components, and Administrative Assistants to the Sheriff. The Bureau Commanders assume the functions of the Sheriff in his absence.

**General Order 101(V)**
**Chain of Command**

The Sheriff, with authority vested by the Constitution of Virginia and the Virginia Code, is the chief law enforcement officer for the county. His decisions concerning the operation of his agency are final unless overridden by intervention of the courts. The Sheriff also authorizes the organizational structure of and chain of command within the Loudoun County Sheriff's Office.

Employees within each of the agency's divisions are supervised by and report to the next highest level supervisor. This supervisor shall be an identifiable person who shall be responsible for the employee's assignments, performance evaluations, counseling, etc. In order to avoid confusion and to promote efficiency within the agency, each organizational component shall be under the direct command of only one supervisor. In addition, each employee shall be accountable to only one direct supervisor at any given time. This does not preclude orders or direction being given by a senior supervisor or any other supervisor in the absence of an individual's primary supervisor.

A. Sworn Personnel

1. Sworn personnel are comprised of the following ranks:

   Deputy, Deputy First Class, Master Deputy, Sergeant, Second Lieutenant, First Lieutenant, Captain, Major (Division

Commander), Bureau Commander (Chief Deputy and/or Lieutenant Colonel) and Sheriff

B. Support Staff

Civilian employee or section supervisor

In general, Majors serve as Division Commanders. Captains, First Lieutenants, Second Lieutenants, or Sergeants supervise sections, depending on the number of personnel assigned to the section. Under certain circumstances, civilians act as supervisors (e.g. Records Section). Units, depending on the number of personnel assigned, are supervised by Sergeants. When only one person staffs a unit, that person may be a deputy who possesses a special skill that qualifies him/her for that position.

**General Order 101(X)**
**Authority and Responsibility**

At every level within this agency, personnel are given the authority to make decisions necessary for the effective execution of their responsibilities. Employees are given the latitude to make certain decisions commensurate with their authority. Each employee will be held fully accountable for the use of or failure to use delegated authority. Any employee who has questions regarding their delegated authority should bring such questions to the attention of their supervisor for prompt resolution. Legal questions may be referred to the County Attorney or Commonwealth's Attorney

through the employee's supervisor. Questions concerning other facets of the criminal justice system may be likewise referred. Employees' acceptance of and proper use of authority will be evaluated on an ongoing basis and reflected during the performance evaluation process. Improper use of authority or failure to accept authority will be reported through command channels.

**General Order 101(XI)**
**Direction**
**(Excerpt)**

The Chief Executive Officer of the Loudoun County Sheriff s Office is the Sheriff. As such, the Sheriff has the authority and responsibility for the management, direction and control of the operations and administration of the agency.

A. Order of Precedence for Command

1. Sheriff
2. Bureau Commander (Lieutenant Colonel)
3. Division Commander of the division that has primary responsibility for an incident (Major)
4. Assistant Division Commander/Station Commander (Captain)
5. Any 1st Lieutenant/Staff Duty Officer
6. Any other deputy as designated by the Sheriff for a specific period or task

B. Supervisor Accountability

All supervisory personnel are accountable for the performance of employees under their immediate control.

C. Lawful Orders

Lawful orders, including those relayed from a superior via an employee of equal or lesser rank shall be in accordance with General Order 203.

**General Order 202(III)(C)**
**Insubordination**

Except as otherwise stated herein, defiance of lawful authority or disobedience to orders constitutes insubordination.

**General Order 203(III)(16)**
**Political Activity**

No employee shall use his or her position in the Sheriff's Office to endorse political candidates, nor shall he/she use such position to solicit, directly or indirectly, funds or other services in support of any political issue. No employee shall use his or her official capacity in any manner that might influence the outcome of any political issue. This order is not intended to prevent an employee of the Sheriff's Office from exercising his/her rights under the United States Constitution or the Code of Virginia.

**General Order 203(III)(17)**
**Running for Political Office**

No employee of the Sheriff's Office, other than the Sheriff, shall run for a constitutional political office or any other elected position without permission of the Sheriff. The Sheriff may deny permission where he deems a conflict of interest exists, or if it is otherwise inappropriate.

. . .

**General Order 303(II)(B)**
**Loudoun County Personnel Regulations**

The personnel rules established by the Human Resources Manual of the County of Loudoun, unless specifically exempted, shall govern employees of the Sheriff's Office. Each employee of the Sheriff's Office shall familiarize themselves with these personnel rules. Each Division Commander shall make a copy of the Human Resources Manual available to employees upon request.

**General Order 303(II)(D)**
**Performance of Duty**

All employees shall perform the duties required of them by law, agency rule, policy, or order; or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.

**General Order 303(II)(U)**
**Criticism of Sheriff's Office or Superiors**

Under no circumstance may an employee speak critically or in a derogatory fashion to other employees or to persons not of the agency in regard to the orders or instructions issued by a superior officer. If an employee has reason to believe that any order or instruction is inconsistent or unjust, then that employee may appeal to the next higher authority in the agency.

**General Order 410.1(III)**
**Public Information**

III. ORGANIZATION FOR THE DISSEMINATION OF PUBLIC INFORMATION

A. The Chief Information Officer (CIO) and the Public Information Officer (PIO) support the Loudoun County Sheriff s Office and its personnel in matters involving the news media. To accomplish this, both the CIO and the PIO will be available during normal business hours as well as on-call for emergencies and other critical incidents. The PIO will act as the primary contact for the news media. The CIO will assume the below responsibilities in the absence of the PIO.

B. The Staff Duty Officer, ranking field supervisor, Traffic Safety supervisor and/or Criminal Investigations Division supervisor shall be responsible for ensuring that the PIO is immediately informed of major incidents and all other events that may generate media interest within his/her field of responsibility. The PIO will then coordinate any release with the Sheriff or, in the absence of the Sheriff, his/her Chief Deputy. The CIO will be referred to in parentheses throughout this section to reflect the CIO as the secondary contact.

C. In the absence of the PIO (CIO), the senior agency official present should attempt to make contact with the PIO (CIO) as soon as possible, and provide a brief synopsis of the situation. If time permits, the presence of the PIO (CIO) should be requested via pager and/or cellular phone.

D. No situational summaries should be provided to any media outlets or representatives without approval from the Sheriff or, in his/her absence, the Chief Deputy acting on behalf of the Sheriff after coordination through the PIO (CIO).

1. Emergency Communications Center personnel should inform the PIO (CIO) immediately of media inquiries, but may, with approval from the Sheriff, Chief Deputies, or PIO/CIO, provide information to the news media in accordance with current ECC directives and General Order 413.4, Privacy and Security Act for Criminal History Information.

2. Adult Detention Center personnel must contact the PIO (CIO) to release information that is considered a matter of public record regarding individuals in custody who have been arrested and charged, including name (if an adult) and status of the charge or arrest.

**General Order 411.8**
**Criminal Investigations: Organization and Administration**
**(Excerpt)**

I. PURPOSE:

The purpose of this General Order is to set forth the authority, organization and administrative procedures to be employed in the investigation of criminal offenses by the Loudoun County Sheriff's Office.

II. POLICY:

It shall be the policy of the Loudoun County Sheriff's Office to vigorously respond to and investigate all reported violations of criminal law. The thorough investigation and prosecution of criminal offenses is a vital function of the Sheriff's Office and one which requires cooperation and coordination of both the Field Operations Division and the Criminal Investigations Division. In order to effectively and efficiently investigate criminal violations, the Sheriff's Office shall maintain a Criminal Investigations Division, staffed with experienced and highly trained Detectives.

III. ORGANIZATION AND ADMINISTRATION:

A. Organization:

1. Investigative Responsibility: The investigation of most criminal offenses begins with the first deputy on-the-scene. This will normally be a uniformed member of the Patrol Section. The majority of such offenses will be investigated from start to finish by the deputy who initially responds to the complaint. However, the investigative responsibility for cases of a serious and/or complicated nature rests with the Criminal Investigations Division. The guidelines for assignment and investigation of criminal cases are set forth in the Loudoun County Sheriff's Office General Orders 411.9 Criminal Investigation Case Management, and

411.12, Criminal Investigation: Operational Procedures.

2. Criminal Investigations Division: The Criminal Investigations Division is responsible for the investigation of all felony cases, serious misdemeanors which show a pattern of occurrence, and cases which involve organized criminal activity, narcotics, vice crimes and/or corruption. . . .

B. ADMINISTRATION:

. . .

2. CID Commander: The responsibility for the overall operation and administration of the Criminal Investigation Division rests with the Division Commander. The CID Commander shall be appointed by the Sheriff based on training, experience, and other criteria as deemed appropriate.

3. CID Lieutenants: The responsibility for the Units within the Criminal Investigations Division will be divided up between two Lieutenants within CID. The coordination of activities within these units will be the responsibility of the Lieutenants who shall report directly to the CID Assistant Division Commander.

4. CID Unit Supervisors: The CID Commander, or his designee shall refer cases to the appropriate investigative section,

based on the nature of the offense, in accordance with existing agency directives. The daily operation and administration of the sections is the responsibility of the Section Supervisors, who shall report to their respective CID Lieutenant Supervisors of the respective units shall be assigned by the Sheriff, based on expertise in a specific area.

5. CID Detectives: Deputies shall be assigned to the Criminal Investigation Division by the Sheriff, based on experience, training and/or the possession of specific skill or ability. The Sheriff shall establish minimum requirements that must be met in order to be considered for assignment to CID.

. . .

**General Order 411.9**
**Criminal Investigation: Case Management**
**(Excerpt)**

I. PURPOSE:

The purpose of this General Order is to establish the procedures to be followed in the receipt, recording, reviewing, classification, assignment and maintenance of cases forwarded to and/or initiated by the Criminal Investigation Division.

II. POLICY:

It shall be the policy of the Loudoun County Sheriff's Office to refer cases of a serious, complicated and/or confidential nature to the Criminal Investigation Division for investigation and/or resolution. In order to ensure the effective and efficient investigation of all cases turned over to or initiated by the Criminal Investigation Division, the Sheriff's Office shall strictly adhere to the procedures outlined in this order for the supervision, maintenance and control of criminal investigative activities.

III. PROCEDURE:

A. Case Status Control System:

1. Cases forwarded to C.I.D.:

a. Upon receipt of an offense report from the Operations Division marked "TOT-CID", the CID Commander or his designee shall review the report and forward to the appropriate Section Supervisor (i.e. Major Crimes, or Tactical Enforcement Unit) for further action. . . .

. . .

c. Upon receipt of an Offense Report, the Section Supervisor shall:

i. The section supervisor shall then review the report thoroughly and make a determination as to what investigative efforts should be undertaken by CID. The supervisor shall adhere to any specific instructions noted by the CID Commander, or his designee.

. . .

ii. If, after review, it is determined that the case warrants follow-up investigation, the Section Supervisor shall take the following action:

a. Select the Detective to whom the case is to be assigned for investigation.

b. Indicate in the Case Management System to whom the case is assigned and the date of assignment. (The detective listed shall be considered the "Primary Detective" and shall have responsibility for the investigation and all reporting requirements.)

c. Indicate whether the case is to receive "Routine" or "Priority" handling by the assigned detective. This

determination will be based on the criteria for assignment, seriousness of the crime and other elements as defined in this order.

d. Indicate the report due date. The due date is the date when an investigative supplement report must be submitted for review. Routine cases will normally be allowed thirty (30) working days for the first supplement and priority cases will be given three (3) working days.

. . .

B. Detective receipt of assigned case:

Upon receipt of an Offense Report from the Section Supervisor, the detective assigned to investigate the case shall:

1. Carefully review the report and any related documentation.

2. Proceed with the investigation in accordance with agency directives and procedures and any specific instructions indicated by the CID Commander, Assistant Division Commander and/or Section Supervisor.

3. Establish contact with the victim and/or reporting person within forty-eight (48) hours of receipt. In addition, it is suggested that

second contact be made with all principals in the particular case as soon as possible (within 48 hours if practical).

a. This practice is especially useful in that it may result in the receipt of new and/or additional information necessary to resolve the case.

b. Adherence to this practice also builds public confidence in the Sheriff's Office and indicates concern for the victim's welfare; others associated with the case and the desire to bring the investigation to a successful conclusion.

4. File a supplemental report within the prescribed time frame indicating investigative action taken and the development of leads, evidence and/or suspects. This procedure shall continue until the investigation is brought to a close, or until the Section Supervisor or the CID Commander inactivates the investigation.

. . .

C. Cases initiated by CID:

1. In certain situations, cases may come to the attention of CID personnel that have not been prereported to the Field Operations Division. In such instances, the CID Detective receiving the information shall initiate a LCSO Offense Report, detailing as much information as appropriate and forward through the Section Supervisor and CID Commander to the Records Section. The first supplemental report is due automatically in five (5) or

ten (10) days as appropriate. All other procedures outlined in this order and/or other agency directives shall be adhered to.

. . .

E. Case Screening System:

1. In order to more efficiently use available manpower, CID Supervisors shall thoroughly screen all Offense Reports received from the Field Operations Division. Particular attention shall be given to the extent and results of the preliminary investigation conducted by the reporting deputy. As outlined in a preceding section of this directive, the initial case screening begins in CID with the review by the Division Commander. However, the primary screening responsibility rests with the Section Supervisors.

2. Case screening by CID Supervisors shall be based on factors affecting solvability (listed below) and will result in a determination of whether or not the case will be assigned for follow-up investigation by investigative personnel.

a. Solvability factors to be considered in assigning a case for follow-up and/or changing the case status:

i. Seriousness of the offense

ii. Time elapsed between occurrence and reporting,

iii. Suspect identification,

iv. Vehicle identification,

v. Witness availability/reliability,

vi. Identification/traceability of property,

vii. Presence or lack of physical evidence,

viii. Pattern/similarity of modus operandi,

ix. Physical/mental condition of victim/ reporting person,

x. Other recognizable/articulable factors which would affect successful investigation of the case.

b. In addition to the solvability factors above, certain other criteria should be considered in assigning cases to investigative personnel for follow-up. Some of these factors are as follows:

i. Documented experiences of the agency in dealing with certain types of crimes/ incidents.

ii. Documented experiences of other law enforcement agencies in dealing with similar cases.

iii. Research conducted by the Sheriff's Office dealing with particular types of crimes/incidents.

iv. Research conducted in other law enforcement agencies pertaining to investigating and closing similar types of offenses.

v. Investigative workload and/or availability of resources necessary to

successfully deal with a particular type of crime/incident.

c. After careful application of solvability and other pertinent factors, the responsible supervisor(s) will either direct follow-up investigation or suspend the investigative effort. The decision to suspend the investigative effort and change the case status must be based on sound screening methods and involve one of the following criteria:

   i. Absence of further leads and/or solvability factors.

   ii. Unavailability of investigative resources.

   iii. Degree of seriousness of crime/incident.

d. It is important to remember that case screening is a continuous process, which begins with the initial reporting of the offense and continues until the case is brought to a conclusion. By the continuous screening and application of solvability factors, supervisors can better control the investigative efforts, workload and potential for success of their personnel and section.

F. Case File Maintenance:

. . .

4. Access to Case Files: Detectives shall exercise extreme care in controlling the access to case file folders under their control. Access to information in case files shall be limited to sworn personnel of the Loudoun County Sheriff's Office and sworn personnel from other law enforcement agencies. Exposure to any and all information shall be granted on a "need to know" basis and must be in connection with a legitimate, on-going investigative function. Mere curiosity will not suffice. Requests for information contained in case files by persons other than sworn law enforcement officers, shall be referred to the CID Commander and shall be dealt with in accordance with existing Sheriff's Office policy and laws governing release of such information.

    a. Information contained in investigative case files shall be available to prosecutors from the Commonwealth Attorney's Office upon request during all court proceedings. All information and/or documentation provided to the Commonwealth Attorney's Office shall be documented in written form, detailing all information/ documentation provided, date provided, and to whom it was provided, and this documentation shall be retained in the original case file.

**General Order 411.12**
**Criminal Investigation: Operational Procedures**
**(Excerpt)**

. . .

III. PROCEDURE

A. Investigative Responsibility:

1. Preliminary Investigations:

The investigation of most criminal offenses begins with the first deputy on the scene. This will normally be a uniformed member of the Field Operations Division. While the majority of criminal offenses and activity will be investigated from start to finish by the deputy who initially responds to the complaint, the investigative responsibility for cases of a serious and/or complicated nature rests with the Criminal Investigations Division. The responsibility for conducting a thorough and professional preliminary investigation shall remain with the first deputy on the scene until the case is resolved or investigative responsibility is transferred by competent authority.

A. Deputies assigned to investigate reports of criminal offenses shall, at a minimum, take the following action in the preliminary phase of the case:

1. Provide aid to the injured and summons emergency services as appropriate

2. Maintain and protect the crime scene to ensure that evidence is not lost or contaminated

3. Observe and record all conditions, events and remarks

4. Determine if an offense has actually been committed and, if so, the exact nature of the offense

5. Notify supervisor of major crimes that may require C.I.D. or extensive patrol response, or attract community or media attention

6. Determine the identity of the suspect(s) and effect an arrest if it can be accomplished either at the scene or through immediate pursuit

7. Notify the Emergency Communications Center of descriptions of suspect persons and/or vehicles, direction of travel and other relevant information pertaining to the incident for dissemination to other patrol units and agencies as appropriate

8. Locate and obtain complete identification of all victims and witnesses

9. Interview the victim(s) and witnesses to obtain as much information as possible about the event and potential suspects

10. Arrange for the collection of evidence and crime scene processing

11. Interview and obtain statements from the suspect(s) if such statements can be obtained legally

12. Accurately and completely record all pertinent information on appropriate report forms in accordance with LCSO General Order 413.3

13. Make appropriate NCIC/VCIN entries and clearances if applicable

14. Brief detectives who may assume the follow-up investigation responsibility as to pertinent information concerning the incident if appropriate

2. Follow-up Investigations:

The follow-up investigation should be an extension of the activities of the preliminary investigation and not a repetition of it. The purpose of the follow-up investigation in a non-criminal case is to gather additional information or to carry out actions that will lead to closure of the case. In a criminal case, the purpose of the follow-up investigation is to gather additional evidence and information to prove the elements of a particular crime in order to effect an arrest and support prosecution of the perpetrator and/or to recover stolen property.

. . .

a. The divisional responsibility to conduct follow-up investigations will normally be determined by the class/nature of the offense as follows:

. . .

1. Criminal Investigation Division Follow-up:

a. Criminal Investigation Division personnel will generally be responsible for follow-up investigation of the below listed categories of offenses, including attempts except as indicated in section "a" above.

Abduction, Abortion, Arson, Auto theft, Bigamy and Polygamy, Blackmail and Extortion, Bomb Violations, Bribery, Computer Crimes, Credit Card Offenses, Embezzlement, Forgery and Counterfeiting, Fraud, Homicide, Kidnapping, Malicious Wounding (unsolved and/or where death is possible), Medical Examiner Cases (excluding traffic-related deaths), Missing persons (including juveniles), Rape, Robbery, Runaway, Sex Offenses, Suicides attempts where there is a likelihood of death.

b. In extenuating circumstances at the discretion of the Sheriff, Chief Deputy or Criminal Investigation Division Commander, the following offenses could be assigned for follow-up by CID:

Those cases could include but are not limited to: Telephone calls (obscene and threatening), Weapons offenses, Accidental overdose and injuries, suspicious circumstances, persons, and vehicles, or any other criminal cases designated by the Sheriff, Chief Deputy or CID Commander requiring CID resources or expertise.

c. Deputies assigned the responsibility of investigative follow-up in criminal cases shall, at a minimum, take the following action:

1. Review and analyze reports of preliminary investigations
2. Record information obtained during follow-up investigation
3. Review agency records for investigative leads
4. Seek additional information (from uniform deputies, informants, contacts in community, other investigators/ agencies, etc.)
5. Interview victims and witnesses
6. Interrogate suspects
7. Arrange for the dissemination of information as appropriate. (Teletypes, roll call, lookouts etc.)
8. Plan, organize and conduct searches
9. Collect and preserve physical evidence
10. Recover stolen property
11. Arrange for the analysis and evaluation of evidence
12. Review results from laboratory examinations
13. Identify and apprehend the perpetrator(s)
14. Check for suspect(s) criminal history,
15. Determine if the suspect may have committed other crimes

16. Determine if suspect/perpetrator meets Career Criminal criteria

17. Consult with the Commonwealth Attorney's Office in preparing cases for court presentation and assisting in the prosecution thereof

18. Attendance to testify in court

. . .

B. Investigative Techniques and Resources:

The successful investigation of criminal and non-criminal cases involves the application of a variety of techniques and the utilization of many sources of information. The following is a list of several of the areas of utmost importance to Deputies conducting investigations. The list is by no means all-inclusive and deputies are encouraged to be innovative and persistent in their investigative duties.

1. Information Development

The development of pertinent case information begins when a call for Sheriff's Office assistance is received, and continues until the case is cleared or suspended. Obtaining and recording even apparently minor information is often crucial to the successful conclusion of a case.

a. Sources of agency information that are valuable and should be utilized as needed include:

1. Agency master file

2. Arrest records

3. Traffic and accident reports

4. Field observation reports
5. Identification Unit photos and fingerprint records
6. Offender Management System
7. Licensing Office records
8. Informant file

b. Outside agency information that can be valuable in an investigation and should be utilized when appropriate. Such information includes:

1. VCIN/NCIC Criminal History Records Information (CHRI)
2. DMV records
3. Probation and parole records
4. Local and federal agencies records
5. Court records
6. Tax records
7. Licensing Unit's records
8. Welfare and social service agency records
9. Board of Education records
10. Real Estate records
11. Post Office records

c. Private organizations and agencies can also provide information valuable to investigations. Court orders may be necessary to obtain

certain records. Such sources of information include:

1. Utility companies
2. Telephone companies
3. Banks and credit agencies
4. Unions and professional agencies
5. Insurance companies
6. Neighbors, social contacts, and business associates

d. Use of informants

All deputies are responsible for developing sources of information that will assist them in their follow-up investigations. Information that is obtained that relates to specific crimes being investigated by other deputies or investigators should be brought to the attention of those persons.

Information is available from many sources, e.g. concerned citizens who wish to remain anonymous, criminals who have firsthand knowledge of illegal activity, and relatives or friends of those involved in criminal enterprises. These sources should be kept in mind when conducting investigations and related interviews. Deputies are cautioned to determine the motivation of individuals who provide information in order to help evaluate that information.

When informants are used to contribute to the solution of a case and their identity is to be protected, the Deputy involved shall notify the Supervisor of the Tactical Enforcement Unit, CID in order that the proper documentation and precautions may be taken. Informant processing and handling shall be in accordance with LCSO General Order 409.4.

Confidentiality must be maintained and deputies will refrain from discussing informants, information provided, or cases they are involved in when inappropriate.

2. Interviews and Interrogations

The effective use of field interviews, interviews of victims and witnesses, and interrogations of suspects are often crucial in solving many types of crimes.

a. Field interviews

i. Field interviews are a productive tool and source of information for the Sheriff's Office. However, they should only be used in the pursuit of legitimate law enforcement goals and not to harass any segment of the community. When used properly, they can discourage criminal activity, identify suspects and add intelligence information to the files of known criminals.

ii. Field interviews should be conducted and recorded in all situations where:

a. Subject's actions are unusual or suspicious

b. Subject and/or vehicle does not fit area

c. Subject's actions are not consistent with time of day and/or area

d. Other articulable circumstances which arouse suspicion

iii. A written record should be made on an IBR. Full information should be recorded on the suspect, vehicle and behavior/ circumstances observed. It will not always be possible to personally interview the person exhibiting the suspicious behavior and/or sighted in an unusual location. In such situations, as much information as possible should be recorded for intelligence purposes.

C. Victim/Witness Interviews

1. Detailed notes and/or a recording should be made for future reference giving time, date, location, deputies present, etc.

2. The trauma/stress to which the victim or witness has been subjected should be considered and the interview conducted in such a manner as to reduce stress and minimize further problems

3. The age, physical limitations, and credibility of witnesses should also be considered

D. Interrogation of Suspects

In the interrogation of suspects, deputies should consider these important points:

1. Interrogations to obtain investigative leads can be very useful, but all constitutional precautions must be taken and recorded if the interrogation is to be used in court later

2. Detailed notes and/or a recording should be made for future reference and court use giving time, date, location, deputies present, waiver of rights, time interrogation ended, etc.

3. Statements obtained during an interrogation must not be based on coercion, promises, delays in arraignment, or deprivation of counsel

4. In order to use a statement in court, a suspect should be advised of their "Miranda" constitutional rights and the deputy must be able to demonstrate that the suspect understood those rights and made a knowing and intelligent waiver of those rights

    a. Deputies should assure that hearing impaired and/or non-English speaking persons understand their rights under the Constitution. Qualified interpreters should be used whenever Constitutional issues become apparent to deputies who are confronted with hearing impaired and/or non-English speaking persons.

5. Juvenile victims, witnesses, and suspects must be given the same constitutional

protection as adults. The following additional safeguards should be followed:

a. Parents or guardians should be notified whenever a juvenile is interrogated, taken into custody, or charged

b. The number of deputies engaged in the interrogation and its duration should be kept to a minimum

c. A brief explanation of the Juvenile Justice System and Agency procedures should be provided

d. Deputies should remember that by using innovative, yet proper methods, much valuable evidence could be obtained from victims, witnesses, and suspects. A flexible and effective interview and interrogation technique can obtain valuable evidence that might otherwise be lost.

E. Collection, Preservation, and Use of Physical Evidence

Deputies must realize that physical evidence is of major importance in all cases, particularly those without witnesses. The successful prosecution of a case often hinges on the quality of the physical evidence collected and preserved.

1. All deputies are responsible for the preservation of evidence and for maintaining and documenting the chain of custody of all evidence that is in their custody.

2. Most evidence collection will be handled by the Crime Scene Unit who are trained in evidence processing.

F. Surveillance

Stakeout and surveillance operations are valuable investigative tools available to deputies. Such methods are very often the only ones available to identify suspects, vehicles, and locations of criminal activity. Since surveillance and stakeout operations generally involve the commitment of significant manpower and other resources, all such operations shall be coordinated through the Supervisor of the Tactical Enforcement Unit in accordance with LCSO General Order 409.4.

. . .

H. Background Investigations (criminal cases)

. . .

2. Prior to beginning a complete background investigation on any person in a criminal case, the purpose of such an inquiry should be clearly identified and approved by the appropriate section supervisor in CID. . . .

3. In conducting background investigations on criminal targets, deputies are encouraged to be innovative and resourceful in searching for and collecting pertinent information. While information may come from virtually any source, the following should be considered routinely:

a. Court records

b. Bank and credit agency records

c. Telephone/utility Company records

d. Internet/Social Media sites

e. School records

f. Military records

g. Business/professional licensing agencies' records

h. FBI and police records

i. DMV files

J. Employers (past/present)

k. Mortgage and rental agency records

l. Friends and associates (if appropriate)

**LOUDOUN COUNTY HUMAN RESOURCES HANDBOOK**

## Chapter 1
## General Principles and Governing Policies
## (Excerpts)

### Purpose and Intent

Purpose: These Loudoun County policies and regulations ensure a system of personnel management based on merit principles and objective procedures for recruiting, classifying, appointing, promoting, transferring, training, disciplining, filing grievances, implementing reductions-in-force and other aspects of County employment.

Intent: These policies and regulations are intended to be in compliance with all applicable Federal and State laws and regulations.

**1.1 Authority**

The Board of Supervisors establishes personnel policies for all employees and volunteers under its supervision and control. The Chairman of the Board of Supervisors on behalf of the corporate board provides direction to the County Administrator and other employees who are assistants to the Board of Supervisors.

**1.2 Administration and Enforcement**

The County Administrator implements and enforces these rules and regulations in adherence to the purpose and intent of the County's personnel policies. . . . The County Administrator establishes procedures and/or guidelines regarding work activity and record keeping to ensure equitable and uniform administration and enforcement of these policies.

. . .

**1.4 Scope**

. . .

(B) Employees not under the Board of Supervisors' control and supervision, including officers and employees of Constitutional Officers, are not covered by this policy and these regulations except by agreement between the department/agency director, supervisor, or Constitutional Officer and the Board of

Supervisors. The County Administrator may act as the Board of Supervisors' agent in negotiating and executing such agreement(s).

**1.5 Merit Principles**

The County's personnel policies and procedures will be consistent with the following merit principles and are based ont eh Federal Merit System Standards.

. . .

Merit Principle V: Fair treatment of applicants and employees in all aspects of personnel management without regard to race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, gender identity, or other non-merit factors and with proper regard for their privacy and constitutional rights as citizens will be assured

Merit Principle VI: Employees will be protected against coercion for partisan political purposes and will be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

### 1.6 Equal Employment Opportunity

The Board of Supervisors has . . . declared that the county does not discriminate against employees or applicants for employment based on political affiliation, sexual orientation, or gender identity.

. . .

The County of Loudoun is also committed to providing a work environment free of any form of retaliation. Retaliation is prohibited within the workplace and is defined as overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group for lawfully exercising rights under this Equal Employment Opportunity Policy.

## Chapter 3
## Employee Conduct
## (Excerpt)

### 3.5 Political Activity

Employees have every right to vote as they choose, to express their opinion, and to join political organizations. County employees have the right to not be forced to take a political position as a condition of employment due to particular job duties. Nothing contained in this policy shall be interpreted to apply to duly elected or appointed constitutional officers.

Participation in political activities is permitted unless:

1. Such activities take place during assigned hours, or
2. Involvement adversely affects the employee's ability to do his/her job or adversely affects the employee's department.

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