No. 19-342

In The
Supreme Court of the United States

MARK MCCAFFREY,

Petitioner,

v.

MICHAEL L. CHAPMAN, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER MARK MCCAFFREY

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Now comes the Southern States Police Benevolent Association (hereafter PBA) and respectfully submits this amicus curiae brief in support of the petition for writ of certiorari filed by Deputy Sheriff Mark McCaffrey.[1]

I. INTEREST OF *AMICUS CURIAE* PBA

PBA is an eleven state police association that promotes public safety, more effective professional law enforcement and the rights of police officers. PBA's membership includes many Deputy Sheriffs including from Virginia. PBA has encountered countless instances of similar retaliatory political corruption for decades and is therefore very familiar with the problems presented from the instant case and many others like it. PBA's members are severely impacted by the decision below.

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[1] Pursuant to Rule 29, F.R.A.P. and Rule 37.6, this amicus brief was prepared by the undersigned PBA counsel. No counsel of any party authored this brief in any part. No party or party's counsel, or other person, contributed money to fund this brief. All parties have consented to the filing of the amicus brief.

II. SUMMARY OF ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION IN ORDER TO RESOLVE SUBSTANTIAL CONFLICTS OF LAW AMONG MANY CIRCUIT COURTS AND BECAUSE THE ISSUES PRESENTED ARE OF EXCEPTIONAL IMPORTANCE TO ENSURE THAT DEPUTY SHERIFFS ENJOY CONSTITUTIONAL PROTECTIONS FROM RETALIATION

> **"People challenge me. I'm going to crush them. They'll never work in law enforcement. I'm going to ruin their career."** Sheriff Michael Chapman, Complaint; JA 12.

Sheriff Chapman's above stated retaliatory motive captures the essence of this case. This is a case about an egregious abuse of government power by a Virginia Sheriff who maliciously and corruptly terminated Deputy Sheriff Mark McCaffrey because of traditional protected activity supporting a political candidate.

Sheriff Chapman's actions were so corrupt that the constitutional right to freely vote was also implicitly impaired. See e.g., *Shocckency v. Ramsey County*, 493 F.3d 941 (8th Cir. 2007)(protecting Deputy Sheriffs from political retaliation), citing *Burson v. Freeman,* 504 U.S. 191, 196 (1992) ("the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office") When the government's conduct frustrates and impedes the right to freely vote, as in patronage based employment schemes, there is a far greater need for constitutional protection.

This Court should grant certiorari because the confusing political affiliation law must be clarified to ensure constitutional protection for Deputy Sheriffs from retaliatory terminations and not reward crooked Sheriffs for political corruption schemes damaging to public safety.

Justice Scalia has explained that the pertinent law is in "shambles" of "uncertainty and confusion" since *Elrod/Branti*. *Rutan v. Republican Party,* 497 U.S. 62, 112-13 (1990) (Scalia, J. dissenting). Justice Scalia observed: "A few examples will illustrate the shambles *Branti* has produced. A city cannot fire a deputy sheriff because of his political affiliation, but then again perhaps it can, especially if he is called the "police captain." (omitting citations) Justice Scalia further explained: "the 'tests' devised to implement *Branti* have produced inconsistent and unpredictable results. That uncertainty undermines the purpose of both the nonpatronage rule and the exception…"

The Fourth Circuit below rejected constitutional protection for Deputy McCaffrey with draconian reasoning, over a strong dissent by Judge Robert King who observed how the majority had "gone too far." 921 F.3d 159, 170 (4th Cir.) (King, J., dissenting). Six Circuit Judges of the Fourth Circuit voted to rehear the case en banc.

This Court should grant the petition for several reasons:

1) To resolve a substantial split of authority among the Circuit Courts regarding First Amendment political association and expression protections for police officers; it appears that at least seven Circuits provide *Branti* protection for Deputy Sheriffs;

2) To clarify the law so that Deputy Sheriffs and their employers will better understand what types of political association and expressive conduct are protected or not;

3) To enunciate more clear governing principles in political retaliation cases in order to promote more professional policing, workplace efficiency and by eliminating corrupt management practices as practiced by Sheriff Chapman here;

4) To clarify political association law so as to eliminate an undue classification of American Deputy Sheriffs as being an inferior class of public employees and citizens.

This case presents constitutional employment issues of enormous importance for the American law enforcement community and for public safety. The case involves a termination of a Virginia Deputy Sheriff because of expressive activity that some Circuits would have protected, while the Fourth Circuit and some others have not protected. As the Eleventh Circuit observed in *Underwood v. Harking,* 698 F.3d 1335, 1338 (11th Cir. 2012):

> First Amendment jurisprudence in the area of firings based on political affiliation or candidacy is, at best, muddled. We do not pretend to eliminate all of the confusion with this opinion, but we hope that we can at least harmonize our existing cases and enunciate a workable and relatively predictable standard.

The widely noted "confusion" in political affiliation law referenced by *Underwood* has hampered the police community for many years. In *Underwood*, Judge Martin, in his lengthy dissenting opinion, further explained how "our sister circuits

have adopted sharply conflicting views." 698 F.3d at 1347. These sharply conflicting views have created nationwide confusion for both police officers and administrators. This crucial area of law is much in need of settling.

Many retaliation cases reflect different methodological tests and different approaches, and many have generated strong dissents. *Cf. Nord v. Walsh County*, 757 F.3d 734 (8th Cir. 2014); *Gall v. N.J. Meadowlands*, 490 F.3d 265 (3d Cir. 2007) and other cases *infra*. The facts here are particularly egregious and present vastly more compelling circumstances warranting constitutional protection for Deputy McCaffrey as compared with other cases.

In contrast to the extreme position of the Fourth Circuit below, a number of leading cases have recognized First Amendment protection for Deputies from political patronage. In *Barrett v. Thomas,* 649 F.2d 1193, 1200–01 (5th Cir. 1981), the Fifth Circuit upheld a jury verdict in favor of Deputies who had been fired by a Texas Sheriff for not supporting him in an election. The Court explained that the job duties of the more than 500 deputy sheriffs in the department "range[d] from clerical work to law enforcement" and noted that the Sheriff had "offer[ed] no satisfying justification for demanding greater political loyalty from his deputies" than the sheriff in *Elrod* was entitled to expect from his employees: "In a sheriff's department with more than 700 employees, including approximately 550 deputies, the absence of political cohesion between sheriff and deputy can hardly be said to undermine an intimate working relationship." *Id.* at 1201. *Cf. DiRuzza v. County of Tehama,* 206 F.3d 1304, 1309, 1310 (9th Cir. 2000) (reversing summary judgment for Sheriff where

Deputy Sheriff was fired for Plaintiff's political activity in support of Sheriff's opponent).

In *Thomas v. Carpenter,* 881 F.2d 828 (9th Cir. 1989), a Sheriff's Lieutenant who had run unsuccessfully against the incumbent Sheriff brought a retaliation claim. The Court held that the Deputy stated a valid claim for relief. Many of the leading political patronage Circuit cases such as *Thomas, DiRuzza, Barrett, Falco, Bland, Brady, Stough* and other cases cited herein, provide principles and tests consistent with this Court's teachings in *Elrod, Branti and Rutan*.

Following *Branti*, however, the Circuit Courts took many divergent approaches. *See* Susan Lorde Martin, *A Decade of Branti Decisions: A Government Official's Guide to Patronage Dismissals,* 39 Am. U. L. Rev. 11, 23–48 (1989) (reviewing cases from other circuits). In *Burns v. County of Cambria*, 971 F.2d 1015 (3d Cir. 1992), the Third Circuit held that it was clearly established by 1982 that public employees could not be fired due to their political affiliations.

In *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), another panel of the Fourth Circuit recognized protection for some Virginia Deputy Sheriffs but applied qualified immunity. *Bland* explained: "[T]he First Amendment generally bars the firing of public employees "solely for the reason that they were not affiliated with a particular political party or candidate." These many conflicting cases and the needs of the police community warrant certiorari so that this Court can unravel all of this confusion and provide clear principled law.

It appears that the Third, Fifth, Sixth, Eighth, Ninth, Tenth and Eleventh Circuits essentially support McCaffrey's position of political affiliation

protections for Deputy Sheriffs. In the First Circuit, lower courts have held that Deputy Sheriffs are protected by *Branti*. *Tedeschi v. Reardon,* 5 Supp.2d 40, 45 (D. Mass 1998).

In recent years, the American law enforcement community has become increasingly pummeled and undermined by retaliatory employment schemes that impede police operations. destroy *esprit de corps* and obstruct the rule of law E.g. *Bland*; *Durham v. Jones*, 737 F.3d 291 (4th Cir. 2013); *Andrew v. Clark*, 561 F.3d 261 (4th Cir. 2009); *Edwards v. Goldsboro*, 178 F.3d 231 (4th Cir. 1999), and other cases cited herein. Now a whole class of officers have had First Amendment protection from corrupt patronage schemes effectively rendered off limits for them. When police officers are stripped of important constitutional rights, a crucial component of public safety is undermined.

Deputy Sheriffs are the most prevalent front-line law enforcement officers throughout America. Deputies serve in a wide variety of core police functions, from traditional patrol, emergency response, investigations and virtually every dangerous aspect of policing. Deputies usually work in harms' way and under extraordinary pressures.

There is simply nothing about these core police services by Deputies that involves partisan political interests. The Fourth Circuit's approach below is palpably at odds with professionalism in policing and in fact promotes an even greater politicization of the American police workforce. As Judge King explained in dissent, the Fourth Circuit "went too far."

A. POLITICAL PATRONAGE BY SHERIFFS SUBVERTS CRUCIAL PROFESSIONALISM IN MODERN POLICING.

Sheriffs are elected and in part live in a partisan world. Some Sheriffs regretfully go to extremes in their zeal to be reelected by using political patronage schemes, which often decimate the constitutional rights and liberties of Deputies. Some Sheriffs, like Sheriff Chapman, abuse their offices by attempting to politicize the workplace by coercing Deputies to politically support the Sheriff. This electoral abuse by Sheriffs has grown throughout America and has become a serious force undermining professional and effective law enforcement which is crucial for enhanced public safety. Professionalism in policing will be enhanced by the eradication of political patronage by Sheriffs and by respect for constitutional protection for Deputies who engage in protected activities. The Fourth Circuit approach encourages greater politicization of police agencies, which undermines professional policing.

Professionalism in policing is crucial in modern America. In recent years, the law enforcement community has made many demonstrable strides in enhanced professionalism. See e.g., Parish, *Unsatisfactory Service*, 19 W. Mich. U. Cooley J. Prac. & Clinical L. 237 (2018)(noting the "increased professionalism in policing"); Rachel Harmon, *Promoting Civil Rights Through Proactive Police Reform*, 62 Stan. L. Rev. 1 (2009).

Training and education, often heavily dependent upon budgets, has enhanced public safety. Procedural reform with modernized agency regulations has promoted new ideals. New tools such

as body cameras, tasers and other less than lethal weapons have been recognized as promoting professionalism in law enforcement. Despite these notable improvements in policing, however, political patronage, as practiced by Sheriff Chapman here and others like him, remains as a stark discriminatory relic of the past.

Because of the partisan nature of how individuals become Sheriffs, this Court must be especially protective of safeguarding the association and expression rights of Deputies through the First and Fourteenth Amendments. Certiorari should be granted to eliminate the substantial confusion and clear Circuit Court conflicts so that Deputies will enjoy similar constitutional protections as do other police officers.

For decades, lower courts have struggled with unclear law governing political retaliation claims and issues arising from protected activity by Deputy Sheriffs and police officers. Divergent approaches by various Circuit courts have resulted in conflicting law whereby some police officers are protected in situations where officers in other jurisdictions are terminated without protection. This Court in recent years has clarified public employee expression law in several areas. E.g. *Lane v. Franks*, 573 U.S. 228 (2014).

However, *Branti v. Finkel* has created a divergent following in political affiliation law. which this Court has not addressed since *Rutan v. Republican Party*, 497 U.S. 62 (1990). In *Rutan*, Justice Scalia then observed how political affiliation law was in "shambles" of "uncertainty and confusion" since *Elrod* and *Branti*. 497 U.S. at 112-13. Now this law is in a state of pure chaos.

The issues presented in Deputy McCaffrey's petition involve fundamental First Amendment issues, which impact the police community throughout America. In *West Virginia v. Barnette*, 319 U.S. 624, 642 (1943), this Court held:

> "If there is a fixed star in our constitutional constellation, it is that no official, high or petty can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or for citizens to confess by word or act their faith therein."

B. A CORRUPT SHERIFF'S RETALIATORY PATRONAGE SCHEME IS UNCONSTITUTIONAL AND THE COMPLAINT IN THIS CASE STATES VALID CLAIMS

Deputy McCaffrey was fired because of his expression which arose from Sheriff Chapman's "campaigns of unrelenting retaliation" (JA12) after the following overt threats by Sheriff Chapman:

> **"People challenge me. I'm going to crush them. They'll never work in law enforcement. I'm going to ruin their career."** Sheriff Michael Chapman, Complaint; JA 12.

Sheriff Chapman executed his overt retaliatory threats, which has obstructed justice, ripped off the taxpayers, undermined law enforcement operations, and ruined Deputy McCaffrey's career as promised.

The 51-page complaint demonstrates extensive unlawful, corrupt and retaliatory actions by Sheriff Chapman. E.g. JA 20-22, 28-29, 36-38, 41. 44, 47. After Chapman learned of McCaffrey's support for his

election opponent, Chapman vowed "to get him" and did so. JA 44

Chapman's practices fit the mold of what often happens when a Sheriff implements a patronage scheme to attempt to extort reelection and personal graft: resulting public corruption and undermined law enforcement. These old-fashioned Sheriffs' political patronage schemes still thrive and breed a broad range of corruption and catastrophe for police families. Firing those who support your opponent is also a direct form of voter intimidation.

The Fourth Circuit below broke the dam in this enormously important area of constitutional law - and also broke the spirit of the American police community. As Judge King demonstrated in his authoritative dissent, the majority decision here has "gone too far" by further opening the door for more *en masse* political firings of deputy sheriffs – a holding that will further politicize sheriff's departments, further destroy Deputy Sheriffs and further obstruct the rule of law. As Judge King explained:

> "Merely by performing 'law enforcement activities,' any beat cop in our bailiwick can now be fired for not having the right political association." 920 F.3d at 177.

Six Circuit judges of the Fourth Circuit voted for Rehearing en banc. Certiorari is critically needed in order to clarify and settle this crucial law and return rank and file Deputy Sheriffs to their rightful place of having First Amendment protection from being fired because of their off-duty political affiliation or associations.

The Fourth Circuit decision below is not only erroneous and in conflict with Supreme Court

precedent, it also undermines the police community and frustrates enhanced professionalism in policing. Rank and file Deputy Sheriffs are simply not the kind of political or partisan policymaking officials exempted from constitutional protection by *Elrod/Branti* and their progeny.

The decision below misreads how very narrow the basis is for an exception to constitutional protection. For a position to be exempted from protection, it must be a political or partisan policymaking position. Law enforcement functions and activities of rank and file Deputies not only do not involve political or partisan interests – they are forbidden, and surely not a valid basis for a classification eliminating protection.

This case therefore presents an urgent "officer down" call for the police community because, *inter alia*, the current anti-police climate in America has caused skyrocketing frivolous complaints against officers therefore necessitating constitutional protection from ensuing retaliation. The Fourth Circuit majority decision is a sharp departure from leading anti-retaliation precedent for police officers such as *Hunter v. Town of Mocksville*, 789 F.3d 389 (4th Cir. 2015). There, Judge Wynn's majority opinion recognized the dangers and harm from anti-police retaliation and police management corruption. In its analysis of the *Pickering/Connick* lines of cases, the decision here did not apply *Hunter*.

The decision's reliance on *Jenkins v. Medford*, 119 F.3d 1156 (4th Cir 1997) (en banc) complicates the issues further in light of the overbreadth of *Jenkins* and its unsound wholesale pronouncements. The majority apparently felt constrained to follow *Jenkins,* but *Jenkins* failed to satisfy the

Elrod/Branti test. *Branti* requires a deeper drill-down to determine if the activities of the position are partisan or political – the decision here and *Jenkins* failed by not applying this crucial test. The dissent in *Jenkins* made this point.

Certiorari is needed to unravel all of this, to get into the weeds and enunciate protection consistent with this Court's precedent. Because of the sweeping adverse impact of the decision and *Jenkins*, PBA therefore must sound an urgent alarm to this Court for certiorari. Deputy Sheriffs must not be singled out, as an inferior class, for the elimination of fundamental First Amendment rights enjoyed by other Americans.

III. ARGUMENT

A. THE MAJORITY DECISION SUBSTANTIALLY CONFLICTS WITH SUPREME COURT AND OTHER CIRCUIT PRECEDENT AND UNDERMINES ENORMOUSLY IMPORTANT DEPUTY SHERIFF INTERESTS IN HAVING CONSTITUTIONAL PROTECTION FROM PATRONAGE RETALIATION

"We begin our analysis by stating the well settled rule that men and women do not surrender their freedoms when joining the police force." *Driebel v. City of Milwaukee*, 298 F.3d 622, 637 (7th Cir. 2002); accord *Hunter v. Mocksville*, 789 F.3d 389, 393 (4th Cir. 2015). Law enforcement officers are not "relegated to a watered-down version of constitutional rights." *Garrity v. New Jersey*, 385 U.S 493, 500 (1967). Despite these principles, however, in *Hall v. Tollett*, 128 F.3d 418, 427 (6th Cir. 1997), a Tennessee

Sheriff fired a deputy because he "hauled around the wrong bumper sticker."

Branti provides the key test in order for a position to be subject to permissible political patronage; the employer must "demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Sales v. Grant*, 158 F.3d 768, 776 (4th Cir. 1998); *Knight,* 214 F.3d at 550.

The constituonal rights in issue are core "bedrock" fundamental American values. In *Falco v. Zimmer*, 767 Fed Appx. 288, 2019 WL 1569564 (3d Cir. April 11, 2019), the Third Circuit held that political activity by Chief Falco was protected from the retaliatory animus of Mayor Zimmer:

> [P]olitical participation is a quintessential civic duty, giving substantial weight to Falco's side of the test. Moreover, restricting public employees from engaging politically is contrary to bedrock principles of civic society—and, more relevant here, does not seem to promote the efficiency of government services.

President Obama explained the importance of law enforcement officers and the need for *protections* for officers:

> So what these officers do is dangerous. They do it because it's important. Maintaining the public safety is the foundation of everything that is good that happens every single day in America…
>
> And that's why Americans everywhere owe a debt to our nation's law enforcement. And we have to do our part by making sure all of

> you have the resources and protections and support that you need to do your job well. *http://www.whitehouse.gove/thepress-office/2017/05/12/*
>
> *Remarks-present-and-vice-president-honoring-national-Association-pol-0.*

1. PARTICIPATION IN LAW ENFORCEMENT IS NOT AN APPROPRIATE BASIS TO TRIGGER *BRANTI* AND EXCLUDE PROTECTION

The Fourth Circuit's *per se* reliance on participation in law enforcement to trigger the *Elrod/Branti* exception erroneously declares law enforcement to be an inherently partisan undertaking. This part of the decision is especially troubling in that the functions and duties of non-senior management police officers are completely to the contrary – law enforcement activities are not partisan or political and may not be. As Judge King explained, which highlights an enormous problem:

> "Merely by performing 'law enforcement activities,' any beat cop in our bailiwick can now be fired for not having the right political association." 921 F.3d at 177.

Judge King's point here, that the majority recognition of the performance of "law enforcement activities" as being the dispositive turning point eliminating constitutional protection is irrational. Performing law enforcement functions is most certainly *not* either a political or partisan activity. Deputy Sheriffs are not meant to be the political bag men/women or puppets of the Sheriff.

The essential work of rank and file Deputies cannot be politicized without extraordinary costs. This troublesome point from the Fourth Circuit decision appears to be driven from *Jenkins*, 119 F.3d at 1165 ("we limit dismissals …to those deputies actually sworn to engage in law enforcement activities.") The *Law Enforcement Code of Ethics* and other authority forbids any political or partisan functions in policing. See https://www.cvcja.org/law-enforcement-code-of-ethcis/; https://www.sheriffs.org/Code-of-Ethics-of-sheriff.

2. *HEFFERNAN* IS INSTRUCTIVE

The Fourth Circuit decision overlooked the most recent authority from this Court in a political retaliation case where a police officer was punished because he was perceived to have supported the political campaign of the Mayor's opponent. *Heffernan v. City of Patterson*, 136 S. Ct. 1412, 1417 (2016). Heffernan was seen holding a campaign yard sign and was demoted the next day. This Court explained:

> With a few exceptions, the Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate. Id. at 1427.

Thompson v. Shock, 852 F.3d 786, 791 (8th Cir. 2017) described the test as "the narrow justification test outlined in *Elrod*…" *Accord Wells v. Cole*, 355 F. Supp. 3d 841 (W.D. Mo. 2018) (holding that constitutional right of Deputy Sheriff for supporting Sheriff's election opponent was clearly established); *Knight v. Vernon*, 214 F.3d 544, 548 (4th Cir. 2000)(*Branti* exception is "narrow").

B. THIS COURT SHOULD GRANT CERTIORARI TO EXAMINE THE NEED TO OVERRULE THE EXTREME FOURTH CIRCUIT APPROACH, WHICH UNDERMINES PUBLIC SAFETY AND THE POLICE COMMUNITY'S INTERESTS IN CONSTITUTIONAL PROTECTION FOR DEPUTY SHERIFFS

The Fourth Circuit in *Jenkins* launched an unduly broad wholesale pronouncement: "North Carolina Deputy Sheriffs may be lawfully terminated for political reasons…" 119 F.3d at 1164. In this case, the Fourth Circuit went even further. As Judge King says, it "went too far." Much too far.

The basis for the overbreadth of *Jenkins* has never been clear. In *Bland*, the Court observed that there is a "question as to how to read *Jenkins*." 730 F.3d at 377. *Bland* went further and observed that Jenkins has sent "very mixed signals." 730 F.3d at 391. In his concurring opinion in *Pike v. Osborne*, 301 F.3d 182, 186 (4th Cir. 2002) Judge Hamilton observed the confusion from *Jenkins*: "[o]ur decision in *Jenkins* sends mixed signals to sheriffs." One of the messages that it sent to Deputies is that they are declared as second class citizens.

Jenkins' categorical rule is that all North Carolina Deputies sworn to engage in *law enforcement activities* may be punished for political disloyalty. 119 F.3d at 1163-64. *Jenkins'* reliance on alter ego status is unsound in this context. Even if deputies are considered as alter-egos of the Sheriff, the Sheriff is supposed to be a law enforcement officer and not a politician.

Deputies do not exercise partisan judgment on behalf of the Sheriff. Contrary to the conclusion in *Jenkins*, the exercise of law enforcement powers by Deputies does not trigger *Elrod/Branti*. *Jenkins* and the decision in this case are inherently unsound and conflict in material ways with *Elrod, Branti, Rutan, Heffernan,* and other cases cited herein.

The Fourth Circuit reliance upon *Jenkins* is also misplaced because of the vast differences of underlying state law as observed by Judge King. *Jenkins* should not control but its sweeping breadth is often cited as a basis of invoking the narrow *Branti* exception when really inapplicable. The *Branti* exception permitting political retaliation is "narrow." *Lawson*, 828 F.3d at 248.

The overbroad *Jenkins* principle was adopted over a compelling dissent by Judge Motz, 119 F.3d at 1165, joined by Judges Hall, Murnaghan and Michael. Political patronage cases since then have continued to generate dissents and concurrences, wrestling with the slippery slope of *Jenkins.* E.g. *Knight v. Vernon*, 214 F.2d 544, 553 (4th Cir. 2000) (Widener, J. dissenting in part)*; Harter v. Vernon,* 101 F.3d 334 (4th Cir. 1996) (Luttig, J. dissenting from denial of rehearing en banc); *Smith v. Frye*, 488 F.3d. 263, 273 (4th Cir. 2007) (Motz, J. concurring). Other Circuits support constitutional protection for Deputies in this political patronage context. E. g, *Brady v. Fort Bend County*, 145 F.3d 691, 704 (5th Cir. 1998); *Stough v. Gallagher*, 967 F.2d 1523 (11th Cir. 1992). All of these differing views further warrant certiorari.

Law review commentary further reveals the conflict and wide debate over *Jenkins* and related patronage law issues See e.g. Burke, *Political Patronage and North Carolina Law: Is Political*

Conformity with the Sheriff a Permissible Job Requirement for Deputies?, 79 N.C. L. Rev 1743 (2001); Galloway, *A Narrow Exception Run Amok: How Courts Have Misconstrued Employee Rights' Law Exclusion of Policymaking Employees, and A Proposed Framework for Getting Back on Track*, 86 Washington L. Rev. 875 (2011).

Sheriffs are also being increasingly convicted of various corruption schemes including offenses whereby employees were politically coerced. See, e.g., *U.S. v. Maynor*, 310 Fed. Appx. 595, 596-98 (4th Cir. 2009) (conspiracy and perjury); *U.S v. Medford*, 661 F.3d 746 (4th Cir. 2011) (conspiracy to commit extortion; the very sheriff that employed the patronage scheme in *Jenkins v. Medford* ultimately went down for public corruption); and *U.S. v. Hewett*, (E.D.N.C. 7:08-CR 51-BR) (obstruction of justice).

Jenkins' basis has eroded and the need for constitutional protection for Deputies has grown. Recently, the police community has been demonized and under increasingly harsh and often frivolous attacks, from drug dealers to the President of the United States. These multifaceted attacks have crippled officers by stripping them of basic constitutional rights and rendering them into second class citizenry.

Enough. The time has come for rank and file Deputy Sheriffs to be able to enjoy freedom from corrupt and politically charged retaliation as practiced by Sheriff Chapman and those of his ilk.

V. CONCLUSION

Certiorari should be granted for all the reasons herein and because Deputy Sheriffs are not mere chattel and the law "is not settled until it is settled

right" *State v. Ballance*, 229 N.C. 764, 767, 51 S.E.2d 731, 733 (1949) (Ervin, J.)

The PBA respectfully dissents from the overreaching decision of the Fourth Circuit below. Certiorari should be granted to resolve the many stark Circuit conflicts and clarify this important area of law in order to promote public safety and protect the American police community.

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