No. _____

In the Supreme Court of the United States

DAVID BOHLER

Petitioner

v.

CITY OF FAIRVIEW, TENNESSEE

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

Whether a rational juror could find that the Petitioner, a police officer, had a First Amendment right to speak to a local prosecutor about corruption in his police department

RELATED PROCEEDINGS

Bohler v. City of Fairview, et. al., slip op. 20-5016 (6th Cir. Nov. 04, 2020).

Bohler v. City of Fairview, Tennessee, et al., (M.D. Tenn. Dec. 19, 2019

PARTIES TO THE PROCEEDING

The Petitioner is David Bohler, the Plaintiff.

The Respondent is the City of Fairview, Tennessee, a Defendant.

Other parties in the lower court were Defendants Joseph Cox and Timothy Shane Dunning. The Petitioner does not believe that Cox and Dunning have any legal interest in this petition, however.

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PETITION FOR CERTIORARI

The Petitioner, David Bohler, was a police officer with the City of Fairview, Tennessee until he ran afoul of the City, specifically for speaking out to a local prosecutor about corruption in his police department. After being constructively discharged, he sued for First Amendment retaliation. Whether a public employee enjoys any First Amendment protection, however, depends on whether the employee speaks as part of ordinary job duties, or as a private citizen. Among other things, Bohler's written job description said broadly that he should "coordinate[] activities" with local prosecutors to avoid the "mishandling" of cases. Appx. 46a.

Based almost exclusively on that written description, the Sixth Circuit denied First Amendment protection as a matter of law, saying that Bohler had a job duty to speak to the prosecutor. 11a-13a. Besides the job description, the court further held that *all* police officers have an inherent duty to speak about all facts related to any court cases, and that any speech to prosecutors is unprotected. *Id.* The lower court should not have ruled this way. For one thing, this Court has previously held that a written job description is not dispositive. Further, employers may not curtail First Amendment freedoms by creating excessively broad job descriptions. Finally, only ordinary job duties should be considered — not extraordinary duties. To preserve constitutional freedoms, and to encourage the police to be open about wrongdoing, the lower court should be reversed.

JURISDICTION

This Court has appellate jurisdiction under 28 U.S.C. § 1254(1), which authorizes petitions for certiorari after the rulings made by the federal appellate courts.

The Sixth Circuit issued its opinion, or rather its amended panel opinion, on November 04, 2020. Appx. 3. Fourteen days later, Bohler timely filed a supplemental memorandum, renewing a petition for rehearing en banc that he had already filed. Appx. 45. The Sixth Circuit then denied any further rehearing on December 15, 2021. Appx. 18.[1] This petition for certiorari is being timely filed within 150 days from that denial of rehearing. By general order of March 19, 2020, this Court granted an extension in all cases to 150 days.

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1 While not needed for jurisdiction under Sup. Ct. R. 13.2, Bohler's original petition for rehearing was also timely. That is, the panel's original opinion was filed on September 28, 2020. Appx. 45. His petition for rehearing was filed on October 13, 2020. *Id.* This was the first business day after a three-day holiday weekend.

CONSTITUTIONAL PROVISIONS

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

FOURTEENTH AMENDMENT, § 1

, . . . No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner-Plaintiff, David Bohler, was a detective at the Fairview Police Department. Pet. Appx. 3. The Department is run by the City of Fairview, Tennessee. Pet. Appx. 3. While Bohler was at home one evening dealing with private family matters, he was contacted by a citizen named Robert Hamilton. Appx. 65a-66a. Citizen Hamilton claimed that another police officer, Timothy Shane Dunning, had coerced him into giving up a gun and thereby incriminating himself, since he was a felon and possessed this weapon illegally. Appx. 3; *see also* Appx. 65a. Hamilton believed that this police action was motivated not by legitimate criminal suspicion, but instead by an unrelated civil suit between himself and a friend of Mark Sutton, who was the Assistant Police Chief. *Id.*; Appx. 49a, ¶ 1. The next day at work, however, Bohler could find no arrest report from the incident, so he called Hamilton back and said that he could do nothing for him. Appx. 4.

Many months later, Bohler was contacted by the District Attorney to pull documents from multiple files. Normally Bohler was not a retriever of files. Appx. 78a-79a. However, he performed the task on the day in question because the normal records lady was out of the office that day. *Id.* Specifically, the District Attorney wanted a Miranda waiver form for one case, and some other documents. Appx. 49a, ¶ 1. One of the cases that she requested documents for was Robert Hamilton's. *See* Appx. 67a.

When Bohler pulled the Hamilton file to retrieve the needed documents, he remembered the conversation with Hamilton, and he personally reviewed the arrest report. Appx. 67a. Bohler noticed discrepancies in the report that suggested the report had been falsified. *Id.* He began to suspect that Hamilton was correct, having been set up in retaliation for a civil case against the Assistant Chief's friend. Appx. 49a, ¶ 1.

Bohler had a job duty under his general orders, never disputed, to report misconduct by other officers within his chain of command. *See* Appx. 48a, § 2.02. At the time, however, there was no chief of police. Appx. 63a-64a. Rather, the chief had recently retired. *Id.* Therefore, Bohler first reported the matter to multiple high-ranking police officials in the police department. Appx. 49a, ¶ 3. Unfortunately, however, it did not appear that these officials were going to take any action. *Id.*

Finally, Bohler stepped outside of his chain of command, voluntarily reporting the corruption to the local District Attorney. *See* Appx. 49a, ¶ 3-4. He initially contacted her via text message while off duty. *Id.* Later, he contacted her again by phone. *Id.*

The day after Bohler communicated with the District Attorney, he learned that the Fairview Police Department was going to be investigated by the local Sheriff's Office. Appx. 50a, ¶ 8. Further, the retired Chief of Police had agreed to come out of retirement, apparently to restore order to the department. *See* Appx. 50a, ¶ 11. Blown away, Bohler assumed that these developments may have

had to do with his prior whistleblowing to the District Attorney the day before. Appx. 50a, ¶ 11.

When the Chief returned to the department, he wondered aloud what the Sheriff's investigation was about. Appx. 71a-72a. In response, Bohler told him a suspicion that it may have to do with what he had already reported to the District Attorney. *Id.* Upon hearing Bohler's account, the Chief was sympathetic to Bohler's position. Appx. 72a. He told Bohler that he should investigate so that he could have something useful to tell the Sheriff's Office if they interviewed him. Appx. 50a, ¶¶ 11-12. Bohler then tried interviewing one of the officers involved, but was largely unsuccessful. *Id.* Ultimately, he told the Chief that he did not feel comfortable investigating his own colleagues, anyway. Appx. 77a. Eventually, Bohler sent another message to the District Attorney, this time in the form of an email, reiterating and memorializing the statements that he had already told her previously. Appx. 49a-50a.[2]

The criminal case against Hamilton was dismissed. Appx. 50a, ¶ 10. In a later deposition, the District Attorney would not affirm any specific reason why it was dismissed (such as her communications with Bohler). Appx. 4a. But she testified that it was based on "a lot of factors." *Id.*

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2 Misleadingly, the sequence of facts in the Sixth Circuit's opinion makes it sound like thte Chief originally directed Bohler to speak with the District Attorney. *See* Appx. 4. But in reality, when Bohler originally blew the whistle, the department did not even have any Chief. Appx. 63a-64a. The Chief's return only happened afterward.

Thereafter, Bohler began experiencing harassment within the police department, which the department largely refused to address. Appx. 51a-52a, ¶¶ 13-23. Things finally came to a head when the City Manager told Bohler that he was going to be demoted. Appx. 52a-53a, ¶¶ 24-34. He also told Bohler that he would suffer a $10,000 pay cut. *Id.* Notably, Bohler had recently gotten married to another police officer. *Id.* Initially, the City Manager claimed that the decision to demote him was out of a need to avoid having him exercise any supervisory position over his new wife. *Id.* However, Bohler has testified that as a detective, he would not have had any supervisory authority over the wife, anyway. *Id.* Regardless, even after the City Manager was informed that the wife was willing to *resign her position* to let Bohler keep his job, the City Manager still persisted in pressing for a demotion and pay cut. *Id.* He then told Bohler that he needed to know Bohler's response about whether he would accept the demotion within two days. *Id.* Two days later, Bohler resigned. *Id.*

Bohler ultimately filed suit in federal court based on 42 U.S.C. § 1983, which is a federal civil rights statute. *See* Appx. 27a. He claimed that the City of Fairview had constructively discharged him in retaliation for his whistleblowing to the District Attorney. For jurisdiction, he relied on 28 U.S.C. § 1331, which grants jurisdiction over claims that raise federal questions.

In this case, Bohler testified that he had no job duty to report misconduct to the District Attorney.

Appx. 50a, ¶ 7. When asked why not, he cited the department's general orders, which only required him to report misconduct up within his own chain of command. Appx. 71a. When asked why he did not simply have a broader duty to investigate the misconduct of other officers and to prosecute the officers himself, he cited another general order saying that he should not perform an unsanctioned investigation. Appx. 76a. Further, he testified that it was generally inappropriate for him to be investigating his own department, anyway. Appx. 77a.

In the end, the District Court granted summary judgment to the City of Fairview on the basis that Bohler had spoken as an employee rather than as a citizen when he spoke to the District Attorney. Appx. 33a-35a. On appeal, the Sixth Circuit agreed, saying that Bohler had a job duty to report his concerns about corruption to the District Attorney. Appx. 11a-13a. The only evidentiary basis for that ruling was a written job description. *Id.* Among other things, the written description listed these duties:

> Prepares, obtains, and executes search [sic] within the community. Prepares, obtains, and executes search and/or arrest warrants as needed. ***Coordinates activities with the Prosecutor's and District Attorney's office in an effort to avoid mishandling of cases and/or dismissal of charges.*** Provides relevant testimony in court and before the grand jury as requested.

> Coordinates criminal investigations with other Federal, State, and local law enforcement agencies, and completes and provides any necessary paperwork to such agencies. Completes various paperwork, such as final investigative reports. Conducts follow-up investigations after Patrolman performs preliminary investigations. The Criminal Investigator or his designee serves all warrants/subpoenas issued by the City of Fairview/General Sessions Court.
>
> Investigates all child sexual abuse cases reported to authorities and makes the decision to prosecute or not. Investigator procedures will be followed in this endeavor.

Appx. 46a (emphasis added).

Specifically, the Sixth Circuit held that the requirement to "coordinate[]" activities with the District Attorney to avoid "mishandling" cases created an automatic duty to inform her about all relevant information about every other officer's cases. Appx. 11a-13a. This reportable information included any corruption by other officers. *Id.*

As an additional holding, the Sixth Circuit also said that it was "likely" that a police officer still has this same duty even in the absence of any written job description. Appx. 12a-13a.

Therefore, the Sixth Circuit held that Bohler spoke as an employee, and that his speech was unprotected by the First Amendment. Appx. 11a-13a.

REASONS FOR GRANTING THE WRIT

Who will watch the watchmen? In this case, Detective David Bohler learned about unlawful activity within his police department, and he reported it to someone outside the department — someone with the power to act. In retaliation, he was run out of a job. Unfortunately, the Sixth Circuit has now said that this outcome is okay, and that the same result may again occur whenever another officer tries to do the same thing. In recent years, this Court has let public employers discipline employees for any speech made specifically as part of the job. *Garcetti v. Ceballos*, 547 U.S. 410 (2006). The idea behind this rule is that if the speech is indeed "work product," then in theory, the employer should be able to control its content. *Id.* at 422. Nonetheless, the rule is open to abuse. As such, the Court even warned that governments may not curtail First Amendment speech by mislabeling all speech as work product, through the use of excessively broad job descriptions. By endorsing just such mislabeling here, the Sixth Circuit has erred. The Sixth Circuit has said that any corruption reported by any police officer to any prosecutor is automatic work product, thereby giving the government free reign to retaliate. Because the Sixth Circuit's test is too broad, and deviates from the purposes of *Garcetti*, the judgment should be reversed.

1. Evolution of the Rule of *Garcetti*

Decades ago, this Court first clarified that public employees do not sacrifice their right to comment on important matters of the day simply by working for the government. Instead, the First Amendment generally protects a public employee's right to speak about issues of public concern. *Connick v. Myers*, 461 U.S. 138 (1983). However, speech that interferes with employment may still be restricted, as analyzed under a balancing test. *Pickering v. Board of Ed. of Township School Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968). The key question for analyzing First Amendment rights used to be this balancing test.

In 2006, however, the Court first announced an important way to get around the balancing test. Under the new rule, any speech performed directly as part of the job loses its First Amendment protection. The rationale is that if the speech is itself work product, then a public employer has every right to control its contents. For example, it would make little sense for a presidential speechwriter to claim a First Amendment right to insert his own political ideas into the President's messages. "When the government disburses public funds . . . to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted[.]" *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995) (internal citation omitted).

In *Garcetti*, the plaintiff employee was specifically a government lawyer, paid to analyze

legal cases and then to distribute his written opinions about them to other prosecutors within the office. 547 U.S. 410, at 413. The parties in that case did not contest that the plaintiff's speech was indeed part of his official duties. *Id.* at 424. Unfortunately, the plaintiff then suffered adverse employment action after one of his intra-office memos — recommending dismissal of a criminal case due to perjury by a police officer — caused a stir with his superiors, who disagreed with his analysis. *Id.* at 414-15. Ultimately, this Court condoned the adverse action against the employee, saying that the government was free to make judgments about the quality of its employee's legal work product. *Id.* at 422.

While the position taken in *Garcetti* makes sense, unfortunately the reasoning announced has been difficult to apply, and open to abuse. Many lower courts have failed to recognize the rule's emphasis on work product, as opposed to speech about work, and many have simply erred on the side of restricting speech. In *Lane v. Franks*, for example, the Court finally had to clarify matters after a lower court read the employee speech rule "far too broadly." 573 U.S. 228, 239-240 (2014). In that case, the lower court held that speech was unprotected simply because it concerned the subject matter of the employee's job. *Id.* This Court had to reiterate — and arguably narrow — the earlier rule, by saying that information learned at work is still protected if it is not part of the employee's *ordinary* job duties. *Id.* As one example, *Lane* held that testifying truthfully in

response to a subpoena, outside of ordinary job duties, does not preclude the protection of the First Amendment. *Id.* Instead, "The critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of the employee's duties, not whether it merely concerns those duties." *Id.*

For one reason or another, though, the lower courts have still had trouble applying *Garcetti*. Part of the problem is that in the history of this nation, this Court has only heard two cases on the topic. And in both cases, the parties *stipulated* the key issue of whether the speech fell under the employee's job duties. Notwithstanding, there has been a disturbing trend of granting summary judgment on this issue even when it is disputed, as here. In *Garcetti*, the parties actually agreed that the speech was part of the plaintiff's "official duties." In *Lane*, the parties agreed that the speech was *not* part of the employee's "ordinary responsibilities." As such, the Court has never been called upon "to articulate a comprehensive framework for defining the scope of an employee's duties in cases where there is room for serious debate." *Garcetti*, 547 U.S. 410, at 424. Arguably, it would do the judiciary some good to see this Court address the topic in a case where the parties have not already agreed on the main factual issue.

Here the Petitioner testified expressly that reporting the crimes of his colleagues to the District Attorney was *not* part of his job duties — ordinary duties, or otherwise. Appx. 50a ¶ 7. He also cited documents and reasons in support of that position.

Appx. 71a, 76a, and 77a. In fact, he testified that even getting the documents for the District Attorney was unusual. Appx. 78a-79a. On the other hand, for its proof, the City of Fairview could only point to a written job description, namely one that was rather vague and broad.

2. The Rules of *Garcetti* and *Lane* were Violated

This Court has already uttered holdings that should dictate the outcome here. For one thing, when evidence is disputed or where the inferences could go both ways, normally summary judgment is improper, regardless of the issue. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 149 (2000); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). But more specifically, in *Garcetti*, responding to criticisms by the dissent that employers might just evade the First Amendment by mislabeling all speech as work product, the Court promised not to allow such a result. Instead, the Court squarely held that "an employee's written job description is *neither necessary nor sufficient* to demonstrate . . . the scope of the employee's professional duties[.]" *See Garcetti*, 547 U.S. 410, at 424-25 (emphasis added). That holding would seem to seal the deal in Petitioner Bohler's favor. Unfortunately, the Sixth Circuit has failed to honor this Court's guarantee.

Instead, the Sixth Circuit has now denied First Amendment protection entirely on a broad, vague, written job description. The broad description

says that Bohler must "coordinate" with the District Attorney to avoid the "mishandling of cases and/or dismissal of charges." Appx. 46a. On the surface, the word "coordinate" would seem to mean coordinating schedules — that is, to show up for court, and show up for trial preparation. Arguably, the phrase "avoid the . . . mishandling of cases" just means to keep prosecutions from being dismissed, delayed, or hindered. Taken that way, Bohler actually did the *opposite* of the job description. Namely, he was instrumental in getting a crooked case dismissed.

Still, the Sixth Circuit read the job description language more broadly. It held that "coordinate" means to communicate, and that to avoid "mishandling" (according to a dictionary) means to give every prosecutor every relevant piece of information about every officer's case. Appx. 12a-13a. Hence, the Sixth Circuit reached its result by considering a written job description as sufficient, in contradiction of this Court's jurisprudence. And it reached its result by then reading the description in the broadest way possible.

But the Sixth Circuit's ruling is even more problematic. It held that even *without* any job description — indeed, without any evidence at all — every police officer "likely" has a job duty to speak, and thereby forfeits any First Amendment protection while speaking to a prosecutor. Appx. 12a-13a.[3] That

3 Since the case was decided on summary judgment, "likely" is not the correct standard, anyway. The correct standard is whether any rational juror could reach the opposite conclusion. *See, e.g., Reeves v. Sanderson Plumbing*

is, the Sixth Circuit has not simply ruled against Bohler. It has ruled against all police officers.

Although this Supreme Court has promised that public employers cannot escape the First Amendment by creating overbroad job descriptions, here it was the judiciary that created the overbroad description. Now we have an entire circuit encompassing four states where police officers have been stripped of any First Amendment right to engage in whistleblowing to their local law-enforcer, the District Attorney. And it all comes on the basis of a judicially created, excessively broad job description.

3. The Circuit Courts are Split and Confused about Applying the Rule of *Garcetti*

Due to an unfortunate lack of clear supervisory guidance, confusion abounds about how to apply the rule adopted in *Garcetti*. The cases cited below will typically deal only with the narrow issue of police officers, but the same law also applies to other professions as well. The same law is unclear for all professions. *See, e.g., Kennedy v. Bremerton School District*, 139 S.Ct. 634 (2019) (Alito, J., Statement on denial of certiorari) (Discussing the Ninth Circuit's apparent overbroadening of the *Garcetti* rule to restrict the speech of schoolteachers).

Although Bohler was faulted for reporting corruption only to a government lawyer, whom he supposedly had a duty to report to, not every court

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Products, Inc., 530 U.S. 133, 149 (2000).

agrees with this rule. For example, the Fourth Circuit has held that police officers did have a First Amendment right to contact a state Attorney General, and later their Governor's office, to complain about criminal misconduct by their chief of police. *See Hunter v. Town of Mockville, North Carolina*, 789 F.3d 389, 398-99 (4th Cir. 2015). The court expressly rejected any argument that since these officers had a duty to enforce criminal laws, they were merely doing their job in speaking out. *Id.*

Going even further, the Second Circuit has ruled that police officers generally enjoy First Amendment protection *even when reporting misconduct within their own chain of command*, so long as 1) Reporting such misconduct is not a normal part of the employee's job, and 2) A non-employee could still make a similar report. *Matthew v. City of New York*, 779 F.3d 167, 175-76 (2nd Cir. 2015). The court also discussed the objection that an employee's official position may lend extra weight to the report that a citizen would not enjoy. The court rightly considered this factor irrelevant. *Id.* at 176.

On the other hand, the Fifth Circuit takes a more restrictive view of the First Amendment. In one noteworthy case, a deputy was held to have spoken as an employee (without any First Amendment protection) when he reported to his own Sheriff and to Internal Affairs about potentially illegal wiretaps being carried out by their department. *Wilson v. Tregre*, 787 F.3d 322, 324-26 (5th Cir. 2015). The Fifth Circuit came out against the deputy by holding that he had a job duty to report all activities in

violation of the law, and it also noted that he spoke within the chain of command. *Id.* In another case, however, the Fifth Circuit did find a police officer's speech to be protected where it was made outside the chain of command. *Howell v. Town of Ball*, 827 F.3d 515, 523-524 (5th Cir. 2016) (Officer reporting misconduct to the FBI). In general, the Sixth Circuit similarly emphasizes the issue of the chain of command. *See, e.g., Mayhew v. Town of Smyrna, Tennessee*, 856 F.3d 456, 465 (6th Cir. 2017).

Even aside from the case of Bohler, the Sixth Circuit has been generally restrictive about employee speech rights. In one recent case, the Sixth Circuit held that a Sheriff's deputy who performed an audit — a task well outside his normal duties — and who voluntarily reported to a county finance director that law enforcement funds were being mishandled, was unprotected by the First Amendment. *DeWyse v. Federspiel*, slip op. 19-2333 at *6-8 (6th Cir. Oct. 09, 2020).

Certainly it is up to this Court to decide which rulings are right, and which are wrong. But regardless of who is right, it remains true that this Court prefers to grant certiorari where "a United States court of appeals has entered a decision in conflict with another United States court of appeals on the same subject matter[.]" Sup. Ct. 10(a).

4. The Vagueness of the *Status Quo* is Chilling to Free Speech

Finally, splits and confusion on the issue are especially problematic because they create vagueness in the law, and in a way that chills speech. In general, a law is unconstitutionally vague if its scope is unclear enough that persons "of common intelligence" must necessarily guess at its meaning and differ as to its application. *United States v. Davis*, 139 S.Ct. 2319, 2325 (2019) (internal citation omitted). The judges on these courts of appeals are certainly of much-higher-than-common intelligence, and yet they still differ widely.

Further, the constitutional concern about vagueness is especially acute in the free speech context. *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (internal citation omitted). When the rules are unclear, speakers will tend to err on the side of safety. They will self-censor. And self-censorship suppresses valuable speech. As this Court has unanimously declared, "speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment." *Lane v. Franks*, 134 S.Ct. 2369, 2379 (2014). Therefore, the need for clarity on a First Amendment issue is especially important. And because this Court prefers to hear cases where "a United States court of appeals has decided an important question of federal law . . . in a way that conflicts with relevant decisions of this Court," Sup.

Ct. 10(c), the importance is another reason to grant the writ.

5. This Case is an Ideal Vehicle to Address and Clarify the Law on Employee Speech

Moreover, this case would be a great way to clarify the rule of *Garcetti* because the case is generally straightforward.

For one thing, the employee speech issue is the only relevant question. As such, it is dispositive. The lower court already recognized, for example, that Bohler spoke on a subject of public concern. Appx. 10a-11a. The court did not expressly deal with the *Pickering* balancing issue, but it is a non-issue. "Statements exposing possible corruption in a police department are exactly the type of statements that demand strong First Amendment protection." *See v. City of Elyria*, 502 F.3d 484, 493 (6th Cir. 2007) (internal citations omitted). When a matter involves reporting corruption to the public, "typically 'the employer's side of the *Pickering* scale is entirely empty.'" *Buddenberg v. Weisdack*, 939 F.3d 732, 740 (6th Cir. 2017), *citing Lane*, 573 U.S. 228, at 242. Here the only test even disputed was *Garcetti*. As such, legally the case is uncomplicated.

Second, the procedural posture of summary judgment against the Plaintiff-Petitioner makes things simple as well. Such posture removes any need to question credibility. *Reeves*, 530 U.S. 133, at 149. It means that the Court must simply view the

evidence in the light most favorable to the Petitioner, adopt all reasonable inferences in his favor, and generally give him the benefit of the doubt. *See id.*

Third, even aside from the standard of review, the case is factually simple given that there was no competing testimony on the topic. The main facts at issue are simply the written job description, and Bohler's own testimony about his job responsibilities. *Cf. Kennedy*, 139 S.Ct. 634 (2019) (Alito, J., Statement on denial of certiorari) ("[I]mportant unresolved factual questions would make it difficult if not impossible at this stage to decide the free speech question that the petition asks us to review.").

Ultimately, since the constitutional issue is important, singular, and dispositive, since the procedural posture is clean, and since the facts are easy, this case would be an ideal vehicle to resolve the circuit split and to clarify the law on this confusing, problematic rule.

CONCLUSION

For the foregoing reasons, the Court should grant the writ of certiorari.

Respectfully submitted,

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