No. 13-483

In The
Supreme Court of the United States

EDWARD R. LANE,
Petitioner,

v.

STEVE FRANKS, in His Individual Capacity and SUSAN BURROW, in Her Official Capacity as Acting President of Central Alabama Community College,
Respondents.

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

BRIEF OF AMICUS CURIAE THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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Dated: March 10, 2014

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I. INTEREST OF THE AMICUS CURIAE

The National Association of Police Organizations, Inc. ("NAPO") and its affiliate, the National Law Enforcement Officers' Rights Center of the Police Research and Education Project, are national non-profit organizations which represent law enforcement officers throughout the United States.

NAPO is a coalition of police associations and unions that seeks to protect the rights of law enforcement officers and to enhance public safety through legal advocacy, education and legislation. NAPO represents over 1,000 law enforcement organizations, with over 241,000 sworn law enforcement officers. NAPO often appears as amicus curiae in appellate cases of special importance to the law enforcement community. NAPO and the law enforcement profession have a vital interest in the issues before this Court. The adverse impact of the Eleventh Circuit decision below is greater on the police community because of the higher frequency that police officers testify as compared with other public employees. Law enforcement officers have a keen understanding of the needs of the judicial system.

NAPO submits this brief to assist this Court in its resolution of this enormously important case.[1]

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1. The parties have consented to the filing of this amicus curiae brief. Letters of consent have been filed with the Clerk of Court. No party authored the brief in whole or in part, and made no monetary contribution to this brief.

II. SUMMARY OF ARGUMENT: TESTIMONY IS INHERENTLY PROTECTED BY THE FIRST AMENDMENT FROM GOVERNMENT RETALIATION

This case poses an issue of enormous constitutional importance to the American police community including the officers and their families:

> Does the First Amendment prohibit police and other governmental employers from retaliating with adverse actions against officers and employees because of their testimony?

This Court must send the message that retaliation against police officers because of their testimony is forbidden. If not, floodgates of greater retaliation will inflict grave harm on our nation's front line defenders, thus tampering with the operation of the rule of law.

At its core, this is a case about an abuse of government power because, *inter alia*, the conduct of Respondents and other public employers will likely have a sweeping impact – of muzzling robust testimony in the courts of America.

America's law enforcement community represents a large and unique class of public servants[2] who often suffer from retaliatory abuse by

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[2.] Police officers are *sworn* officials, with duties as *witnesses*. Officers as witnesses may not show allegiance to their employers. In 2004, there were 14,254 police agencies, employing 675,734 sworn police officers and 294,854

their employers due to expression. Law enforcement officers *are often required* to testify in multiple forums. By its very nature, testimony is special and should be afforded the highest rung of First Amendment protection. A special rule of law to protect testimony should be enunciated by this Court. That rule need only be simple: testimony is constitutionally protected unless the testimony has been determined to be perjury by a court.

The protection of testimony must not depend upon idiosyncratic differences of the nuances of the particular testimony. Rather, testimony should be *per se* protected, *inter alia*, because of the massive impact of testimony on the accuracy of judicial decisionmaking throughout America. When a police officer testifies, he or she must be completely free to tell it like it is – without pressure or worry as to whether the police brass in management will be pleased or not. Retaliatory conduct which has the

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civilians, serving the 278 million persons in America. See Uniform Crime Statistics in *www.fbi.gov/ucs/cius_04/law_enforcement_personnel.* The American law enforcement profession is the most dangerous job for non-military workers. Officers constantly serve in environments where the risk of death and serious injury are prevalent. American policing has changed since its inception in Boston, Massachusetts in 1631. See Bopp & Schultz, *A Short History of American Law Enforcement* 17 (1972). Crime fighting has taken its toll on American police officers, who often develop illnesses and disabilities from their high stress profession, resulting in an average life span of only 57 years. Since 1792, when Deputy Sheriff Isaac Smith became the first police officer to die in service more than 17,900 police officers have been killed in the line of duty. See http://lawenforcementmuseum.org/TheMemorial/facts.htm More than 56,000 police officers are assaulted each year. *Id.*

effect of tinkering with testimony may lead to corruption. Permitting retaliation against officers because of their testimony will promote obstruction of justice.

Testimony should be pristine, and testifying officers must not be intimidated as witnesses by fear of having to appease police management or anyone else. Testimony is the engine that drives justice on a daily basis throughout America and should be held sacred.

III. TESTIMONY AS AN EXPRESSION IS PROTECTED BY THE FIRST AMENDMENT BECAUSE IT IS INHERENTLY A CITIZEN'S EXPRESSION

Law enforcement officers are frequently required to testify before all sorts of tribunals from local magistrates to federal trial courts. When called to testify, officers have no choice over the content of their testimony.

In *Connick v. Meyers*, 461 U.S. 138 (1983), this Court clarified the public concern test in public employee expression cases. That test should not be applicable in cases where the expression is testimony, as explained below, because expression is categorically unique and deserving of the highest rung of protection. Public concern analysis does not fit in testimony retaliation cases and its use potentially may result in allowing retaliation on an arbitrary unprincipled basis. In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), this Court essentially precluded speech protection where the expression was

pursuant to "official duties" arising from one's particular job. Testimony is derivative of one's status as a witness which is predicated upon citizenship.

This Court has recognized broad immunities for testifying witnesses in both trials and grand juries, including for public employees. *Briscoe v. LaHue*, 460 U.S. 325, 333 (1983) ("'public policy . . . requires that the paths which lead to the ascertainment of truth should be left as free and unobstructed as possible,'"); *Rehberg v. Paulk*, 132 S. Ct. 1497, 1506 (2012). This protection for testimony is necessary to ensure that witnesses "testify fully and frankly," without fear of "retribution." *Douglas Oil Co. v. Petrol Stops*, 441 U.S. 211, 219 (1979).

The obligation to respond to a subpoena is "shared by *all citizens*" by virtue of their citizenship and not by virtue of their employment. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991) (emphasis added); *see also United States v. Calendra*, 414 U.S. 338, 345 (1974) ("The duty to testify has long been recognized as a basic obligation that every citizen owes his Government."); *Piemonte v. United States*, 367 U.S. 556, 559 n.2 (1961).

Testimony, like other citizen speech, vindicates a core "First Amendment interest": "the public's interest in receiving the well-informed views of government employees." *Garcetti*, 547 U.S. at 419.

The reach of *Garcetti* in limiting protection for speech has been significant. E.g. *Houskins v. Sheahan*, 549 F.3d 480 (7th Cir. 2008) (complaint of assault not protected); *Callahan v. Fermon*, 526 F.3d 1040 (7th Cir. 2008) (complaint regarding police management misconduct not protected). *Garcetti* must not be read to permit government retaliation against testifying police officers based on the content of the testimony, which is the key component of the public concern test.

NAPO is concerned that an unintended result of *Garcetti* has been a decrease in complaints about police management corruption because of the elimination of speech protection. *Garcetti*, however, does not control the issue before the Court here because, *inter alia*, testimony is predicated upon the role as *witness* as opposed to employee. Officers testify because of their role as a *witness.* Absent perjury, there is no legitimate basis to punish any witness for carrying out the function of a witness.

IV. THIS COURT AND MANY LOWER COURTS SUPPORT FIRST AMENDMENT PROTECTION OF TESTIMONY FROM RETALIATION, ESPECIALLY FOR TESTIFYING POLICE OFFICERS

In *Perry v. Sinderman*, 408 U.S. 593, 598 (1972), over forty years ago, this Court held that retaliation against Professor Sinderman "based on his testimony before Texas legislative committees and his other public statements" was protected by the First and Fourteenth Amendments. Scores of recent

Circuit cases have followed the lead of *Perry* in protecting testimony in various contexts. E.g., *Chrzanowski v. Branchi*, 725 F.3d 734 (7th Cir. 2013); *Reilly v. City of Atlantic City*, 532 F.3d 216 (3d Cir. 2008); *Karl v. City of Mountlake Terrace*, 678 F.3d 1062 (9th Cir. 2012). These cases demonstrate, among other things, that public employers have become more brazen in their zeal to punish by retaliation when they learn of testimony that they do not like.

"The First Amendment protects the right to testify truthfully at trial." *Melton v. City of Oklahoma City*, 879 F.2d 706, 714 (10th Cir. 1989) (police officer testimony held protected), 928 F.2d 920 (10th Cir. 1991)(on rehearing, court addressed liberty but not expression claim), *cert denied*, 502 U.S. 906 (1991).

Numerous compelling cases support First Amendment protection for testimony[3] and many cases

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3. *Chrzanowki v. Branchi*, 725 F.3d 734, 741 (7th Cir. 2013); *Reilly v. City of Atlantic City*, 532 F.3d 216 (3d Cir. 2008); *Morales v. Jones*, 494 F.3d 590 (7th Cir. 2007); *Fairley v. Fremont*, 482 F.3d 897 (7th Cir. 2007); *Whalen v. Roanoke*, 769 F.2d 221, 226-27 (4th Cir. 1985)(protecting testimony under the First Amendment), *aff'd*, 797 F.2d 170 (4th Cir. 1986)(en banc)(affirming on the basis of Judge Ervin's opinion). *Catletti v. Rampe*, 334 F.3d 225 (2d Cir. 2003) (police officer testimony protected by First Amendment); *Schneider v. City and County of Denver*, 2002 WL 1938583, 47 Fed. Appx. 517, 520 (10th Cir. 2002)(same); *Myers v. Nebraska*, 324 F.3d 655, 659 (8th Cir. 2003); *Kinney v. Weaver*, 301 F.3d 253 (5th Cir. 2002); *Green v. Philadelphia Housing Authority*, 105 F.3d 882, 887 (3d Cir. 1997); *Pro v. Donatucci*, 81 F.3d 1283 (3d Cir. 1996); *Tindal v. Montgomery*, 32 F.3d 1535 (11th Cir. 1994); *Reeves v. Claiborne County Bd. Of Ed.*, 828 F.2d 1096, 1100-01 (5th Cir. 1987); *Johnston v. Harris County*, 869 F.2d 1565, 1578 (5th Cir. 1989); *Melton v. City of Oklahoma City*, 879 F.2d 706, 714 (10th Cir.

that have addressed qualified immunity have held that protection for testimony is "clearly established." In *Catletti v. Rampe*, 334 F.3d 225 (2d Cir. 2003), a police officer was retaliated against for his testimony. Deputy Catletti testified on behalf of other employees who had been disciplined. Deputy Catletti had just earned high performance reviews – before the testimony against the police administration. The Second Circuit found the testimony protected under the First Amendment. The Court reasoned that "uninhibited testimony is vital to the success of ... truth seeking function." 334 F.3d at 230.

In *Schneider v. City of Denver*, 2002 WL 193 1938583, 47 Fed. Appx. 517, 520 (10th Cir. 2002), the Tenth Circuit held that a police officer's testimony was protected where he was retaliated against because he testified at a civil service personnel hearing. The case was on appeal from Officer Schneider's verdict because of a retaliatory transfer. Officer Schneider testified about one of the Police Department's training programs and testified against the department.

In *Kinney v. Weaver*, 301 F.3d 253 (5th Cir. 2002), police officers initiated First Amendment claims alleging retaliation because of their testimony. The Fifth Circuit held that the *officers' right not to be retaliated against for testifying was clearly established.* The Court explained:

1989); *Martinez v. City of OPA-Locka*, 971 F.2d 708 (11th Cir. 1992); *Robinson v. Balog*, 160 F.3d 183 (4th Cir. 1998); *Miller v. Kennard*, 74 F. Supp. 2d 1050 (D. Utah. 1999); *Freeman v. McKellar*, 795 F. Supp. 733, 739 (E.D. Pa. 1992); *Tate v. Yenoir*, 537 F. Supp. 306 (E.D. Mich. 1982).

> "There is no question Kinney's and Hall's testimony in the *Kerville* case is speech protected by the First Amendment. Testimony in judicial proceedings is inherently of public concern ... Moreover, the testimony at issue in the instant case is of public concern not only because of its context, but also because its subject matter - i.e., the use of excessive force by police officers."

In *Tindal v. Montgomery*, 32 F.3d 1535 (11th Cir. 1994), the Eleventh Circuit held that testimony was protected. Officer Tindal testified as a witness in a personnel trial regarding "the working environment in the Sheriff's office." *Id*. at 1537. Tindall's testimony was on behalf of a co-worker. *Id.* at 1541. The Court also denied qualified immunity because the constitutional right to testify without retaliation was clearly established, as other cases have held.

In *Miller v. Kennard*, 74 F. Supp. 2d 1050 (D. Utah. 1999), a police officer initiated a First Amendment claim alleging that he was retaliated against because of his testimony. The Court concluded that the testimony was protected and that it was clearly established that a police officer's testimony constituted protected speech; therefore the Court denied qualified immunity. In *Lynch v. City*, 166 F. Supp. 2d 224 (E.D. Pa. 2001), a police officer initiated a First Amendment challenge to punishment because of testimony. The Court

concluded that the officer's testimony constituted protected speech.

In *Dahm v. Flynn*, 60 F.3d 253 (7th Cir. 1994), the Court found that testimony before a legislative body regarding employee morale was protected. In *Shehee v. City of Wilmington*, 205 F. Supp. 2d 269 (D. Del. 2002), *aff'd in pertinent part*, 2003 WL 21061233 (3d Cir. 2003), the Court held that deposition testimony constituted protected expression. In *Tate v. Yenoir*, 537 F. Supp. 306 (E.D. Mich. 1982), the Court held that a law enforcement officer stated a First Amendment claim where he was punished as a result of his testimony and reasoned:

> "to hold otherwise would place a judicial imprimatur on the intolerable occurrence of allowing a witness' testimony to be compromised out of fear of what that witness' employer may think or do."

V. TESTIMONY NOT INVOLVING PERJURY SHOULD BE *PER SE* OR INHERENTLY PROTECTED

The First Amendment applies to all testimony. There are certain special features of testimony that militate against applying traditional public employee expression methodology in cases involving testimony. The traditional public concern test should be inapplicable in the unique *context* of testimony in a hearing. A witness cannot control

his/her speech. The better rule would be that testimony is inherently protected; otherwise public employee testimony will be subject to manipulation by abusive employers.

This Court has protected officer expression in much less compelling situations. See *Rankin v. McPherson*, 483 U.S. 378 (1987), where this Court held that a comment on the attempted assassination of President Reagan was protected. In contrast here, testimony by police officers throughout America impacts the routine core of the administration of criminal justice.

In *Pro v. Donatucci*, 81 F.3d 1283 (3d Cir. 1996), the Court recognized First Amendment protection for an employee's testimony. The Court reasoned that testimony before an adjudicatory body is *inherently* protected by the First Amendment. The Court explained:

> "A public employee's truthful testimony receives constitutional protection regardless of its content..." *Reeves v. Claiborne County Bd. Of Ed.*, 828 F.2d 1096, 1100-01 (5th Cir. 1987); *Johnston v. Harris County*, 869 F.2d 1565, 1578 (5th Cir. 1989); *Freeman v. McKellar*, 795 F. Supp. 733, 739 (E.D. Pa. 1992) ("a public employee's sworn testimony before an adjudicatory body has been held to be inherently a matter of public

> concern and protected by the First Amendment.")

In *Green v. Philadelphia*, 105 F.3d 882, 887 (3d Cir. 1997), the Third Circuit explained that:

> "When an employee testifies before an official government adjudicatory or fact-finding body he speaks in a context that is inherently a public concern. Our judicial system is designed to resolve disputes, to right wrongs. We encourage uninhibited testimony, under penalty of perjury, in an attempt to arrive at the truth. It would compromise the integrity of the judicial process if we tolerated state retaliation for testimony which is damaging to the state... the utility of inhibited testimony and the integrity of the judicial process would be damaged if were to permit unchecked retaliation for appearance and truthful testimony at such proceedings. Not only would the First Amendment right of the witness be infringed by this type of coercion, the judicial interest in attempting to resolve disputes would be in jeopardy..." 105 F.3d at 887.

Green's reasoning, and that of the plethora of other similar cases cited herein, provides a compelling foundation of rationale for this Court to articulate a bright line of protection for testimony.

The First Amendment applies to all testimony except for perjury.

A number of compelling cases demonstrate the better principle of *per se* or inherent protection for testimony. In *Chrzanowski v. Bianchi*, 725 F.3d 734, 741 (7th Cir. 2013) (*per se* rule that "[w]hen a public employee gives testimony pursuant to a subpoena . . . he speaks 'as a citizen' for First Amendment purposes.") The Third Circuit also recognized the *per se* approach of protecting testimony. *Reilly v. City of Atlantic City*, 532 F.3d 216, 231 (3d Cir. 2008); See *Johnston v. Harris County*, 869 F.2d 1565, 1578 (5th Cir. 1989)(all testimony on a matter of public concern should be protected). See Matt Wolfe, *Does the First Amendment Protect Testimony By Public Employees*, 77 U. Chi. L. Rev. 1473, 1482-90 (2010).

VI. THE PUBLIC CONCERN TEST IN PUBLIC EMPLOYMENT CASES SHOULD BE INAPPLICABLE IN CASES INVOLVING TESTIMONY

The public concern test should be limited to instances where the speaking employee can determine the content of the speech. Testimony must be protected from retaliation regardless of the content. *Kirby v. Elizabeth City*, 388 F.3d 440 (4th Cir. 2005) is a horror story which demonstrates the dangers of applying a public concern test to testimony. *Kirby* was an enormously important case involving testimony by Sergeant Kirby about the condition of a police car. The condition of police

vehicles is of utmost importance in promoting and protecting officer safety.

In *Kirby*, the Fourth Circuit held that Kirby's testimony about malfunctioning police equipment was unprotected. The Chief of Police became angry when he heard the testimony and punished Kirby. The *Kirby* holding exposed the Fourth Circuit police community to greater safety hazards as the affirmed discipline of *Kirby* because of his testimony sent the message loud and clear: officers can be disciplined for testimony about malfunctioning police equipment. This principle is repugnant to the critical needs of officer safety, and should be overruled.

The application of *Kirby* in the Fourth Circuit has wreaked havoc on the police community as it has opened the door for police management hyper-scrutiny of officer testimony, often followed by the whip of retaliatory discipline. Retaliation is often carried out in police agencies in subtle and hard-to-prove ways. Testimony is a highly dangerous area for the games of retaliation. A *per se* rule against retaliation for testimony is consistent with the core of the First Amendment and sends the right message for the preservation of integrity.

This Court has long recognized the unique and especially dangerous working environment of police officers. E.g. *Scott v. Harris*, 550 U.S. 372 (2007). Police split second decisionmaking is radically different than ordinary work related decisionmaking by other public employees. The failure to afford constitutional protection for

testimony will enhance safety hazards for the police community because officers will be less likely to disclose or testify about safety hazards. Officers will be reluctant to testify in ways that criticize management for creating or condoning safety hazards that impact the front line patrol officers. This Court has recognized the "weighty interest in officer safety …" E.g., *Arizona v. Johnson*, 500 U.S. 323, 324, 129 S. Ct. 781, 782 (2009).

Courts should not tinker with determining whether testimony is of public concern or not. Rather, all testimony except that determined to be perjury by a criminal court should be off limits for government retaliation. The sacred bond between a testifying officer and his/her oath should be protected by this Court with a *per se* prohibition of retaliation.

VII. THE FIRST AMENDMENT PROTECTION FROM RETALIATION BECAUSE OF TESTIMONY PROMOTES IMPORTANT CONSTITUTIONAL VALUES, AND ENHANCES THE INTEGRITY OF THE AMERICAN CRIMINAL JUSTICE SYSTEM

The Eleventh Circuit's decision effectively renders public employees and police officers subject to discipline and termination if management disagrees with the officer's testimony. Many courts and commentators have examined this issue and most have demonstrated the critical necessity of protecting testimony by the First Amendment. E.g. Matt Wolf, *Does The First Amendment Protect Testimony By Public Employees*, 77 U. Chi. L. Rev.

1473 (2010); Adelaida Jasperse, *Damned if you Do, Damned If You Don't: A Public Employee's Trilemma Regarding Truthful Testimony*, 33 W. New England L. Rev. 623 (2011).

Permitting retaliation against witnesses is especially harmful in police agencies. E.g., *Green v. Barrett*, 226 Fed. Appx. 883 (11th Cir. 2007) (jailer fired for testifying that jail was unsafe). Officers often have to beg to obtain minimum necessary police resources such as functioning vehicles, bullet proof vests, working radios and weapons – to protect their own safety while doing their jobs. See *Worrell v. Bedsole*, 1997 WL 153830 (4th Cir. 1997) (Deputy fired for pleading for police equipment); *Howell v. Town of Carolina Beach*, 419 S.E.2d 277 (1992) (officer fired for reporting malfunctioning police firearms).

VIII. LAW ENFORCEMENT OFFICERS HAVE HISTORICALLY BEEN SUBJECTED TO MORE ABUSIVE RETALIATORY TREATMENT IN EMPLOYMENT, AND THE FIRST AMENDMENT HAS BEEN THE ESSENTIAL SOURCE OF OFFICER PROTECTION FROM RETALIATION

With only a limited patchwork of some statutory protections for officers in some jurisdictions, the First Amendment remains as the essential source of protection for all police officers who suffer job related retaliation for the exercise of free expression. In *Durham v. Jones*, 737 F.3d 291 (4th Cir. 2013) and *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), the Fourth Circuit recently addressed

representative First Amendment retaliation cases which illustrates the contemporary employment environments confronting police officers in the new millennium. *See also cases cited in note 3.* The officers in *Durham* and *Bland* were held to enjoy First Amendment protections.

Substantial parts of America, especially in the South, prohibit public sector collective bargaining by statute. See, e.g., N.C.G.S. §§ 95-98; *Public Employee Labor Relations In the Southeast - An Historical Perspective*, 59 N.C.L. Rev. 71 (1980). In North Carolina, for example, bargaining with law enforcement agencies as an organized unit is a class one misdemeanor. N.C.G.S. §§ 95-98, Many jurisdictions provide little or no protection from retaliation, leaving police officers with no significant means to protect their careers other than the First Amendment. For example, Sheriff Joe McQueen, has proclaimed that such employees "serve at the whim of the Sheriff." McQueen deposition at 442 in *Benson v. McQueen* (E.D.N.C.; 7:98-CV 164-DEN), quoted in *The Impact Of Willowbrook On Equal Protection And Selective Enforcement*, which appears in, *Section 1983 Litigation* (Practicing Law Institute; 2000; 641 PLI/LIT 469). Scores of cases demonstrate how police employers often make employment decisions based upon arbitrary, retaliatory and discriminatory considerations even including for testifying.[4]

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4. E.g., *Green v. Barrett*, 226 Fed. Appx. 883 (11th Cir. 2007)(jailer fired for testifying that the jail was unsafe); *Kirby v. Elizabeth City*, 388 F.3d 440 (4th Cir. 2005)(officer disciplined for testifying about malfunctioning police equipment) *Cf. Edwards v. City of Goldsboro*, 178 F.3d 231 (4th Cir. 1999)(officer disciplined for teaching off-duty firearms safety

As government has grown, so has the abuse of power by government employers.[5] Americans from all walks of life rely on the Constitution for protection from arbitrary and oppressive government power.[6] Contemporary law enforcement bureaucracies afford vast opportunities for bureaucrats to employ abusive tactics that are retaliatory.[7] Retaliation by government agencies

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class); *Jenkins v. Medford*, 119 F.3d 1156 (4th Cir. en banc 1997; firing for political activities); *Worrell v. Bedsole*, 1997 WL 153830 (4th Cir. 1997)(deputy fired for reporting failures in providing safe police equipment); *Carroll v. N.C.D.E.N.R*, 358 N.C. 649, 599 S.E.2d 888 (2004)(officer disciplined for nominal speeding while responding to medical emergency); *Newberne v. N.C. Department of Crime Control and N.C. Highway Patrol*, 359 N.C. 782, 610 S.E.2d 201 (2005)(retaliation against Trooper); *Bulloch v. N.C. Highway Patrol*, 732 S.E.2d 373 (2012)(Trooper arbitrarily terminated without cause); *Howell v. Town of Carolina Beach*, 106 N.C. App. 410, 419 S.E.2d 277 (1992)(officer fired for reporting malfunctioning police firearms).

5. Millions of individuals are employed by more than eighty two thousand governmental units at local, state, and federal levels. As of 1991, more than 18 million persons were employed by local, state or the federal government. See *Waters v. Churchill*, 114 S. Ct. 1878, 1899 n. 3 (1994)(Stevens, J. and Blackmun, J., dissenting)(citing the 1991 figures from the U.S. Department of Commerce Statistical Abstract of the United States, Table No. 500, page 318 (113 ed. 1993). The 2005 data indicate that there were 18,644,112 government employees that year. http://ftp2census/gov/govs/apes/05fedfun.pdf.

6. See Senator Sam J. Ervin, Jr., *Preserving The Constitution* 165, 213 - 214 (1984); Boward, *Lost Rights: The Destruction of American Liberty* 1-6, 49-51 (1995).

7. See *Board of County Commissioners v. Umbehr*, 518 U.S. 668 (1996)(cataloging cases of government retaliation in different contexts).

frequently arises in many different contexts.[8] For police officers, the First Amendment serves as the bedrock beacon of faith that inspires officers to carry out their street and testimonial missions with protection from retaliation.

Patrol commanders, sheriffs, police chiefs, government managers, inspectors and many local government officials are more prone to influence by direct political and other improper pressures, and therefore more likely to act with partisan or other retaliatory motives. *E.g. Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013)(denying summary judgment in political patronage case where deputy sheriffs were fired in retaliation for not politically supporting the Sheriff); *Durham v. Jones*, 737 F.3d 291 (4th Cir. 2013); *Knight v. Vernon*, 214 F.3d 544 (4th Cir. 2000); *Edwards v. City of Goldsboro*, 178 F.3d 231 (4th Cir. 1999) and cases cited herein.

This Court has held that law enforcement officers are not relegated to a "watered down version of constitutional rights." *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967). Lower courts have historically followed this Court's teachings that constitutional protections for America's law enforcement officers are entitled to great weight. See e.g. *Konraith v. Williquette*, 732 F. Supp. 973, 978 (W.D. Wis. 1990) (constitutional rights of law enforcement officers "must be afforded great weight"); *Edwards v. City of*

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8. See Levinson, *Silencing Government Employee Whistleblowers In The Name of "Efficiency"*, 23 Ohio Northern U. L. Rev. 17 (1996)(cataloging numerous cases demonstrating retaliation against police officers).

Goldsboro, 178 F.3d 231 (4th Cir. 1999); *Barrett v. Thomas*, 649 F.2d 1193 (5th Cir. 1981).

IX. CONCLUSION

WHEREFORE, this Court should reverse the Eleventh Circuit decision below, and hold that testimony is protected by the First Amendment.

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