

SUPREME COURT OF NORTH CAROLINA

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MAURICE DEVALLE

Petitioner/Appellee,

v.

N.C. SHERIFF'S EDUCATION  
AND TRAINING STANDARDS  
COMMISSION,

Respondent/Appellant.

From Columbus County  
20 CVS 1273

From N.C. Court of Appeals  
COA158PA23

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MOTION OF THE SOUTHERN STATES POLICE BENEVOLENT  
ASSOCIATION, INC. FOR LEAVE TO FILE AN *AMICUS CURIAE*  
BRIEF IN SUPPORT OF PETITIONER/APPELLEE MAURICE  
DEVALLE

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Pursuant to Rule 28.1(a) and (b)(2) of the North Carolina Rules of Appellate Procedure, the Southern States Police Benevolent Association, Inc. ("SSPBA") respectfully moves this Court for leave to file an amicus curiae brief in support of Petitioner/Appellee Maurice Devalle.

## **STATEMENT OF THE INTERESTS OF THE SSPBA**

The SSPBA is an eleven state police association with more than 70,000 members that promotes effective law enforcement, and the rights and safety of police officers. The North Carolina Police Benevolent Association is a division of the PBA (collectively, the North Carolina Police Benevolent Association and the Southern States Police Benevolent Association are hereinafter referred to as the “PBA”), and has 17,072 members, making it the largest association of law enforcement personnel in the State.

The PBA serves as the voice of the police community in North Carolina. The PBA has actively engaged in advocacy in North Carolina since the late 1980s, and has appeared before all branches of government and before courts throughout North Carolina. The PBA currently fills one of six at-large seats on the Probable Cause Committee of the Criminal Justice Education and Training Standards Commission appointed by the Speaker of the North Carolina House of Representatives, and, over the last several decades, has provided counsel to hundreds of North Carolina law enforcement officers facing allegations that they lack “good moral character.” The PBA therefore has both a significant interest in the

outcome of this case, and extensive firsthand knowledge of the myriad challenges faced by officers attempting to maintaining their certifications against charges that they lack moral character.

PBA members are employed by cities, towns, and counties across this state. They regularly risk injury and even death to themselves to protect and serve other members of their communities. What they do is dangerous, but they do it because it is important. The maintenance of public safety is central to a functioning society. It's why people feel secure in their homes. It's why parents can send their kids to school. It's why people cast their votes and express their views without fear. And it's with the help of law enforcement that people in Western North Carolina are getting the help they need after Hurricane Helene.

The PBA appears in cases as amicus curiae where there are issues of special importance to the police community.<sup>1</sup> This is such a case.

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<sup>1</sup> See, e.g., Churchill v. Waters, 511 U.S. 661 (1994); Gilbert v. Homar, 520 U.S. 924 (1997); Swint v. Chambers County Commission, 514 U.S. 35 (1995); Wetherington v. N.C. Department of Public Safety, 368 N.C. 281 (N.C. 2015) (and in both Weatherington cases before the Court of Appeals); Tully v. City of Wilmington, 370 N.C. 527 (2018); Harris v. N.C. Department of Public Safety, 370 N.C. 386 (2018); Toomer v. Garrett, 155 N.C. App. 462, 574 S.E.2d 76 (2002); State v. McGrady, 367 N.C. 516 (2014); N.C. Association of Educators v. State, 368 N.C. 777 (2016); N.C. DENR v. Carroll, 358 N.C. 649 (2004); Whitehurst v. East

Deputy sheriffs and law enforcement officers understand that they can be punished up to and including the revocation of their license for misconduct. But “too often[,] law enforcement officers lose their jobs for frivolous reasons—or for no reason at all.”<sup>2</sup> In light of the sacrifices they make on behalf of the citizens of North Carolina, law enforcement officers reasonably expect—and, under the protections afforded to them under North Carolina’s Declaration of Rights, they have a right to expect—that the State will treat them fairly, uniformly,<sup>3</sup> and equitably when they are accused of wrongdoing.

Reversing the Superior Court and Court of Appeals would authorize the unfair, inconsistent, and inequitable treatment of law enforcement personnel. It would countenance the Commission’s denial of adequate notice of the meaning of the term “good moral character” to Mr. Devalle, and permit the arbitrary application of the moral character standard. It

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Carolina University, 257 N.C. App. 938 (2018); Bray v. Swisher, 253 N.C. App. 407 (2017); Sharpe v. Town of Winterville, 59 F.3d 674 (4<sup>th</sup> Cir. 2023); McCaffrey v. Chapman, 921 F.3d 159 (4<sup>th</sup> Cir. 2019).

<sup>2</sup> Senator Jesse Helms, Congressional Record, January 31, 1991, Vol. 137, No. 21, 102nd Congress.

<sup>3</sup> See, e.g., State v. Tenant, 110 N.C. 609, 14 S.E. 387 (1892); Bizzell v. Board of Aldermen, 192 N.C. 348, 135 S.E. 50, 55 (1926); State v. Fowler, 193 N.C. 290, 136 S.E. 709 (1927).

would also place beyond the reach of deputy sheriffs and other law enforcement personnel the possibility of demonstrating the rehabilitation of their moral character, and impose upon them an obligation to be “near perfect.” Dietrich v. N.C. Highway Patrol, et. al., Proposal for Decision, 00 OSP 1039, 2001 WL 34055881 (13 August 2001). Lastly, it would permit a state agency to indefinitely deny a citizen their ability to earn a living, and violate its own previously articulated standards—an outcome with constitutional implications. See Tully v. City of Wilmington, 370 N.C. 527, 535, 810 S.E.2d 208, 215 (2018).

### **REASONS FOR THIS AMICUS BRIEF**

This Court would benefit from an amicus curiae brief from this amici because:

1. Having spent decades directly assisting hundreds of law enforcement officers respond to allegations that they lack good moral character, the PBA brings a unique perspective concerning the difficulty faced by deputy sheriffs, like Mr. Devalle, in proving the existence of this “unusually ambiguous” character trait. In re Willis, 288 N.C. 1, 10, 215 S.E.2d 771, 776 (1975) (citations omitted). This Court may benefit from

hearing the perspective of North Carolina’s largest voluntary association of law enforcement officers on this important issue.

2. PBA members have a substantial stake in the outcome of this case for two reasons. First, the principle of rehabilitation is of vital importance to law enforcement officers, who are, “like the rest of us, deeply fallible.” United States v. Aparicio-Soria, 740 F.3d 152, 158 (4th Cir. 2014) (Wilkinson, J., dissenting). The Commission abandoned the principle of character restoration in this case. If allowed to stand, the Commission’s decision would impose on PBA members, and all other North Carolina law enforcement officers, a “threshold for moral character that suggests an endless quest in which [they] will never succeed.” In re Wiesner, 94 A.D.3d 167, 183, 943 N.Y.S.2d 410 (2012).

Second, by seeking to indefinitely preclude Mr. Devalle from the law enforcement profession, the Commission’s Final Agency Decision implicates a right so fundamental that it appears first in North Carolina’s Declaration of Rights: the right to earn a living. N.C. Const. art. I §. 1 (the “Fruits of Labor Clause”); King v. Town of Chapel Hill, 367 N.C. 400, 408, 758 S.E.2d 364, 371 (2014) (citations omitted) (Newby, C.J.) (noting that the “right to ‘earn a living’” is “fundamental”). The

outcome of this decision will bear directly on whether, and to what extent, the Fruits of Labor Clause protects the rights of PBA members, and other law enforcement officers, to pursue their profession free from the arbitrary actions of their occupational licensing authority.

### **ISSUES PRESENTED IN THE BRIEF**

1. Whether the Commission's good moral character standard, either in its definition or its application to Mr. Devalle, is unconstitutionally vague under the standard articulated by this Court in Rhyne v. K-Mart Corp., 358 N.C. 160, 186, 594 S.E.2d 1, 19 (2004).

2. Whether Mr. Devalle is presently of good moral character, as required by 12 N.C. Admin. Code 10B.0301(12).

3. Whether the Commission's application of the good moral character standard to Mr. Devalle in this case violated Article I, Section 1 of the North Carolina Constitution.

### **THE AMICUS'S POSITION ON THE FOREGOING ISSUES**

1. Both as defined by the Commission's regulations, and as applied to Mr. Devalle, the Commission's definition of "good moral character" is unconstitutionally vague because (1) the Commission fails to apprise people of ordinary intelligence of that term's meaning, and (2)

the Commission's standardless conception of "good moral character" empowers the Commission to arbitrarily apply that term, as it did in this case.

2. As the undisputed record evidence demonstrates, Mr. Devalle currently possesses good moral character. The Commission's post hoc rationale that Mr. Devalle's conduct during his hearing deprived him of that character is unencumbered by sufficient findings of fact and conclusions of law, as those requirements are specified in Matter of Moore, 301 N.C. 634, 640, 272 S.E.2d 826, 830 (1981).

3. The Commission's Final Agency Decision deprived Mr. Devalle of his rights under the Fruits of Labor Clause because (1) as applied to Mr. Devalle, the Commission cannot demonstrate that its conception of "good moral character" is "reasonable" or "reasonably necessary," State v. Ballance, 229 N.C. 764, 770, 51 S.E.2d 731, 735 (1949); and (2) the Commission unconstitutionally violated its own rules by abandoning the standards it previously articulated in Royall v. N.C. Sheriffs' Educ. And Training Standards Comm'n, 09 DOJ 5859, Final Agency Decision (5 Jan. 2011). See Tully, 370 N.C. at 535, 810 S.E.2d at 215.



## CONCLUSION

Wherefore, Amicus Curiae Southern States Police Benevolent Association respectfully prays that this Court grant leave to file an amicus curiae brief to address this important issue before the Court.

Electronically submitted, this the 6th day of December, 2024.

/s/Jeffrey S. Warren

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N.C. App. R. 33(b) Certification: I certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that on 6th December 2024, I caused a copy of the foregoing to be filed with the Clerk of the Supreme Court of North Carolina by submitting it through the Court's electronic filing website.

I further certify that on 6th December 2024, I caused the foregoing to be served on all counsel of record by sending a copy to counsel's correct and current electronic mail addresses, which are listed below:

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Electronically submitted this the 6th day of December, 2024.

/s/ Jeffrey S. Warren