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The First Amendment Lawyers Association (FALA) today filed a motion in the Ninth Circuit Court of Appeals for leave to file an *amicus* brief in *Adams v. County of Sacramento*, urging the full Ninth Circuit Court of Appeals to rehear the case following a split 2-1 panel decision affirming the decision of U.S. District Judge William B. Shubb, of the Eastern District of California, dismissing a suit by a former city police officer alleging she was forced to resign in violation of the First Amendment, in retaliation for off-duty, text messages with “racist” overtones. The District Court decision is reported at 2023 WL 2655856. The Ninth Circuit panel ruling is reported at 116 F.4th 1004.

The brief forcefully argues that the dismissal should be reversed because, among other reasons, that is the result which will facilitate the “robust marketplace of ideas” that has been central to the protection of free expression in our society since Justice Holmes’ dissent in *Abrams v. United States*, 250 U.S. 616, 630 (1919), and has been repeatedly recognized by the Supreme Court in subsequent cases, including *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 745–46 (1978) (requirement of government neutrality “in the marketplace of ideas”), and *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988) (“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern.”).

As Justice Robert Jackson, writing for the United States Supreme Court in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), presciently explained 80 years ago:

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. *** As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. *** Those who begin coercive elimination of dissent

soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

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It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

* * *

If there is any 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 force citizens to confess by word or act their faith therein. [Emphasis added.]

The message of *Barnette* is a simple one to understand and apply: Unless called out and stopped, coercive elimination of officially disfavored expression will undermine the freedoms protected by the First Amendment and ultimately destroy American democracy. Every American, regardless of their politics, has the right to be heard and to be protected against government retaliation for exercising their Freedom of Speech without fear of official retaliation. Federal, State and local governmental officials must welcome and encourage, not attempt to stifle, expression. Official retaliation for private speech should not be tolerated and must be opposed at every turn.

A copy of the *amicus* brief, which was authored by FALA member, Ryan E. Long, Esq., of Santa Monica, CA, may be accessed here: <https://www.firstamendmentlawyers.org/public-resources/6091b498-6fee-4ea2-b2e1-1cf17b2719c0>

Further information regarding FALA may be accessed here: www.firstamendmentlawyers.org.

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(The First Amendment Lawyers Association, founded in 1965, is a national association of attorneys dedicated to preserving the Freedom of Expression guaranteed by the First Amendment and State Constitutions. Its members represent individuals and businesses throughout the United States engaged in constitutionally protected expression, have litigated many of the landmark First Amendment cases decided during the past eight decades, and often appear amicus curiae in the Supreme Court of the United States and other appellate courts throughout the nation in cases in which First Amendment rights are at stake.)