

NO. COA26-668

SIXTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

DURHAM COUNTY,
EX REL MAGGIE CLAPP,

Petitioner-Appellee,

v.

AMANDA SHENELLE WALLACE,

Respondent-Appellant.

From Durham County

25CV012521-310

BRIEF BY AMICI CURIAE
IN SUPPORT OF RESPONDENT-APPELLANT

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AfroMarxist, Unified Against Genocide – Angela Davis (1992), YouTube (Nov. 11, 2017), https://www.youtube.com/watch?v=O-BB8vIFjA8	6
Mia L. Carey, <i>Dr. Anna Julia Cooper (1859-1964) and “A Voice from the South”</i> , NAT’L PARK SERV., https://www.nps.gov/articles/000/cooper-a-voice-from-the-south.htm	7
Iván-Nicholas Cisneros, <i>Racist Urbanisms, or Notes on Why Family Policing Must Be Abolished</i> , COLUMBIA CTR. FOR CONTEMP. CRITICAL THOUGHT (Mar. 13, 2021), https://blogs.law.columbia.edu/abolition1313/ivan-nicholas-cisneros-racist-urbanisms-or-notes-on-why-family-policing-must-be-abolished/	5
Civil Rights Congress, <i>We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People</i> 8-9 (1951)	6

- Dewey M. Clayton, *Black Lives Matter and the Civil Rights Movement: A Comparative Analysis of Two Social Movements in the United States*, 49 J. BLACK STUDIES 448 (2018)..... 8
- Whitney Clegg, Jeffrey Billman, & Nick Ochsner, *Best Interest of the Child*, ASSEMBLY (Dec. 5, 2023), <https://www.theassemblync.com/news/politics/justice/child-welfare-investigation/>..... 6
- Latagia Copeland Tyronce, MSW, CADAS, *Cultural Genocide and the Destruction of the Black Family: Child Welfare Personnel's Refusal to Follow the Law*, MEDIUM (Oct. 22, 2018), <https://medium.com/latagia-copeland-tyronces-tagis-world/cultural-genocide-and-the-destruction-of-the-black-family-child-welfare-personnels-refusal-to-24f399b92d96>..... 5
- Allyson C. Criner, et al., *Civil Rights Movement in North Carolina*, in *Encyclopedia of North Carolina* (William S. Powell, ed., 2006), <https://www.ncpedia.org/civil-rights-movement/nonviolent-protests> 8
- Christian Davenport, et al., *Protesting While Black? The Differential Policing of American Activism, 1960-1900*, 76(1) AM. SOC. REV. 152 (2011)..... 10
- Camila Domonoske, *After Fatal Police Shooting, Protest Erupts in Charlotte, N.C.*, NPR (Sep. 21, 2016), <https://www.npr.org/sections/thetwo-way/2016/09/21/494844130/after-police-shooting-protesters-in-charlotte-n-c-shut-down-interstate>..... 9
- Nina Farnia, *Imperialism and Black Dissent*, 75 STAN. L. REV. 397 (2023)..... 11
- Freedom House, N.C. AFRICAN AM. HERITAGE COMM'N, <https://aahc.nc.gov/programs/nc-civil-rights-trail/nc-civil-rights-virtual-trail/freedom-house> 8, 10
- David H. Gans, *The Black Conventions of the Reconstruction Era*, 79 STAN. L. REV. 3 (2027) (forthcoming manuscript) 8
- Greensboro Sit-In, HISTORY.COM (Jan. 26, 2026), <https://www.history.com/articles/the-greensboro-sit-in>..... 10
- Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L. J. FOR. 685, 688-690 (2018) 11

- Hendersonville, NC City Government, *Celebrating Black History - Golden Frinks*, FACEBOOK (Feb. 15, 2024),
<https://www.facebook.com/HVLNC/posts/celebrating-black-history-golden-frinks-golden-frinks-was-a-civil-rights-activis/792570549574371/>8, 10
- Virgie Hoban, ‘Discredit, Disrupt, and Destroy’: FBI Records Acquired by the Library Reveal Violent Surveillance of Black Leaders, Civil Rights Organizations, U.C. BERKELEY LIBRARY (Jan. 18, 2021),
<https://www.lib.berkeley.edu/about/news/fbi>10
- Robin D.G. Kelley, *Slangin’ Rocks . . . Palestinian Style, in Police Brutality: An Anthology* 27 (Jill Nelson ed., 2000)10
- Martin Luther King, Jr., I Have a Dream: Address Delivered at the March on Washington for Jobs and Freedom (Aug. 28, 1963),
<https://kinginstitute.stanford.edu/king-papers/documents/ihave-dream-address-delivered-march-washington-jobs-and-freedom> 8
- North Carolina State Capitol- Golden Asro Frinks, NORTH CAROLINA HISTORIC SITES, <https://historicsites.nc.gov/north-carolina-state-capitol>8, 10
- Brandon M. Lofton, *Fifty Years After Brown, The Civil Rights Ideology and Today's Movement*, 29 N.Y.U. REV. L. & SOC. CHANGE 719 (2005) 8
- German Lopez, *What Happened in Ferguson, Missouri, Following the Shooting and Grand Jury Decision?*, VOX (Jan. 27, 2016)10
- Press Release, *Leaked FBI Documents Raise Concerns about Targeting Black People Under ‘Black Identity Extremist’ and Newer Labels*, AM. CIV. LIBERTIES UNION (Aug. 9, 2019), <https://www.aclu.org/press-releases/leaked-fbi-documents-raise-concerns-about-targeting-black-people-under-black-identi-1>11
- Rashawn Ray, *Black Lives Matter at 10 Years: 8 Ways the Movement has been Highly Effective*, BROOKINGS INST. (Oct. 12, 2022),
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MUDASSAR TOPPA & PRINCESS MASILUNGAN, CLEAR CLINIC & MOVEMENT FOR BLACK LIVES, STRUGGLE FOR POWER: THE ONGOING PERSECUTION OF BLACK MOVEMENT BY THE U.S. GOVERNMENT, https://bit.ly/460mPuN	10
Etienne C. Toussaint, <i>Afrofuturism in Protest: Dissent and Revolution</i> , 125 COLUM. L. REV. 1375 (2025)	7

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BRIEF BY AMICI CURIAE
IN SUPPORT OF RESPONDENT-APPELLANT¹

¹ No person or entity other than this *amicus curiae* and its counsel directly or indirectly wrote this brief or contributed money for its preparation.

ISSUES PRESENTED

This brief addresses whether the district court violated the First Amendment. *Amici* will argue that Ms. Wallace’s speech was protected political expression on matters of public concern, not harassment, threats, or workplace violence. The brief further addresses whether courts must evaluate such speech in its social and historical context, including the long tradition of Black political dissent challenging state violence, racial injustice, and family separation, before imposing any order that chills constitutional advocacy.

INTRODUCTION

This case asks whether the Workplace Violence Prevention Act (“WVPA”)—a statute designed to prevent violence—may be used to silence a Black organizer’s criticism of public officials and the state systems they administer. It may not. Public officials have no constitutional right to be shielded from outrage, condemnation, or demands for accountability. Courts cannot transform protected political advocacy into harassment merely because it is forceful, disruptive, or unsettling to those who exercise state power.

The order against Ms. Wallace violates the First Amendment. It punishes her public condemnation of Durham County DSS and its leadership as misconduct rather than protected political speech. In doing so, the order repeats a familiar and dangerous pattern: Black political dissent is recast as threat, disorder, or violence when it challenges institutions that exercise coercive power. That danger is especially acute here, where Ms. Wallace spoke against the child welfare system, a family-separation and policing system she understood to be devastating Black and poor families.

Amici urge this Court to vacate the no-contact order or, at minimum, substantially narrow it so that it does not suppress Ms. Wallace’s constitutional rights, chill public protest, or constrain organizers who challenge state violence and family separation.

ARGUMENT

I. Ms. Wallace’s Speech Was Protected Political Speech.

The district court did not properly analyze Ms. Wallace’s speech as what it plainly was: protected political speech directed at a government agency and its leadership. The First Amendment does not protect only measured, polite, or institutionally approved criticism. It protects the language of social movements and the rhetoric of dissent. As the U.S. Supreme Court recognized in *Terminiello v. Chicago*, speech often serves its highest purpose when it “invites dispute,” “creates dissatisfaction,” or “stirs people to anger.” 337 U.S. 1, 4 (1949). That is precisely why courts may not punish political speech merely because public officials find it provocative, unsettling, or morally severe.²

Ms. Wallace implored the Director of Durham County DSS to stop separating families, return children to their parents, and resign from public office. Her use of terms like “*kidnapping*” and “*genocide*” was political protest language—morally urgent, historically grounded, and aimed at condemning a state system she understood to be disproportionately harming Black families. Professor Sarah Katz, an expert on family policing and abolition, testified that these terms are not isolated insults, but part of a political vocabulary used by family-policing advocates to challenge state power.³ She explained that advocates invoke “*genocide*” because international law recognizes that forcibly transferring children from one group to another can constitute genocide. That framing connects today’s family-separation

² *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”). *See also*, *Snyder v. Phelps*, 562 U.S. 443, 460-461 (2011).

³ T pp 8-9.

system to a longer history of state violence against families, including the forced removal of Indigenous children to boarding schools, the separation of enslaved Black mothers from their children, and the apprenticeship of emancipated Black children to former enslavers.⁴

Professor Katz further testified that family-policing advocates use “*kidnapping*” to describe the government’s removal of children from their parents and communities because that word captures how many families experience forced separation.⁵ Leading scholars, including Professor Dorothy Roberts, have used similar language, including terms such as “*kidnapping*” and “*hostage-taking*,” to critique the family-policing system.⁶ Ms. Wallace’s language therefore sits squarely within an established political and scholarly critique of state family separation and receives First Amendment protection.

Further, Ms. Wallace’s use of “*genocide*”, like the family-policing movement’s use of that term, did not emerge in political isolation. Black freedom movements have long used “*genocide*” to name racialized state violence and to force public institutions to confront harms they would rather ignore. In 1951, the Civil Rights Congress, led by Black activists including W.E.B. Du Bois, submitted *We Charge Genocide* to the

⁴ Iván-Nicholas Cisneros, *Racist Urbanisms, or Notes on Why Family Policing Must Be Abolished*, COLUMBIA CTR. FOR CONTEMP. CRITICAL THOUGHT (Mar. 13, 2021), <https://blogs.law.columbia.edu/abolition1313/ivan-nicholas-cisneros-racist-urbanisms-or-notes-on-why-family-policing-must-be-abolished/>.

⁵ Latagia Copeland Tyronce, MSW, CADAS, *Cultural Genocide and the Destruction of the Black Family: Child Welfare Personnel's Refusal to Follow the Law*, MEDIUM (Oct. 22, 2018), <https://medium.com/latagia-copeland-tyronces-tagis-world/cultural-genocide-and-the-destruction-of-the-black-family-child-welfare-personnels-refusal-to-24f399b92d96>;

⁶ DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES- AND HOW ABOLITION CAN BUILD A SAFER WORLD 64 (2022).

United Nations, accusing the United States of perpetrating genocide against Black Americans through state violence, racial terror, and official indifference.⁷ Decades later, Angela Davis and other organizers continued to use the term to confront racialized state violence.⁸ This history shows that “*genocide*” is not merely inflammatory rhetoric; it is a recognized language of Black political dissent. Ms. Wallace’s speech therefore stands at the intersection of two protected traditions: the movement to end forced family separation and the Black freedom struggle to expose state violence and build a more just society.

The true target of Ms. Wallace’s speech was not Director Clapp personally, but North Carolina’s family-separation crisis. During the 2022-2023 fiscal year, only thirty percent of children leaving North Carolina’s foster system were reunited with their parents.⁹ Nearly 1,200 parents in North Carolina, overwhelmingly Black and poor, lose their parental rights each year. In Durham County, the reunification rate is only 22 percent—less than half the national average—and the racial disparities are stark.¹⁰ In 2021, only one family permanently separated by the Durham family system was white; every other family was Black.¹¹ Against this backdrop, Ms. Wallace’s use of “*kidnapping*” and “*genocide*” was not a personal accusation against Director Clapp. It was an expression of political outrage against a system that Ms.

⁷ Civil Rights Congress, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People* 8-9 (1951).

⁸ AfroMarxist, *Unified Against Genocide – Angela Davis* (1992), YOUTUBE (Nov. 11, 2017), <https://www.youtube.com/watch?v=O-BB8vIFjA8>.

⁹ Whitney Clegg, Jeffrey Billman, & Nick Ochsner, *Best Interest of the Child*, ASSEMBLY (Dec. 5, 2023), <https://www.theassemblync.com/news/politics/justice/child-welfare-investigation/>.

¹⁰ *Id.*

¹¹ *Id.*

Wallace and many affected families experience as state violence against poor, Black, and Brown communities. Had the district court examined her words in that context, it should have recognized that her speech demanded the highest level of constitutional protection.

II. By Applying the WVPA Without Meaningful Constitutional Scrutiny, the District Court Treated Protected Black Dissent as a Threat Rather Than an Act of Democratic Participation.

By failing to recognize Ms. Wallace’s words as protected political speech, the district court did more than misapply the First Amendment; it diminished Black dissent’s central role in expanding democracy and challenging state power.

a. Black Dissent Is an Engine of Democracy.

The history of American democracy is inseparable from Black dissent and political speech. Frederick Douglass, Harriet Tubman, Sojourner Truth, Dr. Anna Julia Cooper, and generations of Black organizers exposed the contradiction between America’s professed ideals and its realities of slavery, racial subordination, and state violence. They did so not through comfortable conversation, but through petitioning, public protest, organizing, and uncompromising demands for equal citizenship.¹² Black dissent shaped the text of the U.S. constitution. Black Americans organized conventions, petitioned Congress and the President, issued declarations of rights, and demanded constitutional guarantees of citizenship, political participation, and equal

¹² Etienne C. Toussaint, *Afrofuturism in Protest: Dissent and Revolution*, 125 COLUM. L. REV. 1375, 1394 (2025); Mia L. Carey, *Dr. Anna Julia Cooper (1859-1964) and “A Voice from the South”*, NAT’L PARK SERV., <https://www.nps.gov/articles/000/cooper-a-voice-from-the-south.htm> (last accessed Aug. 12, 2026).

protection. Those efforts helped secure the Fourteenth and Fifteenth Amendments and redefined American citizenship.¹³

The Civil Rights Movement continued this tradition. Demonstrations, boycotts, sit-ins, freedom rides, marches, and local campaigns across the country were often condemned as disruptive, dangerous, or unlawful, even when they sought basic equality.¹⁴ In North Carolina, Golden Asro Frinks spent years leading efforts in Edenton to desegregate public facilities and defeat Jim Crow practices through civil disobedience, picket lines, slowdowns, strikes, and boycotts.¹⁵ His organizing made him a frequent target for arrest and earned him the nickname “The Great Agitator.”¹⁶ Through such organized dissent, however, Black Americans like Mr. Frinks secured transformative reforms, including landmark civil rights and voting rights legislation, expanded constitutional enforcement, and greater public recognition of racial injustice.¹⁷

¹³ David H. Gans, *The Black Conventions of the Reconstruction Era*, 79 STAN. L. REV. 3 (2027)(forthcoming manuscript) (on file with author).

¹⁴ Brandon M. Lofton, *Fifty Years After Brown, The Civil Rights Ideology and Today's Movement*, 29 N.Y.U. REV. L. & SOC. CHANGE 719, 723 (2005).

¹⁵ Shiri Spicer, “The Great Agitator”: Golden A. Frinks, TAR HEEL JUNIOR HISTORIAN (Fall 2004, v.44, no. 1), <https://digital.ncdcr.gov/Documents/Detail/tar-heel-junior-historian-2004-fall-v.44-no.1/3700456?item=5369530>. Allyson C. Criner, et al., *Civil Rights Movement in North Carolina*, in Encyclopedia of North Carolina (William S. Powell, ed., 2006), <https://www.ncpedia.org/civil-rights-movement/nonviolent-protests> (last accessed Aug. 11, 2026).

¹⁶ *North Carolina State Capitol- Golden Asro Frinks*, NORTH CAROLINA HISTORIC SITES, <https://historicsites.nc.gov/north-carolina-state-capitol> (last visited August 17, 2026), and, Hendersonville, NC City Government, *Celebrating Black History - Golden Frinks*, FACEBOOK (Feb. 15, 2024), <https://www.facebook.com/HVLNC/posts/celebrating-black-history-golden-frinks-golden-frinks-was-a-civil-rights-activis/792570549574371/>.

¹⁷ *Freedom House*, N.C. AFRICAN AM. HERITAGE COMM'N, <https://aahc.nc.gov/programs/nc-civil-rights-trail/nc-civil-rights-virtual-trail/freedom-house> (last accessed Aug. 13, 2026); Dewey M. Clayton, *Black Lives Matter and the Civil Rights Movement: A Comparative Analysis of Two Social Movements in the United States*, 49 J. BLACK STUDIES 448, 452 (2018); Martin Luther King, Jr., *I Have a Dream: Address Delivered at the March on Washington for Jobs and Freedom* (Aug. 28, 1963),

This pattern persists in the twenty-first century. The deaths of Trayvon Martin, Michael Brown, Layleen Polanco, Sandra Bland, Keith Lamont Scott, and other Black Americans sparked renewed movements demanding accountability for discriminatory policing and unequal justice.¹⁸ Like earlier generations, contemporary Black activists protested, demonstrated and pressed public institutions toward transformation, contributing to investigations of police practices, policy changes, and a broader reckoning with race and democracy.¹⁹

b. The District Court’s Ruling Enforces the State’s Silencing of Black Political Speech.

Despite Black dissent’s central role in shaping American democracy, Black political speech has too often been treated as disorder, danger, or threat rather than democratic participation. That history matters here. A court cannot evaluate the WVPA’s use against Ms. Wallace without recognizing the deeper pattern in which legal systems have punished Black advocacy when it confronts racial injustice, state violence, or inequality.

That pattern has deep roots. In the Jim Crow era, “[i]nformal modes of terrorism and violence,” particularly lynching, “became the most pervasive form of

<https://kinginstitute.stanford.edu/king-papers/documents/i-have-dream-address-delivered-march-washington-jobs-and-freedom>.

¹⁸ Rashawn Ray, *Black Lives Matter at 10 Years: 8 Ways the Movement has been Highly Effective*, BROOKINGS INST. (Oct. 12, 2022), <https://www.brookings.edu/articles/black-lives-matter-at-10-years-what-impact-has-it-had-on-policing/>; Camila Domonoske, *After Fatal Police Shooting, Protest Erupts in Charlotte, N.C.*, NPR (Sep. 21, 2016), <https://www.npr.org/sections/thetwo-way/2016/09/21/494844130/after-police-shooting-protesters-in-charlotte-n-c-shut-down-interstate>.

¹⁹ *Id.*

policing and disciplining African Americans” who resisted segregation.²⁰ During the Civil Rights era, laws prohibiting trespassing, disorderly conduct and disturbing the peace were used to arrest protestors,²¹ and cities like Edmonton passed anti-picketing laws that led to the arrests of primarily Black activists.²² The FBI’s surveillance of Marcus Garvey²³ and repeated disruption of civil rights and Black Power organizations²⁴ are also examples of the same impulse to treat Black dissent as a threat to be controlled rather than speech to be protected.

These trends persist in the present day. Black-led protest activity is still more likely to provoke police intervention, arrests, and use of force than comparable protests involving white participants, even after accounting for protest size and violence.²⁵ After the police killing of Michael Brown in Ferguson, Missouri, law enforcement responded to demonstrators with armored vehicles, military-grade weaponry, tear gas, and sniper deployments.²⁶ Leaked FBI materials later revealed

²⁰ Robin D.G. Kelley, *Slangin’ Rocks . . . Palestinian Style*, in *Police Brutality: An Anthology* 27 (Jill Nelson ed., 2000).

²¹ Greensboro Sit-In, HISTORY.COM (Jan. 26, 2026), <https://www.history.com/articles/the-greensboro-sit-in>.

²² *Freedom House*, *supra*, fn 17. Notably, while public institutions now uplift Frinks’ work and legacy, he was frequently arrested and targeted by the police for his activism at the time. *See Source Packet for Golden A. Frinks (1920-2004)*, *supra* n. 16 (uplifting Mr. Frinks’ lifelong racial justice activism, including the fact that he was jailed eighty-seven times). *See also* Hendersonville, NC City Government, *Celebrating Black History - Golden Frinks*, *supra* fn. 16 (celebrating Frinks’ role as a civil rights leader, including his role leading desegregation pickets and protests in Edenton).

²³ Virgie Hoban, ‘Discredit, Disrupt, and Destroy’: FBI Records Acquired by the Library Reveal Violent Surveillance of Black Leaders, Civil Rights Organizations, U.C. BERKELEY LIBRARY (Jan. 18, 2021), <https://www.lib.berkeley.edu/about/news/fbi>.

²⁴ MUDASSAR TOPPA & PRINCESS MASILUNGAN, CLEAR CLINIC & MOVEMENT FOR BLACK LIVES, STRUGGLE FOR POWER: THE ONGOING PERSECUTION OF BLACK MOVEMENT BY THE U.S. GOVERNMENT 9, <https://bit.ly/460mPuN> (last accessed Aug. 14, 2026) (internal citation omitted).

²⁵ Christian Davenport, et al., *Protesting While Black? The Differential Policing of American Activism, 1960-1900*, 76(1) AM. SOC. REV. 152, 162-168 (2011).

²⁶ German Lopez, *What Happened in Ferguson, Missouri, Following the Shooting and Grand Jury Decision?*, VOX (Jan. 27, 2016).

federal monitoring of Black activists under the label “Black Identity Extremists.”²⁷ These examples show how quickly racial-justice advocacy can be reframed as a security threat instead of protected political expression.

Courts have not been immune from this pattern. Although courts have sometimes protected the associational rights of Black political movements,²⁸ they have too often failed to appreciate the constitutional importance of Black protest itself—especially when that protest directly challenges systems of power.²⁹ The result is a constitutional asymmetry: Black political movements face heightened legal consequences while receiving diminished constitutional protection.³⁰

This Court should not allow that asymmetry to govern Ms. Wallace’s case. Her speech addressed racial justice, inequality, and government accountability—core matters of public concern.³¹ The Supreme Court of North Carolina has recognized that the First Amendment, under both the state and federal constitutions, requires courts to provide “adequate breathing space” for political speech, especially speech

²⁷ Press Release, *Leaked FBI Documents Raise Concerns about Targeting Black People Under ‘Black Identity Extremist’ and Newer Labels*, AM. CIV. LIBERTIES UNION (Aug. 9, 2019), <https://www.aclu.org/press-releases/leaked-fbi-documents-raise-concerns-about-targeting-black-people-under-black-identi-1>.

²⁸ See *Shelton v. Tucker*, 364 U.S. 479 (1960), and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) for examples of U.S. Supreme Court cases protecting the associational rights of civil rights protestors.

²⁹ See *Walker v. City of Birmingham*, 388 U.S. 307, 316, 321 (1967) (affirming the protestors’ convictions for contempt of court after they violated a city ordinance requiring permits for public demonstrations, despite having major doubts about the ordinance’s constitutionality). See also *Adderley v. Florida*, 385 U.S. 39, 46 (1966) (affirming trespass convictions of activists who marched to the local jail to protest racial segregation in the jail and the previous day’s arrests of protesting students).

³⁰ Nina Farnia, *Imperialism and Black Dissent*, 75 STAN. L. REV. 397, 440-443 (2023); Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 YALE L. J. FOR. 685, 688-690 (2018).

³¹ R p 36 ¶ 18; T pp 52, 114, 129, 146:23–24, T pp 103:23–104; 146:22–25, T pp 12–14, 15:16–21, 41:14–18, 73:25–74:9, T pp 122:4–7; 106:23–107:5.

concerning public affairs. *State v. Taylor*, 866 S.E.2d 740, 749 (N.C. 2021). Such speech is “more than self-expression; it is the essence of self-government.” *Id.* (quoting *Snyder v. Phelps*, 562 U.S. 443, 452 (2011)). Yet the district court allowed the State to use the WVPA to restrict Ms. Wallace’s speech without engaging its political nature or the substantial constitutional interests at stake.

If the district court’s order stands, the WVPA risks becoming another legal tool used to suppress Black dissent and narrow the political possibilities of racial-justice advocacy. The First Amendment does not permit that result. This Court should make clear that laws designed to prevent violence cannot be stretched to punish protected protest against state violence.

III. CONCLUSION

Silencing Ms. Wallace’s protest breathes new life into the mistakes of the past: criminalizing Black political speech and suppressing the dissent that propels America forward. This Court has both the opportunity and the obligation to correct this error by vacating—or substantially narrowing—the district court’s order.

Respectfully submitted, this 17th day of August, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, the undersigned counsel hereby certifies that the foregoing brief, which is prepared using a proportional font, is less than 3,750 words (excluding those parts excluded by the Rules) as reported by his word-processing software.

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The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the persons indicated below via electronic mail and United States Mail, postage prepaid, at the addresses as follows:

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