

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KENNETH L. HUNTER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:12-CV-333
	)	
TOWN OF MOCKSVILLE, NORTH	)	
CAROLINA, et al.,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court on Plaintiffs’ Supplemental Motion to Alter or Amend Judgment and Motion for Relief from Judgment. (Doc. 103.) The plaintiffs contend that this Court’s previous decision granting qualified immunity to defendants Town Manager Christine Bralley and Chief Robert Cook should be revisited and revised in light of the Fourth Circuit’s decision in *Durham v. Jones*, 737 F.3d 291 (4th Cir. 2013).

The Court previously held that the cases addressing whether an employer can or cannot discharge law enforcement officers for anonymous off-duty reporting of apparent corruption were ambiguous and gave the defendants the benefit of qualified immunity. *Hunter v. Town of Mocksville*, No. 12-CV-333, 2013 WL 5726316, at \*9 (M.D.N.C. Oct. 21, 2013); (Doc. 95 at 15-16.) The Fourth Circuit has now explicitly held that “it was clearly established in the law of this Circuit in September 2009 that an employee’s speech about serious governmental misconduct, and certainly not least of all serious misconduct in a law enforcement agency, is protected.”<sup>1</sup> *Durham*, 737 F.3d at 303-04 (internal citation omitted). The Fourth Circuit expressly relied on

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<sup>1</sup> The plaintiffs here were terminated in December 2011.

*Andrew v. Clark*, 561 F.3d 261, 269 (4th Cir. 2009), which this Court, in its previous opinion, acknowledged was in plaintiffs’ favor. *Hunter*, 2013 WL 5726316, at \*9; (Doc. 95 at 16.)

Ms. Bralley and Chief Cook note that *Durham* did not address the *Garcetti* issue of whether the plaintiffs were speaking as citizens or as employees and contend that *Durham* is not relevant to whether the law on the *Garcetti* issue in this case was “clearly established.”<sup>2</sup> But that argument assumes too much. There are now two reported Fourth Circuit cases that weigh in favor of the plaintiffs’ position and none that weigh in favor of immunity for Chief Cook and Ms. Bralley. That there are cases in other circuits which might give rise to some uncertainty does not help the defendants; the issue is whether the law is clearly established in this circuit. *See Wilson v. Layne*, 141 F.3d 111, 114 (4th Cir. 1998) (en banc).

Moreover, there are significant factual differences between this case and the out-of-circuit cases the Court earlier viewed as establishing a lack of clarity about the law. Those cases, *Anemone v. Metro. Transp. Auth.*, 629 F.3d 97, 115-17 (2d Cir. 2011), and *Morales v. Jones*, 494 F.3d 590, 597-98 (7th Cir. 2007), involved reports to a prosecutor’s office with whom the plaintiff law enforcement officers had regular contact. Here, plaintiffs communicated their concerns to the NAACP and to the Governor. Mocksville law enforcement officers do not routinely work with the Governor, who is completely outside normal law enforcement channels. Indeed, there is no evidence that at the time of the events in question, Ms. Bralley, Chief Cook, or anyone associated with them said or did anything which would even indirectly indicate that they considered the phone calls to the Governor’s office to have been part of the plaintiffs’ jobs.

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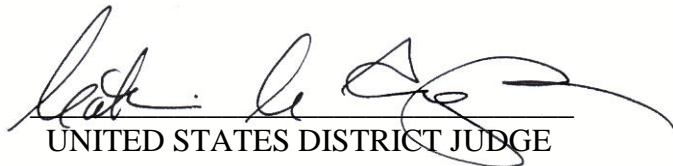
<sup>2</sup> Defendants also contend that they “never even argued” at summary judgment that the “plaintiffs’ speech would cause disruption within the MPD.” (Doc. 106 at 5.) This is inaccurate. (*See* Doc. 38 at 16-17.)

The Court concludes that its earlier determination that the plaintiffs' First Amendment rights were not clearly established must be revisited and, in light of the clear language in *Durham*, set aside. Since final judgment has not been entered as to any party, much less all parties, the Court may revise its decision "at any time," pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

For the reasons stated above, it is **ORDERED** that:

1. Plaintiffs' Supplemental Motion to Alter or Amend Judgment and Motion for Relief from Judgment, (Doc. 103), is **GRANTED**;
2. This Court's order entered October 21, 2013, (Doc. 95), is **VACATED** to the extent it granted Defendants' Motion for Summary Judgment as to defendants Christine Bralley and Robert Cook; and
3. Defendants' Motion for Summary Judgment, (Doc. 37), is **DENIED** as to Christine Bralley and Robert Cook and plaintiffs' § 1983 and punitive damages claims against Christine Bralley and Robert Cook may proceed to trial.

This the 22nd day of January, 2014.

  
UNITED STATES DISTRICT JUDGE