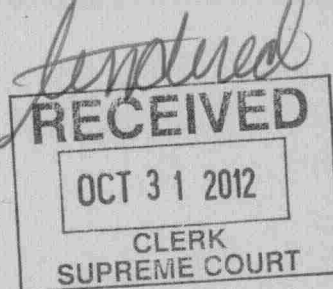


JEFFERY T. PEARCE

SUPREME COURT OF KENTUCKY
2011-SC-000756-DG
(2009-CA-001813-MR)



APPELLANT

V. ON APPEAL FROM JEFFERSON CIRCUIT COURT
CIVIL ACTION NO. 08-CI-02524

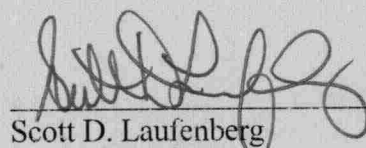
UNIVERSITY OF LOUISVILLE,
BY AND THROUGH ITS BOARD OF TRUSTEES

APPELLEE

**AMICI CURIAE BRIEF ON BEHALF OF
EASTERN KENTUCKY UNIVERSITY, MOREHEAD STATE UNIVERSITY,
NORTHERN KENTUCKY UNIVERSITY, UNIVERSITY OF KENTUCKY,
AND WESTERN KENTUCKY UNIVERSITY**

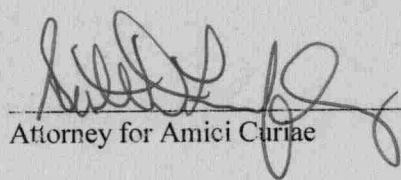
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CERTIFICATE OF SERVICE

This is to certify that the original and ten (10) copies of this Amici Curiae Brief were mailed to Susan Stokley Clary, Clerk of the Supreme Court, New Capitol Bldg., 700 Capitol Avenue, Frankfort, KY 40601-3488, via Federal Express on this 30th day of October, 2012. True and accurate copies of the original were served via First Class U.S. Mail on this the same day to the following: Samuel P. Givens, Jr., Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; David L. Leighty, & Ben S. Basil, Priddy, Cutler, Miller & Meade, PLLC, 800 Republic Bldg., 429 W. Muhammad Ali, Louisville, KY 40202; Craig C. Dilger & Jeffrey A. Calabrese, Stoll Keenon Ogden, 500 W. Jefferson St., 2000 PNC Plaza, Louisville, KY 40202-2828; Honorable Irvin G. Maze, Judge, Jefferson Circuit Court, Division 10, Jefferson County Judicial Center, 700 W. Jefferson St., Louisville, KY 40202; David L. Nicholson, Jefferson Circuit Court Clerk, Louis D. Brandeis Hall of Justice, 600 W. Jefferson St., Louisville, KY 40202.


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STATEMENT CONCERNING ORAL ARGUMENT

Amici Curiae Eastern Kentucky University, Morehead State University, Northern Kentucky University, University of Kentucky, and Western Kentucky University believe that oral argument would assist the Court in addressing whether KRS 15.520 is applicable to disciplinary action taken against police officers when the discipline is not based upon a citizen complaint.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT CONCERNING ORAL ARGUMENT	i
STATEMENT OF POINTS AND AUTHORITIES.....	ii-iv
STATEMENT OF THE CASE	1
ARGUMENT	1

KRS 15.520 ONLY APPLIES TO DISCIPLINARY PROCEEDINGS AGAINST POLICE OFFICERS ARISING FROM CITIZEN COMPLAINTS.....	1
--	---

A. <u>Police officers employed by state universities fall under the KLEFP and KRS 15.520.</u>	1
KRS 15.520	<u>passim</u>
Act of Mar. 17, 1972, ch. 71, 1972 Ky. Acts 288.	1, 2
KRS 15.410.	1-2
<u>Wellman v. Blaton</u> , 927 S.W.2d 347 (Ky. App. 1996).....	2 n.1
KRS 15.420.	2-3
Act of Apr. 1, 1998, ch. 244, 1998 Ky. Acts 912.....	2
Act of Apr. 9, 1980, ch. 333, 1980 Ky. Acts 1095.....	2
B. <u>The Court of Appeals properly construed the General Assembly's intent of KRS 15.520 and its inapplicability to Pearce's termination in this case.</u>	3
<u>Pearce v. University of Louisville</u> , No. 2009-CA- 001813-MR, slip op. (Ky. App. Nov. 11, 2011).....	3-4, 11 n.3
KRS 95.450.	4
KRS 95.765.	4

<u>City of Madisonville v. Sisk</u> , 783 S.W.2d 885 (Ky. App. 1990).....	4
<u>McCloud v. Whitt</u> , 639 S.W.2d 375 (Ky. App. 1982).....	5
<u>Howard v. City of Independence</u> , 199 S.W.3d 741 (Ky. App. 2005).....	5
<u>McDaniel v. Walp</u> , 747 S.W.2d 613 (Ky. App. 1987).....	5-6
<u>Stallins v. City of Madisonville</u> , 707 S.W.2d 349 (Ky. App. 1986).....	6
<u>City of Louisville By and Through Kuster v. Milligan</u> , 798 S.W.2d 454 (Ky. 1990).....	6
<u>City of Munfordville v. Sheldon</u> , 977 S.W.2d 497 (Ky. 1998).....	6-7
<u>Revenue Cabinet v. O'Daniel</u> , 153 S.W.3d 815 (Ky. 2005).....	7
<u>Hale v. Combs</u> , 30 S.W.3d 146 (Ky. 2000).....	7-8
<u>Estes v. Commonwealth</u> , 952 S.W.2d 701 (Ky. 1997).....	8
Act of Apr. 4, 1986, ch. 313, 1986 Ky. Act 678.	8-9
S.B. 169, 2012 Reg. Leg. Sess. (Ky. 2012).	9-10
Kentucky Leg. Res. Comm'n, Local Mandate Fiscal Impact Estimate for SB 169.....	10 n.2
C. <u>Courts must defer to the public policy established by the General Assembly as articulated in KRS 15.520.</u>	11
<u>Legislative Research Comm'n ex rel. Prather v. Brown</u> , 664 S.W.2d 907 (Ky. 1984).....	11-12
<u>Diemer v. Commonwealth</u> , 786 S.W.2d 861 (Ky. 1990).....	12

<u>Board of Trs. of the Judicial Form Ret. Sys. v. Attorney Gen.</u> , 132 S.W.3d 770 (Ky. 2003).....	12
<u>Commonwealth ex rel. Cowan v. Wilkerson</u> , 828 S.W.2d 610 (Ky. 1992).....	12
<u>Compex Int'l Co. v. Taylor</u> , 209 S.W.3d 462 (Ky. 2006).....	12
<u>Owens v. Clemons</u> , 408 S.W.2d 642 (Ky. 1966).	12
<u>Caneyville Volunteer Fire Dep't v. Green's Motorcycle Salvage, Inc.</u> , 286 S.W.3d 790 (Ky. 2009).....	14
CONCLUSION	14

STATEMENT OF THE CASE

Like Appellee University of Louisville, Amici Curiae Eastern Kentucky University, Morehead State University, Northern Kentucky University, University of Kentucky, and Western Kentucky University are public institutions of higher education that have public safety departments comprised of police officers participating in Kentucky Law Enforcement Foundation Program ("KLEFP"), KRS 15.410-15.515, and who are, therefore, entitled to certain rights under KRS 15.520 with respect to citizen complaints. (Mot. for Leave to File Amici Curiae Br. 1). As a result, this Court's interpretation of the scope of applicability of KRS 15.520 will have a direct impact on these sister institutions.

ARGUMENT

KRS 15.520 ONLY APPLIES TO DISCIPLINARY PROCEEDINGS AGAINST POLICE OFFICERS ARISING FROM CITIZEN COMPLAINTS.

This case presents the Court with the first opportunity to address whether KRS 15.520 applies to disciplinary action taken by police departments against police officers when the discipline is not based upon a citizen's complaint. This issue is relevant to the Amici Curiae because their police officers participate in KLEFP and are, therefore, entitled to certain rights under KRS 15.520 with respect to citizen complaints.

A. Police officers employed by state universities fall under the KLEFP and KRS 15.520.

In 1972, the Kentucky General Assembly established the KLEFP. See Act of Mar. 17, 1972, ch. 71, 1972 Ky. Acts 288, 288-93. In part, the purposes of the KLEFP were "to attract competent, highly qualified young people to the field of law enforcement and to retain qualified and experienced officers . . . and to offer a state monetary

supplement for local law enforcement officers while upgrading the educational and training standards of such officers.” KRS 15.410.

KRS 15.420 addresses the applicability of the KLEFP. In the original version of the statute enacted in 1972, however, the terms “police officer” and “local unit of government” were defined such that KLEFP did not apply to police officers employed by state universities.¹ See Act of Mar. 17, 1972, ch. 71, § 2, 1972 Ky. Acts 288, 288.

In 1998, the General Assembly amended KRS 15.420 to define “local unit of government” to include “any city or county, combination of cities and counties, state or public university, or county sheriff’s office of the Commonwealth.” Act of Apr. 1, 1998, ch. 244, § 1, 1998 Ky. Acts 912, 912. In addition, the definition of “police officer” was amended to include “a full-time member of . . . a state or public university police officer who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state” Id., 1998 Ky. Acts at 912. While KRS 15.420 has been amended since 1998, it continues to apply to police officers employed by state universities.

The definition of “police officer” and “local unit of government” is important because police officers falling under that definition may have certain rights under KRS 15.520, which was enacted in 1980 and is commonly referred to as the Police Officer Bill of Rights. See Act of Apr. 9, 1980, ch. 333, § 2, 1980 Ky. Acts 1095, 1096; KRS

¹ In Wellman v. Blanton, 927 S.W.2d 347 (Ky. App. 1996), the Court of Appeals held that campus police officers were not entitled to funds from the KLEFP. See id. at 348-49. That court reasoned that a state university did not constitute a “local unit of government” as defined in KRS 15.420(1) and the definition of police officer as set forth in KRS 15.420(2) did not include police officers employed by state universities. See id.

15.520(4) ("The provisions of this section shall apply only to police officers of local units of governments who receive funds pursuant to KRS 15.410 through 15.992."). The stated purpose of KRS 15.520 is as follows:

In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section

KRS 15.520(1). Since the 1998 amendments to KRS 15.420, the present case appears to be the first case involving the applicability of KRS 15.520 to police officers employed by state universities.

B. The Court of Appeals properly construed the General Assembly's intent of KRS 15.520 and its inapplicability to Pearce's termination in this case.

In Pearce v. University of Louisville, No. 2009-CA-001813-MR, slip op. (Ky. App. Nov. 11, 2011), the Court of Appeals considered, inter alia, whether KRS 15.520 applied to disciplinary action taken by a public safety department at a state university against the police officer that was not based upon a citizen complaint. See id. at 9-15. In affirming the opinion and order of the trial court concluding that KRS 15.520 was not applicable, the Court of Appeals stated:

KRS 15.520 was enacted "[i]n order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth" by creating standards of conduct "to deal fairly and set administrative due process rights for police officers . . . and at the same time providing a means of redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers. . . ."

KRS 15.520(1) (emphasis added). This language suggests that the purpose of the statute is to provide procedural due process to police officers who are accused of wrongdoing by citizens.

Further suggesting this purpose, KRS 15.520(1)(a) addresses itself to “[a]ny complaint taken from any individual alleging misconduct on the part of any police officer” and sets the procedures to be followed in cases involving allegations of criminal activity, abuse of official authority, or a violation of rules and regulations of the department. KRS 15.520(1)(a)(1)-(3). Perhaps most insightful, KRS 15.520(1)(a)(4) explicitly provides that “[n]othing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.” From these provisions, there seems no doubt that police departments may initiate their own disciplinary proceedings, in the absence of a citizen complaint, outside of the scope of KRS 15.520.

Pearce, slip op. at 8-9.

A review of the cases construing KRS 15.520 reflects that no Kentucky appellate court has ever squarely been presented with the opportunity to address the applicability of KRS 15.520 to discipline not based upon a citizen complaint. Those prior cases often involved the interplay between KRS 15.520 and other statutory protections that exist for police officers (e.g., KRS 95.450, 95.765).

For example, in City of Madisonville v. Sisk, 783 S.W.2d 885 (Ky. App. 1990), the court considered whether the city council or the mayor had the authority to terminate a police officer. See id. at 885. In its analysis, the Court of Appeals considered the interplay between KRS 15.520 and KRS 95.765. It is apparent from the decision, however, that the court focused on the application of KRS 95.765, as reflected by the following discussion:

KRS 83A.080(2) and 83A.130(9) permit a local executive authority such as a mayor to terminate the employment of a nonelected city official such as a police officer only if there is no statute which provides otherwise. It is clear to us that KRS 95.765 is such a statute, and that it requires that a disciplinary hearing be conducted before the legislative body rather than before the mayor. It follows, therefore, that the trial court did not err by concluding that appellee was entitled to a hearing before the Madisonville City Council prior to any discharge.

Id. at 886.

In McCloud v. Whitt, 639 S.W.2d 375 (Ky. App. 1982), the mayor removed the police chief, and the former police chief then filed a declaratory action challenging his removal. See id. at 376. After the trial court held that the police chief could not be removed without a due process hearing, the mayor appealed. See id. In reversing the judgment of the trial court, the Court of Appeals held that KRS 15.520 was inapplicable and that the mayor acted within his authority to remove the police chief. See id. at 377.

Pearce's reliance upon Howard v. City of Independence, 199 S.W.3d 741 (Ky. App. 2005), is misplaced. It does not appear that either party challenged whether KRS 15.520 applied to the disciplinary action taken by the city that did not arise from a citizen complaint. Regardless, the city provided the former officer a hearing that complied with the requirements of KRS 15.520, and the Court of Appeals held that the former officer was provided a "full and fair due process hearing." Id. at 745. Thus, it is improper to read into the Howard decision anything but the issues actually raised by the former officer in his appeal.

In McDaniel v. Walp, 747 S.W.2d 613 (Ky. App. 1987), a police officer was initially dismissed following a hearing before the Jefferson County Police Merit Board relating to his failure to return funds recovered from the theft of a business. See id. at 613. As the Court of Appeals noted, "[o]n appeal to the circuit court, under KRS 15.520(2) and 78.455(2)(a), it was argued, and the circuit court agreed, that Walp's dismissal was unlawful for reason that Toohey's complaint was not made upon affidavit. It was successfully argued that KRS 78.445(2) and KRS 15.520(1)(a) required such." Id. at 613-14. In reversing the trial court's order, the Court of Appeals stated,

We do not believe a fair reading of KRS 78.445 and 15.520 requires that disciplinary proceedings must necessarily emanate from a

citizen's sworn complaint. It is true that disciplinary action may rest upon the sworn allegation of a complaining citizen. This is not, however, to preclude disciplinary action by departmental authority based upon initiation from within and upon any source of information.

Id. at 614.

Likewise, the holding in Stallins v. City of Madisonville, 707 S.W.2d 349 (Ky. App. 1986), does not support Pearce's interpretation of KRS 15.520. In Stallins, the police officer converted items seized from an arrestee and was removed from his position by the city council. See id. at 350, 351. After an adverse ruling from the circuit court, the officer appealed to the Court of Appeals. See id. at 350. In that appeal, neither party raised any challenge to the applicability of KRS 15.520, and the appeal focused on the sufficiency of the evidence to support his removal. See id. at 351.

In City of Louisville By and Through Kuster v. Milligan, 798 S.W.2d 454 (Ky. 1990), the police officer appealed seeking to determine "whether K.R.S. 90.190(2) provides authority to the civil service board to modify a disciplinary penalty imposed by the appointing authority." Id. at 455-56. The officer had been terminated after wrongful use of his firearm, and the decision did not address whether KRS 15.520 applied in that case.

In City of Munfordville v. Sheldon, 977 S.W.2d 497 (Ky. 1998), this Court addressed the applicability of KRS 15.520 relating to a citizen's complaint against a police officer. In that case, a citizen had submitted a written complaint to the mayor about the manner in which the officer had investigated a crime at the citizen's business. See id. at 497. At a special city council meeting, the mayor summarily fired the officer without disclosing the complaint or providing any reasons for the officer's termination.

See id. In affirming the Court of Appeals' decision that the officer was entitled to a hearing pursuant to KRS 15.520 because of the citizen complaint, this Court stated:

[O]ur holding merely forbids a mayor or other local executive authority from receiving a citizen's complaint against a police officer, then firing the officer based on that complaint, without ever affording the officer a right to publicly defend against the complaint as required by KRS 15.520. To hold otherwise would encourage the mayor to avoid the time and expense of providing every officer the due-process hearing to which he or she is entitled upon the filing of a citizen complaint, by simply couching the decision to fire in the guise of a simple act of discretion. Nothing in our holding prohibits a mayor from discharging an officer at his or her discretion, so long as the reason behind the discharge does not trigger the hearing requirement of KRS 15.520, or fall into one of the exceptions to the at-will employment doctrine.

Id. at 499 (internal footnote omitted). Thus, this Court concluded that KRS 15.520 is triggered by a citizen's complaint and that the mayor may otherwise exercise his or her authority to terminate a police officer when KRS 15.520 is not triggered or some other public policy prohibition applies.

In the case sub judice, the Court of Appeals' correctly interpreted KRS 15.520. As this Court explained in Revenue Cabinet v. O'Daniel, 153 S.W.3d 815 (Ky. 2005), with regard to the judiciary's role in interpreting statutes:

It is this Court's duty when interpreting statutes to give effect to the General Assembly's intent, but "no rule of interpretation . . . require[s] us to utterly ignore the plain . . . meaning of words in a statute." In fact, "the plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source." We "ascertain the intention of the legislature from words used in enacting statutes rather than surmising what may have been intended but was not expressed." In other words, we assume that the "[Legislature] meant exactly what it said, and said exactly what it meant."

Id. at 819 (alterations in original). See also Hale v. Combs, 30 S.W.3d 146, 151 (Ky. 2000) (citation omitted) ("The essence of statutory construction is to ascertain and give

effect to the intent of the legislature. ‘We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used.’”); Estes v. Commonwealth, 952 S.W.2d 701, 703 (Ky. 1997) (“The statute must be tested on the basis of what is said rather than what might have been said.”) (internal quotation marks omitted) (citation omitted).

In its current version, KRS 15.520 provides, in relevant part:

In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section:

- (a) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:
 - 1. If the complaint alleges criminal activity on behalf of a police officer, the allegations may be investigated without a signed, sworn complaint of the individual;
 - 2. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, shall be obtained;
 - 3. If a complaint is required to be obtained and the individual, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;
 - 4. Nothing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.

KRS 15.520(1)(a)(1)-(4). As originally enacted in 1986, KRS 15.520(1)(a) provided that “[a]ny complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken under oath in the form of an affidavit, signed,

and sworn to by the complainant and duly notarized.” Act of Apr. 4, 1986, ch. 313, § 1, 1986 Ky. Acts 678, 678. Subsequent amendments to KRS 15.520, as reflected in the current version, provided clarification and revisions to the complaint process. Those amendments, however, have not expanded the original intent expressed in KRS 15.520(1)—that its provisions were only triggered by citizen complaints. When the principles of statutory construction are properly applied to determine the General Assembly’s intent, this Court must reach the same conclusion as the Court of Appeals that KRS 15.520 did not apply to Pearce in this case.

Pearce’s interpretation of KRS 15.520 is also undermined by the proposal of Senate Bill 169 during the 2012 Regular Session of the General Assembly. In part, the bill proposed to amend KRS 15.520 as follows:

In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for all complaints against police officers, regardless of the source of the complaint, against ~~of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by~~ police officers covered by this section:

(a) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:

1. ~~If the complaint alleges criminal activity on behalf of a police officer, the allegations may be investigated without a signed, sworn complaint of the individual;~~
2. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, whether a private citizen or a member of the police officer's department, shall be obtained;
- 2[3]. If a complaint is ~~required to be~~ obtained and the complainant is a private citizen who ~~individual~~, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the

department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;

3[4]. Nothing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.

S.B. 169, 2012 Reg. Leg. Sess. § 1 (Ky. 2012). Essentially, Senate Bill 169 sought to expressly extend the reach of KRS 15.520 to all disciplinary actions taken against police officers based upon a complaint from the general public as well as from members of the police department, and if the current version of KRS 15.520 were already as all-encompassing as Pearce maintains, Senate Bill 169 would not have been necessary.² Thus, Senate Bill 169 completely undermines Pearce's interpretation of KRS 15.520.

² The Legislative Research Commission's Local Legislative Fiscal Impact Estimate for Senate Bill 169 states, in part:

SB 169 amends KRS 15.520 commonly known as the "Police Officer Bill of Rights." The purpose of SB 169 is to extend procedural due process rights to police officers in intradepartmental disciplinary actions. Several courts have found that the due process rights guaranteed by KRS 15.520 are only applicable to police officers accused of wrongdoing by citizens and are not applicable to internal departmental disciplinary matters.

SB 169 amends KRS 15.520 by requiring all complaints against police officers, regardless of the source, to be in the form of a signed and sworn affidavit.

Ky. Legis. Res. Comm'n, Local Mandate Fiscal Impact Estimate for SB 169, at <http://www.lrc.ky.gov/record/12RS/SB169/LM.doc> (last visited Oct. 23, 2012).

For these reasons, the Court of Appeals did not err in concluding that KRS 15.520 did not apply to the disciplinary action taken against Pearce.³ This Court should affirm the lower appellate court's decision.

C. **Courts must defer to the public policy established by the General Assembly as articulated in KRS 15.520.**

Implicitly, Pearce is asking this Court to construe KRS 15.520 contrary to the intent expressed by the General Assembly. In doing so, this is an improper attempt to circumvent the separation of powers doctrine.

Like federal constitutional law, the doctrine of separation of powers is a bedrock principle of Kentucky jurisprudence. As this Court stated in Legislative Research Commission ex rel. Prather v. Brown, 664 S.W.2d 907 (Ky. 1984):

The framers of Kentucky's four constitutions obviously were cognizant of the need for the separation of powers. Unlike the federal constitution, the framers of Kentucky's constitution included an express separation of powers provision. They were undoubtedly familiar with the potential damage to the interests of the citizenry if the powers of government were usurped by one or more branches of that government. Our present constitution contains explicit provisions which, on the one hand, mandate separation among the three branches of government, and on the other hand, specifically prohibit incursion of one branch of government into the powers and functions of the others. Thus, our constitution has a double-barreled, positive-negative approach

Id. at 911-12. "Moreover, it has been [this Court's] view, in interpreting Sections 27 and 28, that the separation of powers doctrine is fundamental to Kentucky's tripartite system of

³ Regardless of whether KRS 15.520 applied, the Court of Appeals concluded that Pearce was afforded sufficient due process regarding his termination. See Pearce, slip op. at 15 n.10 ("The hearing officer and the circuit court ultimately determined that no such prejudice occurred in this case given the fact that Appellant was afforded a full de novo post-termination evidentiary hearing. We see no error in this position.").

government and must be ‘strictly construed.’” Id. at 912 (citation omitted). This Court has also explained:

Kentucky is a strict adherent to the separation of powers doctrine. As we stated in Sibert v. Garrett, 197 Ky. 17, 246 S.W. 455, 457 (1922):

“Perhaps no state forming a part of the national government of the United States has a constitution whose language more emphatically separates and perpetuates what might be termed the American tripod form of government than does . . . [the Kentucky] Constitution . . .”

Diemer v. Commonwealth, 786 S.W.2d 861, 864-65 (Ky. 1990). See also Board of Trs. of the Judicial Form Ret. Sys. v. Attorney Gen., 132 S.W.3d 770, 782 (Ky. 2003).

As part of the constitutional separation of powers, Kentucky courts have recognized the unique role of the General Assembly in articulating public policy. As this Court has held, “[t]he establishment of public policy is granted to the legislature alone. It is beyond the power of a court to vitiate an act of the legislature on the grounds that public policy promulgated therein is contrary to what the court considers to be in the public interest.” Commonwealth ex rel. Cowan v. Wilkerson, 828 S.W.2d 610, 614 (Ky. 1992). See also Compex Int’l Co. v. Taylor, 209 S.W.3d 462, 465 (Ky. 2006) (citation omitted); Owens v. Clemons, 408 S.W.2d 642, 645 (Ky. 1966) (internal quotation marks omitted) (citation omitted).

Through KRS 15.520 and in accordance with Section 1 of the Kentucky Constitution, the General Assembly has established that the public policy of the Commonwealth is that police officers are only given greater protection than other public employees when a police officer’s discipline arises from a citizen’s complaint. There are sound policy reasons why KRS 15.520 does not extend beyond citizen complaints. For

example, as construed by Pearce, the statute would preclude a department from disciplining an officer who is habitually late for work or fails to properly and timely complete paperwork without first providing that officer a hearing.

Even though KRS 15.520 would not apply in circumstances like Pearce's, police officers employed by the Amici Curiae are not without recourse. Like all other university employees, the police officers may avail themselves of internal policies and procedures relating to grievances, discipline, and termination. See, e.g., E. Ky. Univ., Staff Grievance Policy & Procedures, at http://policies.eku.edu/sites/policies.eku.edu/files/policies/nonacademic/human_resources_grievance_policy_and_procedure/staff_grievance_policy_and_procedure_4_27_12_BO_R.pdf (last visited Oct. 23, 2012); E. Ky. Univ., Progressive Disciplinary Action, at http://policies.eku.edu/sites/policies.eku.edu/files/policies/nonacademic/human_resources_progressive_disciplinary_action/human_resources_progressive_disciplinary_action.pdf (last visited Oct. 23, 2012); Morehead St. Univ., Discipline, Reassignment or Dismissal Policy, at <http://www2.moreheadstate.edu/hr/policies/index.aspx?id=1673> (last visited Oct. 23, 2012); Morehead St. Univ., Discipline, Reassignment, or Dismissal Policy, at <http://www2.moreheadstate.edu/hr/policies/index.aspx?id=1680> (last visited Oct. 23, 2012); Morehead St. Univ., Staff Appeal Procedure, at <http://www2.moreheadstate.edu/hr/policies/index.aspx?id=1674> (last visited Oct. 23, 2012); Morehead St. Univ., Staff Appeal Procedure, at <http://www2.moreheadstate.edu/hr/policies/index.aspx?id=1681> (last visited Oct. 23, 2012); N. Ky. Univ., Discipline Policy, at http://hr.nku.edu/hrpolicies/employee_relations/discipline.html (last visited Oct. 23,

2012); N. Ky. Univ., Termination Policy, at <http://hr.nku.edu/hrpolicies/employment/termination.html> (last visited Oct. 23, 2012); Northern Ky. Univ., Grievance Procedure, at http://hr.nku.edu/hrpolicies/employee_relations/grievance.html (last visited Oct. 23, 2012); Univ. of Ky., Grievances Policy, at <http://www.uky.edu/HR/policies/hrpp007.html> (last visited Oct. 23, 2012); Univ. of Ky., Corrective Action Policy, at <http://www.uky.edu/HR/policies/hrpp062.html> (last visited Oct. 23, 2012); Univ. of Ky., Separation from Employment Policy, at <http://www.uky.edu/HR/policies/hrpp012.html> (last visited Oct. 23, 2012); W. Ky. Univ., Disciplinary Action Policy, at http://wku.edu/policies/hr_policies/hrpolicy4_8500.pdf (last visited Oct. 23, 2012); W. Ky. Univ., Grievance Resolution Procedure, at http://wku.edu/policies/hr_policies/hrpolicy4_8401.pdf (Oct. 23, 2012).

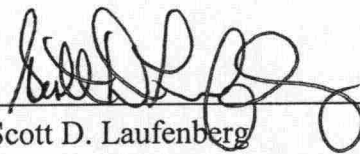
As this Court noted in Caneyville Volunteer Fire Department v. Green's Motorcycle Salvage, Inc., 286 S.W.3d 790 (Ky. 2009), when “the General Assembly has articulated a clear public policy determination . . . [w]e would be remiss to ignore a directive which is so clearly within the purview of this Commonwealth’s legislature.” Id. at 806. In this case, the Court should defer to the public policy articulated by the General Assembly in KRS 15.520 and affirm the decision of the Court of Appeals holding that KRS 15.520 only applies to discipline arising from citizen complaints.

CONCLUSION

WHEREFORE, Amici Curiae Eastern Kentucky University, Morehead State University, Northern Kentucky University, University of Kentucky, and Western Kentucky University respectfully request that this Court affirm the decisions of the

Jefferson Circuit Court and Kentucky Court of Appeals holding that KRS 15.520 is only applicable to a citizen's complaint.

Respectfully submitted,

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