No. 283A22-2 NINTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

IN THE MATTER OF:	)	From Franklin County
	)	No. 20-CVS-630
PATRICIA BURNETTE CHASTAIN	)	COA22-649

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APPELLANT'S NEW BRIEF

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ISSUES PRESENTED

I) Whether the trial court and Court of Appeals erred in holding that Ms. Chastain's acts constitute "corruption or malpractice" warranting permanent disqualification from elected office under Article VI, § 8 of the North Carolina Constitution.

II) Whether the trial court and Court of Appeals erred by materially relying on allegations not included in the Charging Affidavit in permanently disqualifying Ms. Chastain from elected office.

INTRODUCTION

This appeal considers a matter of utmost significance to our democracy: the standard by which a duly elected independent constitutional officer may be unilaterally removed from office and permanently disqualified from holding any future elected office in this state. Indeed, reviewing orders removing elected officials is one of the "most serious undertaking[s]" in which this Court engages. *In re Kivett*, 309 N.C. 635, 673 (1983). Specifically, this case involves the erroneous disqualification of a Clerk of Superior Court, an issue of first impression for this Court.

Appellant Patricia Chastain devoted her career to public service. She was beloved by the residents of Franklin County, who in 2014 and 2018 cast more votes for Ms. Chastain than for *any other candidate* on the ballot. These elections expressed the democratic will of the people, in whom "[a]ll political power is vested." N.C. Const. art. I, § 2.

But in 2020, that democratic will was unilaterally subverted. A small group of local attorneys, prioritizing their personal and political disapproval of Ms. Chastain over the votes of the citizens of Franklin County, filed an affidavit seeking Ms. Chastain's permanent removal as Clerk of Court.

To be clear, this affidavit did not allege bribery or embezzlement. *See, e.g., In re Peoples*, 296 N.C. 109 (1978). It did not allege racism or bigotry. *See, e.g., In re Spivey*, 345 N.C. 404 (1997). It did not allege sexual misconduct or malicious intent. *See, e.g., Kivett*, 309 N.C. 635; *In re Cline*, 230 N.C. App. 11 (2013). As our appellate courts have held, such "egregious" and "willful misconduct" could rightfully warrant removal. *See In re Chastain*, 281 N.C. App. 520, 528 (2022) (*Chastain I*); *Peoples*, 296 N.C. 109.

But Ms. Chastain has never committed such misconduct. Instead, the charging affidavit here alleged that she distributed coupons from a local smoothie shop to potential jurors. (R p 4). It alleged that she visited a pre-trial detainee to ensure that he completed a legally required affidavit of indigency. (R p 5). It alleged that she visited the homes of two neighbors to attempt to resolve a longstanding property dispute. (R p 6). It alleged that a state audit identified areas where her office could improve. (R p 8). It alleged that she spoke unprofessionally on a phone call with a magistrate judge. (R p 8). These actions do not and should not constitute the "egregious and willful misconduct" necessary to meet the extraordinary standard of "corruption or malpractice"

our constitution requires to permanently disqualify an elected official from office. *See* N.C. Const. art. VI, § 8.

The trial court and Court of Appeals majority erred in holding otherwise. *See In re Chastain*, 289 N.C. App. 271 (2023) (*Chastain II*). First, they erred by determining that Ms. Chastain's actions were "equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina," thus "warrant[ing] permanent disqualification from office." (R p 160). This ruling significantly and erroneously diluted the constitutional standard by which our elected officials may be removed from office. *See Chastain II*, 289 N.C. App. at 295 (Wood, J., dissenting).

Second, they erred by improperly and materially relying on acts not alleged in the Charging Affidavit. This reliance violated Ms. Chastain's constitutional right to fair notice of the allegations being brought against her under basic principles of due process, as held in the Court of Appeals' unanimous first opinion in this matter. *See In re Chastain*, 281 N.C. App. 520, 528–29 (2022) (*Chastain I*).

These errors carry profound consequences. For Ms. Chastain, the ruling not only removed her as the Franklin County Clerk of Superior Court, but also permanently barred her from holding *any future elected office* in North Carolina. *See* N.C. Const. art. VI, § 8. It likewise stripped her of her vested retirement benefits and permanently harmed her good name and reputation.

But the harm reaches far beyond Ms. Chastain individually. "Perhaps the greater injury rests upon the people of Franklin County[,] who elected Ms. Chastain as their Clerk of Superior Court multiple times." *Chastain II*, 289 N.C. App. at 312 (Wood, J., dissenting). Their democratic will—from which all legitimate political power is derived—was subverted by the influence of a powerful few. *See* N.C. Const. art. I, § 2.

Most profoundly, the ruling below dilutes the constitutional standard used to permanently disqualify not only Clerks of Superior Court, but *any elected official*. If affirmed, this ruling would allow elected officials across North Carolina—from district attorneys, to legislators, to judges—to be removed and permanently disqualified from any elected office for conduct that functionally amounts to no more than an "error in judgment or a mere lack of diligence"—an earnest attempt to mitigate a conflict, an imperfect internal evaluation, or a frustrated phone call. *In re Nowell*, 293 N.C. 235, 248 (1977). Especially during a period of intense political division, the consequences of such a lowered standard could not be starker.

While Ms. Chastain may have made earnest mistakes as Clerk of Court, her actions do not even remotely resemble the "corruption or malpractice" that our Constitution requires for removal and permanent disqualification from office. Accordingly, this Court should reverse.

STATEMENT OF THE CASE

On 13 July 2020, attorney Jeffrey Thompson filed an affidavit seeking the removal of Patricia Chastain as Franklin County Clerk of Superior Court pursuant to N.C. Gen. Stat. § 7A–105. (R p 3). From 28 to 30 September 2020, the Franklin County Superior Court, the Honorable Thomas H. Lock presiding, held an evidentiary hearing to determine if grounds for removal had been proven. (R p 76). On 16 October 2020, the trial court entered an order permanently removing Ms. Chastain as Clerk. ("First Removal Order") (R pp 76–87). Ms. Chastain timely appealed. (R p 89).

On 1 February 2022, the Court of Appeals issued a unanimous opinion vacating and remanding the First Removal Order. *See Chastain I*, 281 N.C. App. 520.

On 16 March 2022, Ms. Chastain filed a motion with the trial court seeking "Expedited Entry of Order Consistent with Court of Appeals Mandate." (R p 101). The trial court, Judge Lock presiding, conducted a hearing on this matter on 16 March 2022. (R p 149).

On 5 April 2022, the trial court entered an order concluding that Ms. Chastain's actions were "equivalent to corruption or malpractice under Article VI, § 8 of the Constitution of North Carolina" and permanently disqualifying her from serving as the Franklin County Clerk of Superior Court. (the "Second Removal Order") (R pp 149–62). Ms. Chastain again timely appealed. (R 163).

On 20 June 2023, the Court of Appeals issued a divided opinion affirming the Second Removal Order. *See Chastain II*, 289 N.C. App. 271. Judge Wood dissented.

On 25 July 2023, Ms. Chastain timely filed a Notice of Appeal to this Court as a matter of right arising from the issues that form the basis of Judge Wood's dissenting opinion.[1] Contemporaneously, Ms. Chastain filed a Petition for Discretionary Review under N.C.G.S. § 7A-31 requesting this Court's review of one additional issue.

On 4 August 2023, Affiant Thompson filed a response to Appellant's PDR. Therein, Mr. Thompson did not oppose Appellant's PDR and proposed five additional issues for this Court's review.

On 13 December 2023, this Court allowed Ms. Chastain's PDR and Affiant Thompson's motion to certify additional issues.

STATEMENT OF GROUNDS FOR APPELLATE REVIEW

This Court has jurisdiction over the issues raised in the dissenting opinion below under N.C.G.S. § 7A-30(2). This Court has jurisdiction over the additional issues raised by Appellant and Affiant Thompson under N.C.G.S. § 7A-31(c) and the Court's 13 December 2023 Orders allowing Appellant's PDR and Affiant Thompson's proposed additional issues.

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[1] The Court of Appeals opinion below was issued before N.C.G.S. § 7A-30(2) was repealed by Session Law 2023-134 s. 16.21(d) on 1 July 2023.

STATEMENT OF THE FACTS

I. Ms. Chastain's Service as Clerk of Superior Court

Appellant Patricia Chastain was born and raised in Franklin County, where she continues to reside. (R p 149). She has devoted her life to public service, having previously worked with the state community service program, the Department of Vital Records, and as Deputy Clerk of Court in both Henderson and Vance Counties. (R p 76–77; 29 Sept T pp 141–44).

Ms. Chastain began her service as the Franklin County Clerk of Superior Court in May 2013, when she was appointed by the then-senior resident Superior Court Judge of Franklin County, the Honorable Robert J. Hobgood. *Id*. Ms. Chastain then ran for the position in 2014, first winning a contested primary and then winning the general election. (29 Sept T pp 144–46). In fact, the citizens of Franklin County cast more votes for Ms. Chastain than any other candidate on the ballot in the 2014 election. *Id.* After her first four-year term, she successfully ran for reelection in 2018, again receiving the most votes of any candidate on the ballot. *Id*.

As Clerk, Ms. Chastain's guiding philosophy was to lead an office that was lawful, right, and compassionate, where the public was "served as a priority." (29 Sept T p 147). Especially in a rural community like Franklin County, the Clerk of Superior Court is not a far-off official unknown to the public. Rather, the Clerk is often the face of the judicial system that citizens

see and interact with when they come to the courthouse with a legal issue large or small. Ms. Chastain dutifully served as that gateway and guide for seven years. But for the proceedings at issue, Ms. Chastain's service to Franklin County would have continued at least until her elected term of office concluded at the end of 2022.

II. Charging Affidavit and Preliminary Proceedings

On 13 July 2020, attorney Jeffery Thompson filed an affidavit seeking the removal of Ms. Chastain as Franklin County Clerk of Superior Court pursuant to N.C.G.S. § 7A–105 (the "Affidavit" or "Charging Affidavit"). (R p 3). From the start, however, this Affidavit and the subsequent removal process were both highly unusual and fraught with legal errors.

The Charging Affidavit alleged several specific acts by Ms. Chastain, about which Mr. Thompson swore to have personal knowledge. (R p 3–11). However, Mr. Thompson had not actually observed and had no personal knowledge of *any* of the events alleged in the Affidavit. (10 Sept T pp 69–83). Instead, he merely heard these allegations secondhand, including from his attorneys, the Sturges law firm. *Id*. These allegations included:

- Two interactions with potential juror pools, on 25 October 2016 and 27 January 2020; (R p 4);
- One visit to an inmate in the Franklin County jail on 7 March 2017; (the "Machada Affidavit of Indigency" or "Machada incident") (R p 6);

- One out–of–office visit with three county residents to assist in resolving a property dispute on 27 December 2019; (the "Gayden/Diaz Home Visit" or "Gayden/Diaz incident") (R p 6);

- One claim that a recent state audit of the Clerk's office found "material misconduct" by the Office of the Franklin County Clerk of Superior Court; (the "Audit Report") (R p 8); and

- One allegation that Ms. Chastain engaged in an unprofessional phone call with a local magistrate; (the "Magistrate Phone Call") (R p 8).

Like the Affidavit, the subsequent removal process was rife with abnormalities and outright errors. First, the Affidavit was filed on a Monday morning at 8:17 a.m., before the courthouse opened at 8:30 a.m. (R p 3; 10 Sept T pp 49, 93–94). At 8:21 a.m., Chief District Judge John Davis issued a civil summons for Ms. Chastain. (R p 41). However, this summons was legally invalid, as a superior court judge has no authority to issue a summons and this summons was never signed by a member of the Clerk of Superior Court's Office. (R p 41); *see* North Carolina Rule of Civil Procedure 4(b); *In re K.J.L.*, 363 N.C. 343, 344 (2009).

At 10:43 a.m., Senior Resident Superior Court Judge John Dunlow signed an order immediately suspending Ms. Chastain pending a full removal hearing (the "Suspension Order"). (R pp 43–51). However, the trial court later acknowledged that Judge Dunlow had applied an erroneous legal standard against Ms. Chastain in entering the Suspension Order. (R p 84).

At 12:42 p.m., an acting Clerk of Superior Court was sworn in pursuant to the Suspension Order. (R p 50); (Doc.Ex.(II) p 84). This occurred within 20 minutes of the Suspension Order being filed (R p 43), and three minutes before the Affidavit, summons, and Suspension Order were served upon Ms. Chastain.

At 12:45 p.m., Ms. Chastain was notified of the Charging Affidavit, the (invalid) civil summons, and the Suspension Order. (R p 42). She was immediately required to surrender all of her keys, access key cards, official documents, and state-issued computer equipment, and leave her office of seven years. (R p 50). Her removal hearing was set for 6 August 2020.

On 11 August 2020, Ms. Chastain filed a Motion to Recuse Judges Dunlow and the Hon. Cindy Sturges (Superior Court Judge and wife of Boyd Sturges, at that time the unnamed attorney for Affiant Thompson) from presiding over the removal inquiry. (R pp 54–58). The motion demonstrated that both judges had personal knowledge of contested evidence and that substantial grounds existed to question their ability to rule impartially. *Id*.

On 10 September 2020, the trial court, Special Superior Court Judge J. Stanley Carmical presiding, conducted a hearing on the recusal motion. (R p 71). In addition to evidence indicating personal knowledge of contested evidence by Judges Dunlow and Sturges, Mr. Thompson's testimony confirmed that despite his swearing to and signing the Affidavit, he had no personal

knowledge of and did not witness any of the events alleged therein. (R p 10; 10 Sept T pp 69–83).

In fact, Mr. Thompson had not written the Affidavit. (10 Sept T pp 56, 68–69). Instead, both the Charging Affidavit sworn to and signed by Mr. Thompson, as well as the "carbon copy" Suspension Order signed by Judge Dunlow, were drafted and prepared by attorney Boyd Sturges. (10 Sept T pp 68–69, 93). However, despite having personally drafted the Charging Affidavit, the Suspension Order signed by Judge Dunlow, and other motions filed in this matter, attorney Sturges did not file a notice of appearance disclosing himself as counsel of record for Mr. Thompson at the time of the removal hearing. (10 Sept T pp 57, 60–63, 65–68, 84).

At the close of the hearing, the trial court granted Ms. Chastain's Motion to Recuse both Judge Sturges and Judge Dunlow. (R p 71–72). Only then did attorney Boyd Sturges file a notice of appearance as counsel for Mr. Thompson in the removal proceedings.

III. Removal Hearing

A. Evidence Regarding Six Isolated Events

On 28–30 September 2020, the trial court (Judge Lock presiding) conducted an evidentiary hearing to determine whether Ms. Chastain should be removed from office. (R p 76). The evidence admitted at the hearing was legally required to be limited to the allegations set forth in the Charging

Affidavit, which described six isolated incidents of alleged misconduct by Ms. Chastain. All counsel agreed that the Affiant bore the burden of proving his allegations for removal by "clear, cogent, and convincing evidence." (28 Sept T pp 9, 19–21, 27). The evidence presented regarding the six allegations is summarized from the record as follows.

Smoothie Coupons: As Clerk, Ms. Chastain was responsible for the orientation and hospitality afforded to the jury pool at the courthouse. (29 Sept T pp 147–48). On 24 October 2016, Ms. Chastain attended the grand opening of Monnie's Place, a new local store which sold tea, coffee, and smoothies. *Id.* To help celebrate and promote their opening, the store's staff gave Ms. Chastain a stack of coupons for a free smoothie on a customer's first visit. *Id.* The next day, Ms. Chastain distributed these coupons to everyone who came to the courthouse, including the Clerk's staff, District Attorney's staff, judges, attorneys, and the juror venire. (29 Sept T p 149).

When this was brought to the attention of the presiding judge (Judge Wayne Abernathy), all parties discussed the matter in chambers cordially and were unsure of what, if any, were the legal implications. (30 Sept T pp 325–29). District Attorney Waters reached out to the UNC School of Government to seek clarification and guidance. *Id.* To be safe, Judge Abernathy and Mr. Waters cautioned Ms. Chastain to not give any items of value to jurors, and she never did so again. *Id.*

Judge Abernathy then addressed the criminal court before him, asking the State, defense counsel, and the defendant if there were any objections to the coupons. (Doc.Ex.(I) p 161–63). All parties indicated that they had no objections. *Id*. The next morning, the defendant accepted a preexisting plea agreement unrelated to the coupons. (30 Sept T p 367; Doc Ex.(I) pp 168–72).

Machada Affidavit of Indigency: On 6 March 2017, the Sheriff's Office called Ms. Chastain to inform her that they had arrested Oliver Machada for first degree murder. (29 Sept T p 160–61). Because of the high-profile nature of the case, the Sheriff did not want to transport Mr. Machada from the jail to the courthouse. Instead, he requested that Ms. Chastain come to the jail in the morning to conduct a preliminary hearing. (29 Sept T p 177).

When Ms. Chastain arrived at her office on 7 March 2017, her staff informed her that Judge Davis had already conducted a preliminary hearing earlier that morning. However, she was not informed whether Mr. Machada had completed an affidavit of indigency. (29 Sept T pp 161–63). Because Ms. Chastain was responsible for determinations of indigency, she reviewed the file and noticed that the required affidavit had not been completed. *Id*.

Under North Carolina law, an affidavit of indigency is required in every case where counsel is appointed for an indigent defendant. (29 Sept T p 165); *see* N.C.G.S § 7A-452(c). Because Ms. Chastain did not want Mr. Machada's file to be incomplete or subject to future objection, she went to the jail and,

without incident, interviewed Mr. Machada to complete his affidavit of indigency. (29 Sept T p 173–78). After doing so and filing the document, she advised Judge Davis, who thanked her. *Id*.

Uncontroverted evidence at the removal hearing demonstrated that the Clerk of Superior Court has jurisdiction over determinations of indigency and completion of indigency affidavits. (29 Sept T p 165–67). No evidence was presented at the hearing that Ms. Chastain knew that counsel had already been appointed for Mr. Machada when she went to the jail, and she expressly denied knowing this. (29 Sept T p 173). No evidence was admitted demonstrating that she made any demands or gave any orders to any jail personnel during her visit. (29 Sept T pp 131–33).

Gayden/Diaz Home Visit: Ann Gayden and the Diazes were neighbors who were well known to Franklin County law enforcement and judicial officials from longstanding and heated property disputes regarding a driveway easement. (28 Sept T p 42; 29 Sept T p 247–49).

On 27 December 2019, Ms. Gayden came into the Clerk's Office visibly distressed. (29 Sept T pp 86–87). Based on Ms. Chastain's experience handling various domestic violence disputes, she believed there was "potential for a tragedy." *Id*. As both a public servant and a compassionate person, Ms. Chastain believed she needed to try to prevent such harm by personally visiting Ms. Gayden and the Diazes at their homes. *Id*.

Ms. Chastain called the Franklin County Sheriff's Office to request that an officer accompany her on the visit. Specifically, Ms. Chastain requested the assistance of Deputy Justin Dailey, who had previous experience with the dispute. (28 Sept T pp 40–41).

Upon their arrival at the neighboring homes, Deputy Dailey and Ms. Chastain spoke first with Ms. Gayden and then with Mr. Daiz. (27 Dec T(3) pp 8–25); (27 Dec T(4) pp 5–23); (27 Dec T(6) pp 2–6). During these conversations, both Ms. Chastain *and* Deputy Dailey listened to each neighbor's perspective about the dispute and explained their understanding of the law and each party's rights. *Id*. Ms. Chastain gave Mr. Diaz her business card and personal cell phone number so that he could contact her with any further concerns, agreed that Mr. Diaz could call the police if Ms. Gayden violated a previous 50-C No Contact Order, and explained that she wanted both neighbors to find peace from their turmoil. (27 Dec T(6) pp 2–3). Mr. Diaz responded that he appreciated Ms. Chastain coming out. (27 Dec T(6) pp 5–6).

At the time of the visit, Ms. Chastain knew that these individuals did not have a case pending before the Clerk's office. (27 Dec T (3) p 3). Ms. Chastain gave unrebutted testimony that she went to their homes in a good faith and honest effort to help them resolve a misunderstanding that apparently persisted despite their multiple court filings and calls to the police. (29 Sept T p 92). Ms. Chastain never believed she was acting outside her duties

during the Gayden/Diaz matter. (29 Sept T pp 92, 102). She never went out to the residences again, nor had she gone there prior. (29 Sept T p 92).

Introduction of a Judicial Candidate to Jury Pool: The Charging Affidavit falsely alleged that Ms. Chastain endorsed a judicial candidate before a jury pool. (R p 4). Instead, the only evidence presented on this issue showed that Ms. Chastain never endorsed any candidate, but as a simple courtesy allowed a local attorney and judicial candidate who happened to be in the courtroom to introduce himself before court started. (30 Sept T p 343; Doc.Ex.(I) p 157). No evidence was admitted that Ms. Chastain was told or knew that this conduct was improper, nor that she ever repeated this conduct thereafter. *Id*.

Audit of the Clerk's Office: From 2019 to 2020, the State Auditor conducted a periodic audit of the Franklin County Clerk's Office, concluding with a report published in June 2020. (R pp 29–40; Doc.Ex.(I) p 135). The objective of the audit was to identify areas for office improvement, and the report states that the audit did not provide a basis for rendering any opinions regarding the Clerk's internal controls. (Doc.Ex.(I) pp 137–38).

The audit report found no misappropriation of funds, embezzlement, or any form of intentional misconduct. It did, however, identify certain areas for improvement. (Doc.Ex.(I) pp 142–46). Each recommendation focused on employee training and increased oversight. *Id*. Ms. Chastain responded

graciously to the recommendations in writing and immediately began working to implement them. (Doc.Ex.(I) pp 147–49). The audit report in no way contained any finding of "material misconduct" by the Clerk's office.

The audit report incorporated Ms. Chastain's written response, which explained that her office was understaffed in 2019 with several individuals out for extended periods of time. (*Id.*; 29 Sept T p 128). There had never been any prior problems with an audit, and there have been none since. *Id.* No evidence was admitted at trial that Ms. Chastain acted intentionally, knowingly, or in bad faith with respect to any of the findings contained in the audit report.

Magistrate Phone Call: On the evening of 25 June 2020, Ms. Chastain called Chief Magistrate James Arnold on his cell phone while he was in Raleigh. (30 Sept T pp 277–78). Ms. Chastain called because several citizens had come to her upset that they were unable to reach a magistrate on duty that evening. *Id.* Ms. Chastain was with the concerned citizens outside of the empty magistrate's office when she made the call. *Id.* She asked Mr. Arnold to send a magistrate to the office and told him coverage was needed to better serve the citizens of Franklin County. (30 Sept T pp 277–78, 289).

Mr. Arnold refused to send any magistrates unless he could speak directly to one of the citizens. (30 Sept T pp 279–81). Ms. Chastain "threatened to give Mr. Arnold's private telephone number to the people with her, and he stated that she should not do that." (R p 155 ¶ 44). Mr. Arnold then told Ms.

Chastain that if she had complaints, she could call his supervisor, Chief District Judge John Davis. (30 Sept T pp 282, 291). The call then ended. *Id.*

Seconds later, Ms. Chastain's phone inadvertently and unknowingly dialed Mr. Arnold again. (30 Sept T pp 292–93). When he answered the phone, Mr. Arnold had difficulty understanding Ms. Chastain's words. He testified that he did not know what specifically she said. *Id.* He believed he heard her use a curse word, but could not hear the phrase exactly. *Id*. He testified that he thought she either said, "fuck, I'm not calling John Davis," "fuck John Davis," or "I don't give a fuck about John Davis." However, Mr. Arnold did not know which phrase Ms. Chastain actually said. *Id*. He testified that he had never heard Ms. Chastain use profanity previously, and had not heard her do so since. (30 Sept T p 294).

B. Surprise Allegations Not in Charging Affidavit

During the hearing, Affiant Thompson improperly introduced evidence regarding allegations which were not set forth in the Charging Affidavit, and of which Ms. Chastain had no prior notice. (R pp 3–11, 77–78). First, Judge Davis was called and testified that early in Ms. Chastain's term as Clerk, she asked him on several occasions if he wanted to strike certain orders for arrest. (29 Sept T pp 230–31). It is undisputed that such allegations were never disclosed in the Charging Affidavit. (*See* R p 3–11).

However, the evidence at the hearing was uncontroverted that Judge Davis never informed her that such a request was improper, and that when he told Ms. Chastain not to ask anymore, she stopped and did not repeat the conduct. (29 Sept T pp 230–31). No evidence was admitted that Ms. Chastain was ever told her requests were inappropriate, or that she continued making such requests after Judge Davis told her to stop.

Second, District Attorney Waters was also called and testified about alleged misconduct that was not included in the Charging Affidavit. (R 3–11). During direct examination, Mr. Thompson's counsel attempted to question Mr. Waters about undefined additional conduct regarding Ms. Chastain's "impartiality," to which Ms. Chastain's counsel objected. (30 Sept T pp 340–42). The trial court sustained the objection. *Id*.

However, on cross-examination, Mr. Waters injected unsolicited testimony alleging that Ms. Chastain would bring people to the District Attorney's office to see if that office could offer them a dismissal or the striking of a prior failure to appear entry. Ms. Chastain's counsel again objected and made a motion to strike the testimony of these surprise allegations. (30 Sept T p 379). The trial court overruled the objection and admitted the testimony as substantive evidence of misconduct even though it was not disclosed in the Charging Affidavit. *Id.*

C. Affidavit Allegations for which No Evidence was Offered

At the conclusion of the presentation of all evidence, Mr. Thompson conceded that he had presented no evidence in support of two other allegations within the Charging Affidavit (¶¶ 6(E) and 6(F)). (R pp 8–9). As a result, the 16 October 2020 Order stated that "the court will not consider these allegations." (R p 82).

IV. First Removal Order and Appeal

On 16 October 2020, the trial court entered an order permanently removing Ms. Chastain as Clerk. (R p 76–86) (the "First Removal Order"). The Order noted that under Article IV, § 17 of our Constitution, "[a] Clerk of Superior Court may be removed from office by a hearing before the senior resident superior court judge serving the county of the Clerk's residence and may be removed only for willful misconduct or mental or physical incapacity." (R p 81–82 ¶ 3). Based on this standard, the court made the following conclusions of law regarding each allegation noted above:

- The smoothie coupon incident constituted "poor judgment" and "unprofessional conduct," but "d[id] not constitute willful misconduct in office." (R p 84 ¶ 3).

- The Machada incident constituted "an inappropriate intervention into the case and was beyond the legitimate exercise of [Ms. Chastain's] authority notwithstanding the Rules of the North Carolina Commission on Indigent Defense Services." (R p 84 ¶ 4).

- Ms. Chastain's requests "seeking the reduction or dismissal of criminal charges" and seeking "to strike orders of arrest" "d[id] not of themselves constitute . . . willful misconduct," but were "beyond the legitimate exercise of [her] authority." (R p 84 ¶ 5).

- The Gayden/Diaz home visit constituted conduct "prejudicial to the administration of justice" that "tended to undermine the authority of Judge Davis, breed disrespect for his office and the legal processes already in place, and diminish the high standards of the office of Clerk of Superior Court." (R p 85 ¶¶ 7, 8).

- The magistrate phone call constituted "conduct prejudicial to the administration of justice which brings her office into disrepute" and amounted to "willful misconduct in that she engaged in improper and wrong conduct while acting in her official capacity." (R p 85 ¶ 9).

- The audit deficiencies "constituted willful misconduct in office." (R p 85 ¶ 11).

The trial court further concluded that "[e]ven if Respondent's acts of misconduct viewed in isolation do not constitute willful misconduct, her knowing and persistently repeated conduct prejudicial to the administration of justice itself rises to the level of willful misconduct." (R p 85 ¶ 10). Thus, the trial court determined that the evidence was sufficient to "warrant [Ms. Chastain's] permanent removal from the office" of Clerk of Superior Court. (R p 86). Ms. Chastain timely appealed. (R p 89).

On 1 February 2022, the Court of Appeals unanimously vacated the First Removal Order. *Chastain I*, 281 N.C. App. 520. The Court of Appeals noted that "[o]ur Constitution provides two different avenues by which an elected Clerk may be removed." First, Article IV, § 17 empowers solely the "'senior resident Superior Court Judge serving the county to remove the county's clerk for 'misconduct or [for] mental or physical incapacity.'" *Id*. at 523. Second, "a Clerk may be removed from her current term *as a consequence of* being disqualified from holding any office under Article VI [§ 8] where she is 'adjudged guilty of corruption or malpractice in any office." *Id*. at 524–25.

Here, the court determined that because "Judge Lock is not the senior regular resident Superior Court Judge in Franklin County, he lacked any authority to remove Ms. Chastain for mere 'misconduct' under Article IV." *Id*. at 523. Instead, the only "constitutional avenue" by which Judge Lock could remove Ms. Chastain was the "corruption or malpractice" standard under Article VI, § 8. *Id*. at 524–25. Based on previous cases from this Court, the Court of Appeals determined that the "corruption or malpractice" standard includes, "at a minimum[,] acts of willful misconduct which are egregious in nature." *Id*. at 528.

Finally, the Court of Appeals addressed due process. *Id*. at 528–29. The court "h[e]ld that Ms. Chastain has the due process (and statutory) right to notice of the acts for which her removal was being sought." *Id*. at 529. The court

therefore concluded that Judge Lock's reliance on "acts that were not alleged in Mr. Thompson's affidavit violated Ms. Chastain's due process rights." *Id*. The court noted that "Judge Lock could only consider . . . acts [outside of the charging affidavit] to assess Ms. Chastain's credibility, as she has no notice that she would be subject to removal for those acts." *Id*.

Accordingly, the Court of Appeals vacated and remanded the First Removal Order for entry of a new order consistent with the controlling law and remand instructions set forth in the opinion. *Id*. at 530.

V. Second Removal Order and Appeal

Following *Chastain I*, Ms. Chastain filed with the trial court a "Motion for Expedited Entry of Order Consistent with Court of Appeals Mandate." (R 101, 149). The trial court (Judge Lock presiding) conducted a hearing on 16 March 2022. No additional evidentiary hearings were conducted, limiting the court's new order to the same evidence previously provided, excluding evidence regarding allegations not set forth in the Charging Affidavit.

On 5 April 2022, the trial court entered an order permanently disqualifying Ms. Chastain from serving as Franklin County Clerk of Superior Court (the "Second Removal Order"). (R p 149). First, the court noted its authority under Article VI, § 8 to remove Ms. Chastain from office for "corruption or malpractice."

Next, the court made the following conclusions of law regarding each incident noted above:

- The Machada incident constituted "inappropriate intervention into the case and was beyond the legitimate exercise of [Ms. Chastain]'s authority notwithstanding the Rules of the North Carolina Commission on Indigent Defense Services." "Such willful misconduct was egregious in nature and is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina." (R p 158–59 ¶ 3).

- Ms. Chastain's requests "seeking the reduction or dismissal of criminal charges" and seeking "to strike orders of arrest," despite not appearing in the charging affidavit, "provided [Ms. Chastain] with actual notice and knowledge that it was improper for her to use her position as Clerk of Court to interfere with normal judicial processes or to advocate for individuals with matters pending before the courts." (R p 159 ¶ 4).

- The Gayden/Diaz home visit constituted "willful misconduct [that] was egregious in nature," and "is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." (R p 159 ¶ 6).

- The magistrate phone call constituted "willful misconduct [that] was egregious in nature," and "is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." (R p 159 ¶ 7).

- The Audit Report deficiencies "constituted willful misconduct in office that was egregious in nature, is equivalent to corruption or malpractice under

> Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." (R p 159–60 ¶ 8).

The trial court further concluded that even if Ms. Chastain's acts "viewed in isolation do not constitute willful misconduct, her knowing and persistently repeated conduct prejudicial to the administration of justice itself rises to the level of willful misconduct, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and warrants permanent disqualification from office." (R p 160 ¶ 9). The court therefore ordered that Ms. Chastain be permanently disqualified from serving in the Office of Clerk of Superior Court of Franklin County. Notably, this ruling also permanently disqualifies Ms. Chastain from holding any elected office in North Carolina. *See* N.C. Const. Art. VI, § 8. Ms. Chastain again timely appealed. (R p 163).

On 20 June 2023, the Court of Appeals issued a divided opinion affirming the Second Removal Order. *Chastain II*, 289 N.C. App. 271. First, the majority opinion summarized the constitutional standard for disqualification under Article VI as established in *Chastain I*. *Id*. at 274–76. The court noted that under this standard, "only acts of willful misconduct which are egregious in nature"—those which are "extremely or remarkably bad"—may qualify as the "corruption or malpractice" required for disqualification under Article VI § 8. *Id*. at 276.

Second, the court applied this standard to Ms. Chastain's acts. As a preliminary matter, the majority held that the trial court did not err in its consideration of allegations and evidence outside of the Charging Affidavit because "it properly excluded [those] acts . . . from consideration when making the necessary findings and conclusions for the disqualification of [Ms. Chastain] under the corruption or malpractice standard." *Id*. at 279. The court noted that the trial court "unequivocally stated" that "it had not relied upon this [outside] evidence except to consider [Ms. Chastain]'s credibility," and that it would therefore "only find reversible error [if] it affirmatively appear[ed] the action of the court was influenced by the consideration of inadmissible evidence." *Id*. at 278.

Next, the court "review[ed] [Ms. Chastain]'s conduct to determine whether the trial court properly disqualified [her] from office." *Id*. at 287. After summarizing the Machada incident, the Gayden/Diaz home visit, the magistrate phone call, and the Audit Report, the court determined that these incidents "rose to meet the corruption or malpractice standard" because they "constituted willful misconduct which was egregious in nature." *Id*. at 291. The court therefore held that Ms. Chastain "was properly disqualified as her conduct amounted to corruption or malpractice." *Id*. at 291.

Judge Wood authored a 26-page dissenting opinion. First, the dissent emphasized the exceptionally high standard here: "Because this is an ultimate

consequence, conduct must rise to the high constitutional standard of *egregious* and willful misconduct so as to constitute 'corruption or malpractice' before an elected official may be permanently disqualified from office." *Id*. The dissent noted previous examples of the extreme misconduct that this Court has deemed to meet this high standard: repeated embezzlement of court money, *Peoples*, 296 N.C. 109; repeatedly yelling racial slurs to patrons at a bar, *Spivey*, 345 N.C. 404; repeatedly accepting cash bribes, *Hunt*, 308 N.C. 328 (1983); and repeated sexual misconduct, *Kivett*, 309 N.C. 635, among other examples. *Id*. at 299–300.

Here, the dissent reasoned that the alleged conduct failed to meet this high standard. *Id*. at 300. "Ms. Chastain's conduct, even if willful and considered in isolation or combination, was not *egregious* as to merit her disqualification and removal from the elected office of Clerk of Superior Court." *Id*. The dissent then reviewed each incident upon which the trial court relied—the Machada affidavit, the Gayden/Diaz home visit, the magistrate phone call, and the audit—and determined that none supported the trial court's "conclusion that Ms. Chastain's actions rise to the level of egregious and willful misconduct demanded of Article VI's 'corruption or malpractice' standard to warrant disqualification from office." *Id*. at 309.

The dissent also disagreed with the trial court's conclusion that the above instances constituted egregious and willful misconduct when considered

together. *Id*. at 311. Instead, Judge Wood observed that "the instances the trial court noted were singular, isolated occurrences, separated by substantial time, place, and parties involved." *Id*. Therefore, "[t]he trial court cannot commingle and combine conduct that is not egregious and willful to reach the highest bar of corruption and malpractice under Article VI." *Id*.

Finally, the dissent emphasized the gravity of the consequences here. *Id*. at 312. "[T]his is no mere firing of an employee. By being adjudged guilty of corruption or malpractice, Ms. Chastain is not only removed from elected office, but is forever prohibited from holding *any* elected office." *Id*. "Perhaps the greater injury," the dissent noted, "rests upon the people of Franklin County who elected Ms. Chastain as their Clerk of Superior Court multiple times." *Id*. Ultimately, the dissent concluded, "[t]he will of the people must not be cast aside by the stroke of a judge's pen without due consideration and just cause under the high standard set forth by our Constitution." *Id*. at 313.

Ms. Chastain timely appealed to this Court.

STANDARD OF REVIEW

In disqualification and removal proceedings, the Affiant bringing the charges bears the burden of proving that grounds for removal exist by "clear, cogent and convincing evidence." *Cline*, 230 N.C. App. at 20–21. On appeal, this Court first considers whether the trial court's findings are "adequately supported by clear and convincing evidence, and in turn, whether those findings support its conclusions of

law." *In re Hill*, 368 N.C. 410, 416 (2015). The trial court's conclusions of law are reviewed *de novo*. *In re K.J.D.*, 203 N.C. App. 653, 657 (2010).

Absent evidence to the contrary, this Court always presumes that public officials "discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. . . . Every reasonable intendment will be made in support of the presumption." *Huntley v. Potter*, 255 N.C. 619, 628 (1961) (cleaned up); *see also Styers v. Phillips*, 277 N.C. 460, 473 (1971) (emphasizing the presumption of good faith afforded to all public officials).

ARGUMENT

The majority opinion below improperly affirmed two constitutional errors within the trial court's Second Removal Order. First, as raised in Judge Wood's dissenting opinion, the Court of Appeals majority erred in concluding that Ms. Chastain's actions constituted "corruption or malpractice" under Article VI. Second, as raised in Appellant's PDR, the trial court erred by materially relying upon evidence of incidents not alleged in the Charging Affidavit, just as the Court of Appeals unanimously deemed improper in *Chastain I*. As explained below, both errors warrant reversal by this Court.

I. The Court of Appeals Erred in Holding that the Ms. Chastain's Acts Constitute "Corruption or Malpractice."

First, as explained in Judge Wood's dissent, the majority below erred in affirming the trial court's conclusion that Ms. Chastain's acts meet the extraordinary constitutional standard of "corruption or malpractice" required

for disqualification under Article VI. This error significantly dilutes the disqualification standard with stark consequences for our democracy.

A. The Extraordinary Standard for "Corruption or Malpractice" Required for Disqualification Under Article VI.

"Our elected judicial officials, including our Clerks of Superior Court, are entrusted by the people with the administration of justice on their behalf." *Chastain II*, 289 N.C. App. at 297 (Wood, J., dissenting) (citing N.C. Const. art. I, § 2). Accordingly, where our Constitution allows for the removal of an elected official, "such removal must be effectuated with the utmost care and respect for the people's will—and not purely as a result of internal, oligarchical enmity." *Id.* (citing The Federalist No. 51 (James Madison)).

In North Carolina, the Clerk of Superior Court is an independent constitutional officer elected by the people of each county. N.C. Const. art. IV, § 9(3). Our Constitution establishes two potential avenues for removal or disqualification of an elected Clerk of Superior Court: Article IV, § 17, and Article VI, § 8. *See Chastain I*, 281 N.C. App. at 522–23. The former establishes that a Clerk of Superior Court "may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county." N.C. Const. art. IV, § 17. But because "Judge Lock [was] not the senior regular resident Superior Court Judge in Franklin County," he lacked the authority to remove Ms. Chastain under Article IV, *id.*

at 523–24, and thus only possessed authority to consider removal under Article VI. *Id.* at 530.[2]

Article VI, § 8 of our Constitution establishes several ways that a person may be disqualified from holding elected office. Relevant here, it disqualifies "any person who has been adjudged guilty of corruption or malpractice in any office." N.C. Const. art. VI, § 8.[3]

Not just any misconduct constitutes "corruption or malpractice." *Chastain I*, 281 N.C. App. at 525, 527. Indeed, not even just any *willful* misconduct meets this standard. *Id*. at 527–28. Rather, the "corruption or malpractice" standard "include[s,] at a minimum[,] acts of willful misconduct *which are egregious in nature*." *Id*. at 528 (emphasis assed); *Chastain II*, 289 N.C. at 276.

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[2] Contrary to the statements in dicta in *Chastain I* and Judge Wood's dissent in *Chastain II*, the Rule of Necessity does *not* provide grounds for Senior Regular Resident Superior Court Judge Dunlow to preside over Ms. Chastain's removal proceeding despite Judge Carmical's Order requiring his recusal. *See Chastain I,* 281 N.C. App. at 523; *Chastain II*, 289 N.C. App. at 297 (Wood, J., dissenting); (R pp 71–72). Because Judge Dunlow was not the only Superior Court Judge able to preside over Ms. Chastain's removal proceedings, his recusal did not "result in a denial of a [Affiant Thompson]'s constitutional right to have a question properly presented to such a court." *Lake v. State Health Plan for Teachers & State Emps.*, 376 N.C. 661, 664 (2021). Accordingly, the Rule of Necessity does not allow Judge Dunlow's participation in this matter despite his court-ordered recusal.

[3] Being "adjudged guilty" under Article VI does not require criminal conviction or a finding by a jury, and instead a conclusion by a presiding court with jurisdiction will suffice. *Peoples*, 296 N.C. 109.

This sets an extraordinarily high bar. It requires "more than an error of judgment or mere lack of diligence." *Nowell*, 293 N.C. at 248. It requires "more than an intention to commit the offense." *State v. Stephenson*, 218 N.C. 258, 264 (1940); *see Chastain I*, 281 N.C App. at 528; *Chastain II*, 289 N.C. App at 275. It requires more than isolated acts of indiscretion. *See In re Martin*, 302 N.C. 299, 316 (1981). It requires more than "conduct prejudicial to the administration of justice." *Peoples*, 296 N.C. at 157–58.

Rather, "acts of willful misconduct which are egregious in nature" must be "extremely or remarkably bad." *Chastain II*, 289 N.C. App at 276. They must involve "purpose and design in doing so." *Id*. at 275. They often "involve personal financial gain, moral turpitude[,] or corruption." *Peoples*, 296 N.C. at 157; *see Chastain II*, 289 N.C. App at 275. The word "guilty" used in Article VI matters, as the term "connotes evil, intentional wrongdoing and refers to conscious and culpable acts . . ." *Id*. at 165.

Below, the Court of Appeals relied upon several rulings from this Court to exemplify the level of extreme misconduct necessary to meet this extraordinary standard. *See Chastain I*, 281 N.C. at 527–28; *Chastain II*, 275–76. For instance, in *Peoples*, the judge at issue repeatedly, and over a period of several years, removed certain criminal cases from the docket, placed them into a "personal file," and accepted payments in exchange for agreeing to "take care of" the charges by dismissing them. 296 N.C. at 158. In *Martin*, the judge

at issue "attempted on several occasions by innuendoes or directly, to obtain sexual favors from two female defendants" in exchange for judicial leniency. 302 N.C. at 316. In *Hunt*, the judge at issue "accepted money on several occasion in exchange for his assistance in protecting illegal gambling and drug smuggling activities." 308 N.C. at 329.

Judge Wood's dissenting opinion likewise identified several rulings from this Court illustrating the egregious level of misconduct required to warrant removal from office. 289 N.C. App. at 299–300. In *Spivey*, 345 N.C. 404, this Court "upheld the removal of a district attorney who . . . repeatedly yelled 'ni--er' to another patron [at a bar] and engaged in 'other improper conduct' before being forcefully removed." *Id.* In *Kivett*, 309 N.C. 635, this court affirmed the removal of a superior court judge who "eliminat[ed] conditions of a probationer without notice to the district attorney, [engaged in] sexual misconduct, and coerc[ed] an assistant district attorney to 'help' the judge's former mistress in a DWI case." *Id.* at 300. And in *In re Sherrill*, 328 N.C. 719 (1991), this court affirmed the removal of a judge who had been arrested for and pleaded guilty to felony possession of cocaine and possession of drug paraphernalia and marijuana. *See id.*

Based on these cases, the *Chastain I* court unanimously held—and the *Chastain II* majority and dissent both reaffirmed—that the "corruption or malpractice" standard is an extraordinary bar requiring a *higher and more*

egregious level of misconduct than either plain "misconduct" or even "willful misconduct." *Id.* at 525. The significance of the distinctions between these legal standards cannot be overstated here. Taken together, the standard for disqualification as set forth in *Chastain I* and *II* delineate the following levels of misconduct:

1. Acts of mere misconduct—offenses that do not rise to the level of willful misconduct—can never meet the "corruption or malpractice" standard.[4]

2. Even acts of willful misconduct—which require a knowing and willful intent[5]—cannot meet the "corruption or malpractice" standard unless the conduct is so egregious in nature that it rises beyond ordinary willful misconduct.[6]

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[4] *Id.* at 527, ¶ 29 ("We do hold that acts of misconduct which do not rise to the level of willful misconduct do not equate to 'corruption or malpractice' under Article IV.").

[5] As the court explained regarding ordinary willful misconduct in *Chastain I*:

> Our Supreme Court has held in the context of a criminal statute that "willfully" means "something more than an intention to commit the offense. It implies committing the offense purposely and designedly in violation of law." *State v. Stephenson*, 218 N.C. 258, 264, 10 S.E.2d 819, 823 (1940). In the same vein, in the context of a proceeding to discipline a judge, our Supreme Court "ha[s] defined 'wilful misconduct in office' as involving "more than an error of judgment or a mere lack of diligence.' We have also stated that '[w]hile the term would encompass conduct involving moral turpitude, dishonesty, or corruption, these elements need not necessarily be present.' As we observed in *In re Martin*, *supra*, 'if a judge *knowingly and wilfully persists in indiscretions and misconduct* which this Court has declared to be, or *which under the circumstances he should know to be*, acts which constitute wilful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute, he should be removed from office." *In re Martin*, 302 N.C. at 316, 275 S.E.2d at 421 (cleaned up).

[6] *Id.* at 528 ("We construe the language to include at a minimum acts of willful misconduct which are egregious in nature, as those in *Peoples*.").

> 3. Only those acts which are so egregious in nature that they rise above ordinary willful misconduct can possibly meet the extraordinary standard of "corruption or malpractice" for disqualification.[7]

Accordingly, the unanimous Court of Appeals opinion in *Chastain I* and both the majority and dissenting opinions in *Chastain II* all agreed that disqualification under the "corruption or malpractice" standard of Article VI "requires more than mere 'misconduct' or even 'willful misconduct'; it requires *egregious* and willful misconduct." *Id*. at 298 (Wood, J., dissenting). For the reasons articulated in these opinions, Appellant agrees that this exceptionally high bar is the appropriate standard for disqualification proceedings under Article VI, § 8.

B. Ms. Chastain's Acts Do Not Meet the Extraordinary "Corruption or Malpractice" Standard.

Here, Ms. Chastain's acts fall well short of this extraordinary standard. The trial court and Court of Appeals majority erred in concluding otherwise.

The Second Removal Order relied upon four separate acts, isolated by time, persons, and subject matter, to justify Ms. Chastain's immediate and permanent disqualification from office: (1) the Machada Affidavit of Indigency (R pp 151–52 ¶¶ 15–19); (2) the Audit Report (R pp 152–53 ¶¶ 20–24); (3) the

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[7] *Id*. at 528 ("Further, we construe the language "willful misconduct" in Section 7A-105 in the context of an Article VI hearing to include only those acts of willful misconduct which rise to the level of "corruption or malpractice" in office.").

Gayden/Diaz Home Visit (R pp 153–55 ¶¶ 25–29); and (4) the Magistrate Phone Call (R pp 155–56 ¶¶ 40–46).[8] But these acts plainly fail to meet the high constitutional standard of "corruption or malpractice" required for permanent disqualification under Article VI. Instead, each act constitutes—at most—"an error of judgment or mere lack of diligence," or "acts of negligence or ignorance," which "in the absence of bad faith intent to violate the law, do not rise to the level of willful misconduct," let alone the level of *egregious* willful misconduct required to meet the corruption or malpractice standard. *Chastain II*, 289 N.C. App. at 311 (Wood, J. dissenting) (quoting *In re Nowell*, 293 N.C. 235, 248–49 (1977)). Each of these four incidents is considered in turn below.

Machada Affidavit of Indigency: The first act upon which the trial court relied in its Second Removal Order was the Machada Affidavit of Indigency.[9] In short, the trial court found that upon realizing that Mr. Machada had not completed an affidavit of indigency during his first appearance with Judge Davis (as required by state law and the Rules of the

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[8] The Second Removal Order noted two other allegations (the requests to District Attorney Waters and Judge Davis to reduce charges and strike orders for arrest, respectively), but was prohibited from substantively relying upon these allegations because they were not specifically alleged in the Charging Affidavit. (R p 151 ¶¶ 12–14). However, as noted further below, the trial court erroneously did *not* limit its consideration of these two other allegations to its assessment of Ms. Chastain's credibility as required by *Chastain I*, and instead improperly cited them as material evidence of corruption or malpractice warranting disqualification.

[9] In addition to generally challenging the Court of Appeal's holding on this issue, Appellant specifically challenged Findings of Fact 17 and 19 and Conclusion of Law 3 from the Second Removal Order, and maintains these challenges here.

North Carolina Commission on Indigent Defense Services), Ms. Chastain "went to the Franklin County Detention Center and sought access to Machada for the purpose of having him complete an affidavit of indigency." (R p 151–52 ¶ 17; *see* R p 151–52 ¶¶ 15–19). The trial court expressly noted that under these Rules, it is the Clerk of Superior Court's responsibility to ensure that such an Affidavit of Indigency is completed. (R p 152 ¶ 18).

Based on these facts, the trial court erroneously concluded that Ms. Chastain had "demanded access to the county jail for the purpose of obtaining an affidavit of indigency . . . knowing that the defendant already had been appointed counsel." (R p 158 ¶ 3). The trial court further concluded that Ms. Chastain's conduct "was an act beyond the legitimate exercise of [her] authority notwithstanding the Rules of the North Carolina Commission on Indigent Defense Services" and constituted "willful misconduct" that was "egregious in nature" and "equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina." (R p 158–59 ¶ 3).

This conclusion is unsupported by the evidence, factual findings, and applicable law. As an initial matter, as recognized by the *Chastain II* majority opinion, there is *no evidence* in the record supporting the trial court's conclusion that Ms. Chastain knew that Mr. Machada had been appointed counsel. 289 N.C. App. at 283. To the contrary, undisputed evidence established Ms. Chastain "was not aware a lawyer had already been

appointed." *Id*. Accordingly, the *Chastain II* majority correctly recognized that "this portion of Conclusion of Law 3 . . . is not supported by adequate evidentiary findings of fact and is therefore erroneous." *Id*.

Likewise, the trial court made *no* factual findings to support its erroneous conclusion that Ms. Chastain "demanded access to the county jail." (R p 158 ¶ 3). To the contrary, the uncontroverted evidence demonstrated that Ms. Chastain went to jail and obtained the affidavit of indigency without problems or incident (29 Sept T pp 160–67), after which Judge Davis thanked her for doing so. (29 Sept T p 178). Moreover, Sheriff Winstead never testified that Ms. Chastain *demanded* any jail personnel give her access to Mr. Machada, and admitted he was not present at the jail at that time. (29 Sept T pp 224–25). This portion of the trial court's conclusion of law is thus also unsupported and erroneous.

But the trial court's error goes further: its findings of fact do not support its conclusion of law that Ms. Chastain's actions here constitute egregious and willful misconduct. Rather, Ms. Chastain had both the authority and the *responsibility* under North Carolina law to ensure that Mr. Machada completed and signed a sworn affidavit of indigency. *See* N.C.G.S. § 7A-453(c) (Once an indigent defendant is taken into custody and requests counsel, "the authority having custody shall immediately inform the designee of the Office of Indigent Defense Services *or the clerk of superior court*, as the case may be,

who *shall* take action as provided in this Article") (emphasis added); N.C.G.S § 7A-452(c) ("The clerk of superior court is authorized to make a determination of indigency and entitlement to counsel, as authorized by this Article"); North Carolina Commission on Indigent Defense Rule 1.1(4), 1.4(b)(1), 2A.2 (noting the Clerk's responsibility to require a defendant "to complete and sign under oath an affidavit of indigency.") The same act cannot constitute both a professional requirement and authorization of office, and misconduct requiring disqualification from that office, let alone egregious or willful misconduct.

Further, the trial court's factual findings fail to support its legal conclusion that "[Ms. Chastain's] actions were an effort to undermine Judge Davis' authority." (R p 159 ¶ 3). To the contrary, the trial court's findings expressly establish that "Judge Davis *did not ask Machada to complete an affidavit of indigency*,"[10] (R p 151 ¶ 16) (emphasis added), and that Ms. Chastain therefore went to the jail "*for the purpose of having [Machada] complete an affidavit of indigency*" as her job required. (R pp 151–52, ¶ 17) (emphasis added). The trial court's factual findings thus establish that Ms. Chastain's actions were taken to complete a required task that Judge Davis had overlooked, not to "undermine Judge Davis' authority." This is in fact why

[10] In light of this factual finding, the trial court's subsequent finding that Ms. Chastain "interfered with a matter that Judge Davis had already addressed" is directly contradicted and unsupported by clear, cogent, and convincing evidence and must be rejected, further undermining Conclusion of Law 3. (R p 151–52 ¶ 17).

Judge Davis thanked her for doing so. (29 Sept T p 178). Further, the uncontroverted evidence at the hearing demonstrated that Ms. Chastain was acting in good faith and with the honest belief that she was acting within the scope of her duties as Clerk. (29 Sept T p 160–78).

In short, the trial court's own factual findings established that Ms. Chastain's acts regarding the Machada affidavit were squarely within her legal authority and responsibility and taken with the good faith purpose of ensuring that this responsibility was fulfilled. Absolutely no "clear, cogent, and convincing evidence" indicates that Ms. Chastain acted in "an effort to undermine Judge Davis' authority." Accordingly, the trial court erred in concluding that these actions met the extraordinary bar of egregious and willful misconduct.

To be sure, one could reasonably contend that it would have been best practice for Ms. Chastain to consult with Judge Davis *before* ensuring completion of the affidavit of indigency, rather than after. "Perhaps it was true that Ms. Chastain, on this occasion, succumbed in some small way to that familiar tinge of frustration and took matters upon herself to complete that which the judge neglected to do." *Chastain II*, 289 at 302 (Wood, J., dissenting).

But "this single occurrence of alleged misconduct, *if it could be called misconduct at all*, was not so egregious as to support the disqualification and removal of a democratically elected clerk from office under Article VI." *Id.*

(emphasis added). Rather, when compared to previous actions that this Court has deemed to warrant removal from office—repeated criminal embezzlement, bribery, or sexual misconduct, to name a few—Ms. Chastain's actions here are not just vastly different in degree, they are entirely different in kind. To wit, she did not act outside of her legal authority, act with bad faith or malintent, or act to bring any benefit to herself, the hallmarks of corruption and malpractice. Accordingly, the trial court and Court of Appeals majority erred in holding that this incident constituted "corruption or malpractice" supporting disqualification under Article VI.

The Audit Report: The second act upon which the trial court relied in its Second Removal Order was the Audit Report. In short, the trial court found that the Audit Report identified several "deficiencies in internal control and instances of noncompliance" within the Office of the Clerk of Superior Court. (R p 152 ¶ 21). These deficiencies included "untimely completion of bank reconciliation," "untimely or failure to compel estate inventory filings or fee collection," and "failure to accurately disburse trust funds held for minors and incapacitated adults." *Id*. The trial court expressly noted that the Report "found no evidence of embezzlement or misappropriation of funds by [Ms. Chastain] or any employee of the Clerk of Court's office." (R p 152 ¶ 22).

Based on these findings, the trial court concluded that, "[n]otwithstanding the absence of criminal conduct found by the Auditor," Ms.

Chastain's "lack of oversight of her office constituted willful misconduct in office that was egregious in nature, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." (R p 160 ¶ 8).

This conclusion is unsupported by the evidence, factual findings, and applicable law. First, there is no clear, cogent, and convincing evidence in the record supporting the trial court's conclusory factual finding that the deficiencies identified in the Audit Report were "willful." (R p 153 ¶ 24). To the contrary, evidence demonstrates that the audit report constitutes an isolated event to which Ms. Chastain immediately responded by working toward the recommended improvements. In turn, there are no factual findings supporting the trial court's subsequent conclusion of law that the deficiencies were sufficiently willful as to meet the high standard required for "corruption or malpractice."

Ms. Chastain's previous experience in the Clerk's Office does not alone render the Audit Report deficiencies as "willful." Rather, "[w]illful misconduct requires more than an error of judgment or a mere lack of diligence, and acts of negligence or ignorance in the absence of bad faith intent to violate the law do not rise to the level of willful misconduct." *Chastain II*, 289 N.C. at 311 (Wood, J., dissenting); *see In re Nowell*, 293 N.C. 235, 248, (1976). Here, there are no factual findings indicating that Ms. Chastain knew of these deficiencies

previously and deliberately ignored them, let alone that she did so with any form of bad faith intention to violate the law. If prior experience alone is sufficient to find willful misconduct, then nearly every future audit of a public office identifying areas for improvement will be potential grounds for permanent disqualification.

Second, the Audit Report deficiencies are not "egregious in nature." As with the Machada incident, the Audit Report is wholly dissimilar from misconduct that this Court has deemed sufficiently egregious to warrant removal. Unlike those cases, this routine audit did not find any evidence of misappropriation, fraud, embezzlement, corruption, or any other form of intentional, reckless, or bad faith misconduct by Ms. Chastain or her office. *See, e.g., Peoples*, 296 N.C. 109; *Kivett*, 309 N.C. 635; *Hunt*, 308 N.C. 328. At most, the audit identified areas for internal improvements—the very purpose of conducting an audit. "It is not appropriate to equate temporary deficiencies in the training and monitoring of employees with intentional and knowing misuse of office." *Chastain II*, 289 N.C. at 311 (Wood, J., dissenting).

Accordingly, the trial court and Court of Appeals majority erred in holding that the Audit Report constituted "corruption or malpractice" supporting disqualification under Article VI.

Gayden/Diaz Home Visit: The third act upon which the trial court relied in its Second Removal Order was the Gayden/Diaz home visit.[11] In short, the trial court found that Ms. Chastain responded to a known dispute between neighbors by, in collaboration with law enforcement, speaking to each party at their respective homes about the dispute. (R pp 153–55 ¶¶ 25–39). The trial court further found that Ms. Chastain's statements to the Diazes were "false and misleading," "made with the intent to undermine Judge Davis' prior judicial authority, and were made to benefit Ms. Gayden." (R p 154 ¶ 31). Finally, the trial court found that a few days after the visit, "at the request of Ms. Gayden," Ms. Chastain "directed one of her employees to file a copy of Ms. Gayden's deed containing the easement across the Diazes' property in two of the lawsuits Ms. Gayden had filed against the Diazes" with a note in the margin noting that Ms. Gayden "has legal right way to travel per easement to her property." (R pp 154–55 ¶ 38).

Based on these factual findings, the trial court concluded that Ms. Chastain's conduct was willful because it followed "repeated warnings from Judge Davis and District Attorney Waters about acting outside the scope of her official responsibilities." (R p 159 ¶ 6). The trial court subsequently

[11] In addition to generally challenging the trial court and Court of Appeals' holding on this issue, Appellant specifically challenged Findings of Fact 30 and 37 and Conclusion of Law 5 from the Second Removal Order and maintains those challenges here.

concluded that this act was "egregious in nature, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." *Id.*

These conclusions are unsupported by the evidence, factual findings, and applicable law. First, no factual finding supported by clear, cogent, and convincing evidence supports the trial court's legal conclusion that Ms. Chastain's acts in the Gayden/Diaz incident were "willful" as defined under North Carolina law. As an initial matter, this conclusion of law expressly relies upon evidence of two allegations—Ms. Chastain's improper requests to and subsequent "repeated warnings from Judge Davis and District Attorney Waters"—that are indisputably not included in the Charging Affidavit. As the Court of Appeals unanimously held in *Chastain I* and as discussed further below, "reliance on these acts that were not alleged in Mr. Thompson's affidavit violate[s] Ms. Chastain's due process rights." 281 N.C. App. at 529. This portion of the trial court's legal conclusion must therefore be rejected as a matter of law. *See id.* at 529–30.

The remaining evidence likewise fails to support the trial court's factual findings and legal conclusions regarding willfulness. Rather, the evidence indicates Ms. Chastain approached both Ms. Gayden and the Diazes in good faith and with a genuine interest in hearing the concerns of *both* sides. (27 Dec T(4) pp 17–18, 22–23). She engaged in a voluntary discussion with the Diazes

at a time when they had no active case pending before her, listened intently as they explained their concerns, and at the end of the encounter Mr. Diaz thanked Ms. Chastain for coming. (27 Dec T(6) pp 5–6). Ms. Chastain agreed that the Diazes deserved to be able to enjoy their property (27 Dec T(5) p 49), and she wished them happiness and peace from this long-running ordeal. (27 Dec T(6) p 2).

Further, the undisputed evidence is that Ms. Chastain believed in good faith that she was acting properly and within her authority throughout the Gayden/Diaz matter. Indeed, if the opposite were true—that Ms. Chastain was willfully acting outside of the law in an attempt to undermine Judge Davis—then it seems exceedingly unlikely that she would have expressly requested the presence of law enforcement to witness the exchange. Thus, the evidence fails to clearly and convincingly demonstrate that Ms. Chastain's conduct was a calculated decision to intervene in a dispute solely to support Ms. Gayden's side. The trial court's factual findings and subsequent legal conclusion to the contrary are erroneous.

Second, the trial court's legal conclusion that Ms. Chastain's actions during the Gayden/Diaz incident were "egregious" is likewise unsupported by factual findings established by clear, cogent, and convincing evidence. As an initial matter, the very Clerk's guidebook cited by the trial court in its Second Removal Order makes clear that the line that a Clerk of Court must try to

navigate on a daily between providing legal *advice* and providing legal *information* "is often not clear, especially when responding to questions." *Ethics for Clerks*, UNC School of Government (Doc.Ex.(I) at 8). Clerks are not required to be licensed attorneys and very often are not, such as the case with Ms. Chastain. While the trial court faulted Ms. Chastain for talking to the Diazes about the meaning of the easement on file for Ms. Gayden, the same Clerk's guidebook admitted into evidence at trial states that it is squarely *within* a clerk's responsibilities to assist citizens with legal disputes and "explain the meaning of terms and documents used in the court process. *Id*. at 13. Here, Ms. Chastain's acts did not fall so far afield of the often blurry line between legal advice and legal information as to constitute "egregious" misconduct warranting permanent disqualification from office.

Further, Ms. Chastain's actions here lack any hallmark features of egregious misconduct as established by prior caselaw from this Court. Her earnest attempt to resolve a longstanding dispute between neighbors "produced no injury to any individual, was exercised with parties who did not have an action pending before her, was not an evil, intentional wrongdoing, and stands as comparatively innocent with the cases cited above wherein elected officials were removed under a lesser standard than required here." *Chastain II*, 289 N.C. App. at 306 (Wood, J., dissenting). Given her experience dealing with this dispute previously, "Ms. Chastain was more than familiar

with the parties involved" and earnestly sought to mitigate the potential for further harm. *Id*. Further, "Ms. Chastain did not personally gain any benefit from mediating a truce here, which might otherwise imply some level of corruption." *Id*. And even assuming *arguendo* that Ms. Chastain "harbored sympathies for one party over the other, this does not weigh into a consideration of corruption or malpractice." *Id*. Accordingly, the trial court's conclusion that Ms. Chastain's actions here were sufficiently "egregious in nature" to meet the high bar of "corruption or malpractice" was erroneous.

Finally, Ms. Chastain's filing of the deed document, which contained a handwritten note *accurately* noting Ms. Gayden's right of ingress and egress, was done at Ms. Gayden's express request. Therefore, this filing cannot support the trial court's conclusion that Ms. Chastain's action was egregious. To the contrary, the *uncontroverted evidence* established that members of the public are allowed to file whatever documents they want in a civil file, including documents with handwriting on them. (29 Sept T pp 103–09). Ms. Chastain did not usurp the role of the judiciary by fulfilling Ms. Gayden's request and handwriting a reference to Ms. Gayden's easement on the documents Ms. Gayden wanted filed. Contending so constitutes form over substance, as Ms. Chastain only wrote it *at the request of* Ms. Gayden, who could have written any language she desired on the documents she wanted to file. *Id.* This act falls squarely within the Clerk's duty to assist the public in accessing the judicial

system, and thus cannot amount to the egregious misconduct necessary to constitute corruption or malpractice.

To be sure, and as she sincerely admitted at the hearing, Ms. Chastain wishes she had done and said things differently in the Gayden/Diaz matter. (29 Sept T p 86). With the benefit of hindsight and separated from the emotional charge of the moment, it is clear that "it is not the place of a Clerk of Superior Court to interject herself into the legal dispute of two neighbors . . . , even for the purposes of ameliorating the situation." *Chastain II*, 289 N.C. App. at 306 (Wood, J., dissenting).

But earnest missteps done with a good faith intent to help others do not constitute "corruption or malpractice." Indeed, this Court has repeatedly held that where *sitting judges* engage in outside investigations of complaints or conduct outside witness interviews, it does not amount to willful misconduct warranting removal from office. *See In re Cornelius*, 335 N.C. 198, 208–09 (1993) (conducted a personal investigation and discussion with DSS to prevent a perceived injustice to an employee); *In re Bullock*, 336 N.C. 586, 587–89, (1994) (conducted personal investigation and outside interviews concerning the living arrangements of parties in case pending before him). In contrast with judges or district attorneys, Clerks of Superior Court "are not required to be licensed attorneys as a condition of holding office, and, consequently, are not

held to the same high standards as lawyers and judges." *Chastain II*, 289 N.C. App at 312 (Wood, J., dissenting).

Accordingly, the trial court and Court of Appeals majority erred in holding that the Gayden/Diaz Home Visit constituted "corruption or malpractice" supporting disqualification under Article VI.

Magistrate Phone Call: The fourth act upon which the trial court relied in its Second Removal Order was the Magistrate Phone Call.[12] In short, the trial court found that Ms. Chastain called the Chief Magistrate, Mr. Arnold, to inform him "that she had received several complaints about the hours the magistrates' office was open" and "demand[ ] that he send a magistrate to the office." (R p 155 ¶¶ 42, 43). Mr. Arnold declined and recommended that Ms. Chastain talk to Chief District Court Judge Davis. *Id.*

About 30 to 45 seconds later, Ms. Chastain's phone inadvertently and unknowingly redialed Mr. Arnold's phone. (R p 155 ¶ 45). When he answered, Mr. Arnold "heard [Ms. Chastain] say, 'I just talked with the chief magistrate and he's not going to do a thing.'" *Id.* Mr. Arnold then heard Ms. Chastain say one of three phrases, but he *could not say* which: either "fuck, I'm not calling John Davis," "I don't give a fuck about John Davis," or "fuck John Davis." *Id.*

[12] In addition to generally challenging the trial court's and Court of Appeals' holding on this issue, Appellant specifically challenged Findings of Fact 45 and 46 and Conclusion of Law 7. Appellant also specifically challenged the trial court's "catch-all" Conclusions of Law 9 and 10. Appellant maintains these challenges here.

Based on these findings, the trial court erroneously concluded that Ms. Chastain "us[ed] vulgarity in the presence of members of the public to describe her feelings toward Chief District Court Judge Davis," thereby "engag[ing] in conduct prejudicial to the administration of justice which brings her office into disrepute." (R p 159 ¶ 7). The trial court thus concluded that Ms. Chastain "committed willful misconduct" that was "egregious in nature, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and independently warrants permanent disqualification from office." *Id*.

This conclusion is unsupported by the evidence, factual findings, and applicable law. First, the evidence and the factual findings do not support the legal conclusion that Ms. Chastain "us[ed] vulgarity in the presence of members of the public to describe her feelings toward" Judge Davis. *Id*. "[W]ords, and the meaning behind them, are important and necessary in determining someone's intent." *Chastain II*, 289 N.C. App. at 308 (Wood, J., dissenting). Here, the evidence indicated "that the most [Mr. Arnold] could say is that he heard [Ms. Chastain] say a single phrase which, for all he knew, could very well have been "F___, I am not calling Judge Davis." *Id*.; (*see* 30 Sept T pp 292-93). This evidence therefore cannot support the trial court's conclusion that Ms. Chastain used vulgarity in the presence of others *to*

describe her feelings toward Judge Davis, and its subsequent conclusion that Ms. Chastain's conduct was willful and egregious. *See id*.

Second, as with the Machada and Gayden/Diaz incidents above, Ms. Chastain's phone call to Judge Arnold was not "egregious" because it was not wholly outside of the realm of her professional responsibilities as Clerk of Court. Rather, citizens came to her pleading for help because the magistrate's office was empty, and Ms. Chastain tried to assist them.

Moreover, under North Carolina law, the Clerk of Superior Court is responsible for nominating all magistrates for selection by the senior resident superior court judge of the district. N.C.G.S. § 7A-171 (2022). "Implicit with that official duty is the obligation of the Clerk to keep herself informed about the job performance of the magistrates in her district so she can make an intelligent decision as to whether to renominate any such individuals in the future." *Chastain II*, 289 N.C. App. at 309 (Wood, J., dissenting). "As such, it does not strain credibility that [Ms. Chastain] may have felt authorized or obligated to call the chief magistrate when she found the magistrate's office unmanned." *Id*.

Ms. Chastain phoned Mr. Arnold because multiple people had come to her seeking help because they could find no magistrate on duty. It is undisputed that the purpose of her call was to try to figure out why the magistrates were unavailable and to request additional assistance. The trial

court and Court of Appeals majority thus erred in concluding that a good faith action related to Ms. Chastain's professional responsibilities constituted egregious and willful misconduct. *See id*.

Finally, the Magistrate Phone call is wholly incomparable to previous misconduct that this Court has determined warrants removal. Plainly, neither speaking coarsely to a fellow elected official nor using a curse word in the same sentence as the name of a judge in public can be fairly compared to repeated acts of criminal embezzlement, bribery, coercion, sexual misconduct, or other acts that have met this high constitutional standard. Even where our courts have concluded that an elected official's speech alone is sufficient to constitute willful misconduct, the speech in question was extreme, repeated multiple times, and made with actual malice. *See Cline*, 230 N.C. App. 11. Contrastingly, Ms. Chastain's statement here was isolated and comparably mild, with no evidence of any harm intended or received.

Accordingly, the trial court and Court of Appeals majority erred in holding that the magistrate phone call constituted "corruption or malpractice" supporting disqualification under Article VI.

Commingling of Isolated Incidents. Finally, the trial court erred by improperly commingling and combining isolated acts to find that Ms. Chastain acted with corruption or malpractice. (R p 160). Separate acts—none of which

were knowingly or persistently repeated—cannot rise to the lesser standard of ordinary willful misconduct, let alone egregious willful misconduct.

This Court has held that unless the *same wrongful conduct* is both "knowingly and persistently repeated," then such conduct is *per se not* "as serious and reprehensible as willful misconduct in office." *Peoples*, 296 N.C. at 158; *see also Martin*, 302 at 316, ("if a judge *knowingly and wilfully persists in indiscretions and misconduct* which this Court has declared to be, or which under the circumstances he should know to be, acts which constitute wilful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute, he should be removed from office") (emphasis in original);

Here, the trial court took isolated events—each separated by substantial time, place, and actors, and with no evidence that any of these instances were ever knowingly repeated by Ms. Chastain—and commingled them to erroneously conclude that she engaged in "knowing and persistently repeated conduct" constituting the highest bar for removal of corruption or malpractice. (R p160). Moreover, as explained further below, this commingling inherently included consideration of the alleged acts that were not included in the Charging Affidavit, in violation of Ms. Chastain's due process rights as established in *Chastain I*. Accordingly, the trial court and Court of Appeals majority erred in holding that all of the separate and isolated events—

including those outside the Charging Affidavit—constituted "corruption or malpractice" supporting disqualification under Article VI.

* * *

In summary, none of the four isolated incidents relied upon in the Second Removal Order and Court of Appeals majority opinion below—whether considered independently or cumulatively—rise to the extraordinary constitutional standard of egregious and willful misconduct required to constitute "corruption or malpractice" under Article VI. Comparing previous cases and findings of willful misconduct to the complete record of evidence presented against Ms. Chastain, there is a great disparity in the criminality, moral turpitude, and bad faith intent behind the conduct at issue. Unlike prior removal cases, the evidence here demonstrates that Ms. Chastain's actions were motivated by a good faith desire to serve her community and to discharge her professional duties. Accordingly, the trial court and Court of Appeals majority erred in concluding that Ms. Chastain engaged in acts of willful misconduct that were so egregious in nature that they rise to the high bar of "corruption or malpractice" in office.

To be clear, acknowledging this legal error neither endorses nor condones Ms. Chastain's acts as Clerk of Court. Rather, it simply recognizes the high constitutional standard to permanently disqualify an elected official from office—a standard that Ms. Chastain's actions plainly do not meet here.

C. The Stark Consequences of a Diluted Constitutional Standard

"Review of an order removing an elected judicial official is one of the 'most serious undertaking[s]' in which an appellate court may engage." *Chastain II*, 289 N.C. App. at 295 (Wood, J., dissenting) (quoting *In re Hayes*, 356 N.C. 389, 406 (2002)). It carries stark consequences that not only impact the elected official involved in the proceedings, but reverberate across their community and our state. Accordingly, this Court owes a solemn obligation to Ms. Chastain, to the citizens of Franklin County, and to the state to consider the implications of its ruling in this matter with utmost care.

For Ms. Chastain, the erroneous rulings below brought both immediate and long-term personal and professional consequences. The Removal Order not only stripped her of her hard-earned and vested retirement benefits, it permanently harmed her good name and reputation. Ms. Chastain found immense purpose and pride in humbly serving her community as their clerk, and helping ordinary people access our system of justice.

Ms. Chastain's erroneous suspension and removal put an abrupt and painful end to this service. It "fixed upon [Ms. Chastain] a stigma of disgrace and reproach in the eyes of honest and honorable [people] that continues for life." *Harris v. Terry*, 98 N.C. 131, 133 (1887). It not only removed her from her position as Clerk, but also "forever prohibited [her] from holding *any* elected office" ever again in North Carolina. *Chastain II*, 289 N.C. App. at 295 (Wood,

J., dissenting). Indeed, "[i]t is difficult to conceive of a punishment more galling and degrading in this country than disqualification to hold office, whether one be an office seeker or not." *Harris*, 98 N.C. at 133.

But the harm goes much further than just Ms. Chastain. "Perhaps the greater injury rests upon the people of Franklin County," whose democratic will in electing Ms. Chastain in two consecutive elections with more votes than *any other candidate* on the ballot was unilaterally subverted. *Chastain II*, 289 N.C. App. at 295 (Wood, J., dissenting). "[W]hen adjudicating the disqualification of an elected official, care for the people's will is requisite to the proper respect for their sovereignty. The trial court here did not respect that sovereignty." *Id.*

Finally, and most consequentially, the majority opinion below did not just dilute the constitutional standard for disqualification for Ms. Chastain, or even just for Clerks of Superior Court. Article VI, § 8 contains no such narrow specifications. Rather, by interpreting the standard for "corruption or malpractice" under Article VI to include Ms. Chastain's actions here, the majority opinion established an improperly diluted standard for disqualification proceedings for *all elected officials* in our state.

If Ms. Chastain can be disqualified from office for an earnest *ex parte* conversation with a citizen involved in a dispute, then any sheriff or district attorney can be, too. If Ms. Chastain can be disqualified from office for an audit

identifying areas for internal improvement, then our Attorney General or Lieutenant Governor can be, too. If Ms. Chastain can be disqualified from office for speaking unprofessionally to or about a fellow judicial official, then a Justice on our Supreme Court can be, too.

This is not a hyperbolic parade of horribles. It is a clear-eyed assessment of the stark implications that this ruling, if affirmed, could have on our state. Particularly at a time of intense local, statewide, and national political divisions—including about what actions may rightfully disqualify a person from public office—the harm that such a ruling could bear on the fabric of our democracy would be difficult to exaggerate.

Fortunately, this Court need not take that path. "By the plain language of [Article VI, § 8], it is clear that the drafters intended only for the most egregious conduct to apply." *Chastain II*, 289 N.C. App. at 298 (Wood, J., dissenting). As explained above, Ms. Chastain's actions here, though imperfect, fall well short of this extraordinarily high constitutional standard. Accordingly, this Court should reverse.

II. The Trial Court Erred by Materially Relying upon Facts Not Alleged in the Charging Affidavit.

Second, the trial court's Second Removal Order repeated the same constitutional error already identified by the unanimous Court of Appeals ruling in *Chastain I*: it substantively relied upon allegations not included in

the Charging Affidavit. Because this error violated Ms. Chastain's due process right to fair notice, it independently warrants reversal by this Court.

A. The Due Process Right to Fair Notice.

The North Carolina Constitution and General Statutes guarantee certain due process protections for any Clerk against whom removal proceedings are initiated. First, the Clerk "shall receive written notice of the charges against him at least 10 days before the hearing upon the charges." N.C. Const. art. IV, § 17(4). The General Assembly has made clear that this written notice must occur "by the filing of a sworn affidavit with the chief district judge of the district in which the clerk resides." N.C.G.S. § 7A-105.

This statute further establishes that Clerk removal proceedings shall be conducted "under the same procedures as are applicable to a superior court district attorney." *Id*. Those procedures, found in N.C.G.S. § 7A-66, require the affidavit to provide fair notice by "charging the [Clerk] with one or more grounds for removal." N.C.G.S. §7A-66. The superior court must first determine on the face of the charging affidavit's allegations if probable cause exists to bring a removal hearing, and if so, the Clerk must "received immediate written notice of the proceedings and true copy of the charges" not less than 10 days before such hearing occurs. *Id*.

After a Charging Affidavit is filed, and once the evidentiary removal hearing begins, the Affiant bears the burden of proving the grounds alleged

within the Charging Affidavit exist by "clear, cogent and convincing evidence." *In re Cline*, 230 N.C. App. 11, 20-21, 749 S.E.2d 91, 98 (2013)[13].

Importantly, the Clerk is afforded *no discovery rights* prior to the removal hearing. *See Cline*, 230 N.C. App. 11. As such, the charging affidavit serves as the *sole source* of pre-trial due process available to the Clerk. She thus has no choice but to rely on the notice of allegations contained within the affidavit to both understand and prepare a defense at a removal hearing that must occur "[no] more than 30 days" after receipt of the affidavit. *Id*.

B. *Chastain I* Made Clear that the Trial Court Was Prohibited from Relying on Alleged Acts Outside of the Charging Affidavit.

The procedure for a removal hearing is governed by N.C.G.S. § 7A-105 which states that the proceeding "shall be initiated by the filing of a sworn affidavit." *Chastain I*, 281 N.C. App. at 526. In *Chastain I*, the Court of Appeals noted that while this procedure was initiated by the filing of Mr. Thompson's Charging Affidavit, "Judge Lock made findings concerning acts that had not been alleged in Mr. Thompson's affidavit and relied on those findings, in part, to support his sanction." *Id.* at 528–29.

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[13] Under N.C. Gen. Stat. § 7A-105, proceedings to remove a Clerk of Superior Court must be conducted "under the same procedures as are applicable to a superior court district attorney." The Court of Appeals has previously affirmed that the "clear, cogent and convincing evidence" burden of proof applies in district attorney removal proceedings. *See In re Cline*, 230 N.C. App. at 20–21. Accordingly, the same burden of proof applies to clerk removal proceedings, a fact with which the Affiant's counsel and trial court both agreed in the proceedings below. (*See* 28 Sept T p 21; R p 113).

The court unanimously concluded that this was reversible error. *Id.* at 530. The court held "that Ms. Chastain has the due process (and statutory) right to notice of the acts for which her removal was being sought," and therefore "conclude[d] that Judge Lock's reliance on these acts that were not alleged in Mr. Thompson's affidavit violated Ms. Chastain's due process rights." *Id.* at 528.

Accordingly, on remand, the trial court was prohibited from substantively relying on alleged acts that were not in the Charging Affidavit to support removal. Specifically, the trial court was prohibited from relying on the evidence previously admitted at trial concerning either Ms. Chastain's alleged requests to Judge Davis to strike orders for arrests, or Ms. Chastain's alleged interactions with District Attorney Waters or members of his office regarding dismissals of citizen's charges and/or striking failure to appear entries, as neither of these categories of alleged conduct appear in Mr. Thompson's Charging Affidavit. The court instructed that "to the extent that [Ms. Chastain] opened the door [to the presentation of other acts], Judge Lock could *only* consider those acts to assess Ms. Chastain's credibility, as she had no notice that she would be subject to removal for those acts." *Id.* at 529.

C. The Trial Court Erred by Again Relying on Alleged Acts Outside of the Charging Affidavit to Make Substantive Findings and Conclusions.

Despite this clear instruction, the trial court's 5 April 2022 Order removing Ms. Chastain again expressly based its findings and conclusions for removal on the same alleged acts outside of the original Charging Affidavit. Specifically, the trial court relied upon Judge Davis' and District Attorney Waters' incidents to support its finding that Ms. Chastain's conduct was done with notice and knowledge, and its subsequent conclusion that this specific knowledge elevated her conduct to "corruption or malpractice." This improperly relied on the outside allegations for far more than simply assessing Ms. Chastain's credibility.

Examples of this repeated error within the trial court's findings and conclusions include the following:

- Finding of Fact 14: "Moreover, the court finds that **these interactions [with Judge Davis and Mr. Waters] provided Respondent with actual notice** that it was improper for her to use her position as Clerk of Court to interfere with normal judicial processes or to advocate for individuals with matters pending before the court." (R p 151 ¶ 14) (emphasis added).

- Conclusion of Law 4: "Moreover, **these interactions [with Judge Davis and Mr. Waters] provided Respondent with actual notice and knowledge** that it was improper for her to use her position as Clerk of Court to interfere with normal judicial processes or to advocate for the

individuals with matters pending before the court." (R p 159 ¶ 4) (emphasis added).

- Conclusion of Law 6: "Moreover, Respondent **committed willful misconduct in that**, . . . **after repeated warnings from Judge Davis and District Attorney Waters** about acting outside the scope of her official responsibilities, **she intentionally engaged** in improper and wrong conduct while acting in her official capacity." (R p 159 ¶ 6) (emphasis added).

- Conclusion of Law 9: "Even if Respondent's acts of misconduct viewed in isolation do not constitute willful misconduct, **her knowing and persistently repeated conduct** prejudicial to the administration of justice itself rises to the level of willful misconduct, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and warrants permanent disqualification from office. (R p 160 ¶ 9). (Emphasis added).

The trial court's repeated improper reliance on these allegations was integral to its ultimate ruling. In order to find the primary element required for permanently disqualifying Ms. Chastain under Article VI—that she acted with specific knowledge and intent such that the conduct rises beyond ordinary willful misconduct and reached the egregious level required for "corruption or malpractice"—the trial court relied upon the above evidence not alleged in the Charging Affidavit, and concluded this evidence showed that Ms. Chastain acted with notice and knowledge and that her conduct was unlawful. Of critical importance, there is ***no evidence*** of any allegation *within* the Charging

Affidavit—or any other evidence presented at trial—that Ms. Chastain knowingly and intentionally repeated any improper act with bad faith intent. Instead, the Charging Affidavit, and the rest of the evidence at trial, only alleged six distinct and unconnected acts, separated by time, space, and actors, none of which were ever repeated.

This is particularly true given that all of Ms. Chastain's acts, as with any elected official, must be presumed to have been made in good faith and with a lawful purpose absent contrary evidence, and "every reasonable intendment will be made in support of the presumption." *Styers*, 277 N.C. at 473.

No evidence was presented that any of Ms. Chastain's actions in the Charging Affidavit were made with intent to commit misconduct or that she committed any of the Affidavit acts knowing that they were "prejudicial to the administration of justice." *In re Chastain*, 281 N.C. App. at 528 (discussing *In re Martin*, 302 N.C. 299, 316 (1981)). Instead, the trial court chose to materially rely on alleged conduct by Ms. Chastain outside the Charging Affidavit to support its findings and conclusions that she acted with actual notice and knowledge and that her conduct was willful and egregious. (R 159-60).

It is true that the trial court's order includes a boilerplate statement denying any substantive reliance on these external acts. Specifically, the order summarily states that "the court has not considered the evidence concerning [the outside acts] as a potential basis for removal," and instead used the

evidence "to assess [Ms. Chastain]'s credibility." (R p 152). However, the mere presence of this statement does not make it so. To the contrary, this statement is belied by the court's subsequent repeated and substantive use of the improper evidence to find and conclude that Ms. Chastain acted with notice, knowledge, and willful intent.

The trial court's statement is directly and repeatedly contradicted by the court's subsequent substantive reliance on these outside allegations to make its ultimate legal conclusion. Put differently, the trial court's mere incantation of the "credibility" rule does not alone indicate that it followed that rule when its subsequent findings and conclusions repeatedly demonstrate otherwise.

The Second Removal Order thus committed the same constitutional error that the Court of Appeals unanimously deemed improper in *Chastain II*.

D. The Court of Appeals Erred by Affirming the Trial Court's Improper Use of Acts Outside of the Charging Affidavit.

The Court of Appeals majority below erred in holding that the trial court "properly excluded acts outside the charging affidavit from consideration." *Chastain II*, 289 N.C. App. at 279. In reaching this conclusion, the majority relied on two facts: (1) that counsel for Ms. Chastain "excised" these allegations from the record during the hearing; and (2) that the trial court "unequivocally stat[ed] within its findings and conclusions [that] it had not relied upon this

evidence except to consider [Ms. Chastain]'s credibility as authorized by this Court in *Chastain I*. *Id*. at 278–79.

To be sure, these statements are both true: Ms. Chastain's counsel did explain to the trial court during the hearing that the allegations not included in the Charging Affidavit were not before the court, and the trial court did state in its Second Removal Order that it only considered these outside allegations to assess Ms. Chastain's responsibility.

But these statements alone do not negate the trial court's subsequent material reliance upon these outside allegations in its order. For illustrative example:

- In Finding of Fact 14, the court *expressly noted and relied upon* the outside allegations to "find[ ] that these interactions provided [Ms. Chastain] with actual notice that it was improper for her to use her position as Clerk of Court to interfere with normal judicial processes," (R p 151 ¶ 14);

- In Conclusion of Law 4, the trial court *expressly noted and relied upon* the outside allegation in concluding that "these interactions provided [Ms. Chastain] with actual notice that it was improper for her to use her position as Clerk of Court to interfere with normal judicial processes," (R p 159 ¶ 4);

- In Conclusion of Law 6, the trial court *expressly noted and relied upon* the outside allegations in concluding that "after repeated warnings from Judge Davis and District Attorney Waters about acting outside the scope of her official responsibilities, [Ms. Chastain] intentionally engaged in improper and wrong conduct

while acting in her official capacity," (R p 159 ¶ 6); and

- In Conclusion of Law 9, the trial court impliedly relies upon the outside allegations by concluding that Ms. Chastain's "knowing and persistently repeated conduct prejudicial to the administration of justice itself rises to the level of willful misconduct, is equivalent to corruption or malpractice under Article VI of the Constitution of North Carolina, and warrants permanent disqualification from office." (R p 160 ¶ 9).

These findings and conclusions do not mention and are unrelated to Ms. Chastain's credibility. Instead, they materially rely upon the only allegations of repeated misconduct—those outside the charging affidavit—in order to reach the ultimate conclusion that Ms. Chastain's acts were willful and egregious in nature, and thus warranting disqualification under Article VI.

The Court of Appeals majority below erred in ignoring the trial court's plain and repeated material reliance on these outside allegations in violation of Ms. Chastain's constitutional right to due process as held in *Chastain I*. Accordingly, this Court should reverse.

CONCLUSION

Based on the foregoing, Ms. Chastain respectfully requests that this Court reverse the Court of Appeals majority opinion affirming the trial court's Second Removal Order.

Respectfully submitted, this 12th day of February, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellant's New Brief was timely and electronically filed this day with the Clerk of the Supreme Court of North Carolina, and a copy of the same was served this day on counsel for Defendants by United States mail, postage prepaid, as well as electronic mail, as follows:

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