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 REPLY BRIEF

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INTRODUCTION

"All political power is vested in and derived from the people." N.C. Const. art. I, § 2. This power is exercised through "frequent elections," in which the people collectively decide who will run their government on their behalf. N.C. Const. art. I, § 9. Thus, disqualification and removal of elected officials "must be effectuated with the utmost care and respect for the people's will—and not purely as a result of internal, oligarchical enmity." *In re Chastain*, 289 N.C. App. 271, 297 (2023) (Wood, J., dissenting) (*Chastain II*) (citing The Federalist No. 51 (James Madison)).

Here, this Court will assess the standard for such disqualification. Specifically, it will consider whether a public official may be unilaterally and permanently disqualified from all public office for any or all of four alleged acts, entirely separated by time and space: fulfilling a duty of her office, attempting to resolve a dispute among neighbors, using a curse word in a discussion involving another public official, or receiving feedback from an audit.

This question answers itself. Such isolated acts—without any evidence of malintent, repetition, egregiousness, or personal gain—do not constitute the highest bar of "corruption or malpractice" required for disqualification under Article VI, § 8. *See generally*, *Chastain II*, 289 N.C. App. at 295–313 (Wood, J., dissenting). Indeed, they do not even meet the lower, inapplicable standard for removal under Article IV, § 17(4).

In asserting the contrary, the Appellee exaggerates the facts and relies on out-of-state authority applying completely different standards. (*See, e.g.*, Appellee Br. at 17, 34, 39, 44).[1] He attempts to relitigate the case under different and markedly lower legal standards than that ordered by the unanimous Court of Appeals in *Chastain I*. (Appellee Br. at 16–24). Finally, he fails to engage with the stark statewide consequences of diluting the extraordinary constitutional standard for disqualification by applying it to Ms. Chastain's comparatively pedestrian acts.

This Court should not follow Appellee down this misguided path. Instead, this Court should uphold the fidelity of this extraordinary constitutional standard (which will control the disqualification of all elected officials hereafter) and the foundational democratic principles it safeguards. "The 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." *Chastain II*, 289 N.C. App. at 313 (Wood, J., dissenting). Accordingly, this Court should reverse.

[1] Citing *In re Dugan*, 623 N.E.2d 1104 (Mass. 1993) (considering removal based on a different and more amorphous standard under Massachusetts law, whether "sufficient cause is shown therefor and it appears that the public good so requires.")

STANDARD OF REVIEW

Appellee claims that Ms. Chastain asks this Court to "reweigh the evidence." (Appellee Br. at 47–50). Incorrect. Rather, this Court must determine both whether the trial court's factual findings are adequately supported by clear and convincing evidence, and whether those findings support its subsequent legal conclusions. *In re Hill*, 368 N.C. 410, 416 (2015). If this Court determines that a factual finding is not supported by "clear and convincing evidence" in the record, then the finding cannot stand. *Id*. Legal conclusions are reviewed de novo. *Carolina Power & Lights Co. v. City of Asheville*, 358 N.C. 512, 517 (2004).

ARGUMENT

This Court should reverse the *Chastain II* majority opinion for three reasons. First, as reasoned in Judge Wood's dissent, Ms. Chastain's conduct does not meet the only standard applicable here: the extraordinary bar of "corruption or malpractice" under Article VI, § 8. Second, even if a lower standard was applicable (it is not), Ms. Chastain's conduct likewise does not meet that standard. Third, the Chastain II majority opinion dilutes the extraordinary constitutional standard for disqualification carries profound negative consequences for our democracy—consequences which Appellee wholly ignores. Alternatively, even if the Court agrees with Appellee that the

trial court correctly applied the Article VI standard (it should not), due process would require a remand for retrial.

I. Ms. Chastain's Conduct Does Not Meet the Only Applicable Standard: "Corruption or Malpractice" under Article VI.

First, this Court should reverse because the four independent acts relied upon in the trial court's disqualification order do not meet the only standard applicable here: "corruption or malpractice" under Article VI, § 8.

A. The Article VI "Corruption or Malpractice" is the Only Applicable Standard Here.

Our Constitution provides two potential avenues for an action against a Clerk of Superior Court. *See In re Chastain*, 281 N.C. App. 520, 522–23 (2023) (*Chastain I*). First, under Article IV, § 17(4), "[a]ny Clerk of the Superior Court may be removed from office for misconduct . . . by the senior regular resident Superior Court Judge serving the county." N.C. Const. art. IV, § 17(4). Second, under Article VI, § 8, any person "shall be disqualified from office" if he or she, *inter alia*, "has been adjudged guilty of corruption or malpractice in any office." N.C. Const. art. VI, § 8.

By its plain text, Article IV confers the authority to remove a Clerk of Court for "misconduct" to one and only one person: the senior regular resident superior court judge in that county. *See* N.C. Const. art. IV, § 17(4); *Chastain I*, 281 N.C. App. at 523. Here, however, the trial court ordered Franklin County's senior regular resident superior court judge to be recused.

Accordingly, then-Chief Justice Beasley assigned Judge Lock to preside over the proceedings.[2] But because "Judge Lock is not the senior regular resident Superior Court Judge in Franklin County, he lacked the authority to remove Ms. Chastain for mere 'misconduct' under Article IV." *Chastain I*, 281 N.C. App. at 523. The unanimous Court of Appeals in *Chastain I* thus properly vacated Judge Lock's first order (which applied the Article IV standard) and remanded for entry of a new order applying the only applicable standard: Article VI's "corruption or malpractice." *Id*. at 530.[3]

In accordance with these instructions, the trial court applied one and only one standard in its second order: "corruption or malpractice" under Article VI. (*See* R pp 156–160, Applicable Law ¶¶ 3, 4, 16, Conclusions of Law ¶¶ 1, 3, 6, 7–10). To be sure, in this appeal Ms. Chastain challenges *how* the trial court

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[2] Appellee refers to this routine assignment as "the Chief Justice's commission order." (Appellee Br. at 23). But this was in fact a mere judicial assignment, and no such formal "order" appears in the Record on Appeal or the trial court's docket.

[3] The parties agree that the Rule of Necessity is inapplicable, and therefore that Judge Dunlow cannot preside over any removal or disqualification hearing here. (*See* Appellant Br. at 32 n.2; Appellee Br. at 22 n.7). However, the parties disagree about whether "Judge Lock had the proper authority to remove Ms. Chastain under Article IV of the Constitution." (Appellee Br. at 23). Appellee asserts that because Chief Justice Beasley assigned Judge Lock to preside over this matter, Judge Lock had the authority to order Ms. Chastain's removal under Article IV. *Id*. Under the plain text of Article IV and the Court of Appeals' unanimous ruling in *Chastain I*, however, he plainly did not. While Chief Justice Beasley was certainly authorized to appoint Judge Lock to preside, she did not—and could not—unilaterally empower Judge Lock with authority that our Constitution expressly reserves for the senior regular resident superior court judge. *See* N.C. Const. art. IV, § 17(4).

applied this standard. But there can be no doubt that—in accordance with the express remand instructions in *Chastain I*—the trial court's second order only applied the heightened standard of Article VI, not the lower bar found in Article IV.[4]

Now, Appellee improperly seeks to relitigate this case under Article IV. He argues that Ms. Chastain "*could have* been removed under Article IV." (Appellee Br. at 21) (emphasis added). But this statement itself acknowledges that, in fact, the trial court *did not*—and could not—apply Article IV below. Appellee thus argues a case that is not this one, and does so under a theory already properly rejected in *Chastain I*. Respectfully, it is not the place of this Court to reweigh the evidence presented at trial against a standard that was not applied below.

Even if this Court *were* to conclude that the Article IV standard was applicable here (it should not), further remand would be improper because the case would be moot. The only sanction available under Article IV is "removal" of the clerk from the remainder of her current term in office. *See* N.C. Const. art. IV, § 17(4). By this plain text, Article IV does not authorize either

[4] Even this standard was arguably inapplicable here, because the Charging Affidavit that initiated these proceedings only sought Ms. Chastain's removal under Article I, not permanent disqualification under Article VI. Accordingly, after *Chastain I*'s remand for the trial court's reconsideration of the facts under Article VI without retrial, Ms. Chastain lacked any opportunity to craft a defense and present further witnesses or evidence in light of this new legal standard and corresponding new potential sanction.

"permanent removal" as clerk or "disqualification" from any office. While a trial court is authorized to impose *lesser*-included sanctions than that provided for in the applicable statutory or constitutional text, it may not impose sanctions *greater than* of that text. *See Chastain I*, 281 N.C. App. at 527 ("We hold that any constitutional authority to sanction an elected Clerk in a particular way includes the authority to issue a lesser-included sanction"); *see, e.g., In re Hartsfield*, 365 N.C. 418, 431–32 (2012) (imposing a lesser-included sanction). As applied to the sanctions in question here, "permanent removal" and disqualification from all elected office are unquestionably more severe than basic removal, not lesser-included sanctions. Accordingly, removal is the maximum available sanction under Article IV.

Here, Ms. Chastain has already received that sanction: she was (improperly) removed as Clerk for the remainder of her 2018 term.[5] Accordingly, even if this Court concludes that Article IV applies, further rehearing would be moot, and the only appropriate remedy would be to vacate

[5] Appellee tries to further tarnish Ms. Chastain by noting the extra-record fact that Ms. Chastain lost her 2022 reelection bid, becoming the only Republican candidate defeated in Franklin County in that election. What Appellee fails to mention, however, is that Ms. Chastain only lost the election by 418 votes (1.5% of all votes cast) after a withering negative publicity campaign emphasizing her (improper) removal from office. In both of her two elections prior to this improper removal, Ms. Chastain received more votes than any other candidate on the ballot. But for these damaging proceedings, the citizens of Franklin County undoubtedly would have elected Ms. Chastain for a third consecutive term, and she would still occupy that office today.

the trial court's second order. However, given the facial inapplicability of Article IV, this Court should affirm *Chastain I*'s conclusion that Article VI is the only applicable standard here and proceed under that standard.

Appellee further contends that Judge Lock could have removed Ms. Chastain from office for "willful misconduct" under N.C.G.S. § 7A-105. (*See* Appellee Br. at 16–21). But like Article IV, N.C.G.S. § 7A-105 is inapplicable here for three reasons.

First, as noted in *Chastain II*, § 7A-105 only applies to removal proceedings under Article IV. *Chastain II*, 289 N.C. App. at 293. It does *not* apply to disqualification proceedings under Article VI. *Id.* "[B]y its plain language, [§ 7A-105] offers no guidance as to how someone may be disqualified for office." *Id.* Of note, Appellee's Charging Affidavit brought under § 7A-105 that initiated this entire process against Ms. Chastain did not seek her permanent disqualification from any public office, but instead only sought her removal as Franklin County Clerk of Court. (*See* R pp 10). While the General Assembly is certainly authorized to prescribe a statutory procedure for Article VI disqualification, it "has yet to do so." *Chastain II*, 289 N.C. App. at 294. Because the trial court only applied Article VI, § 7A-105 is inapplicable here.

Second, as observed in both *Chastain I* and *II*, § 7A-105 is a "procedural mechanism." *Chastain I*, 281 N.C. App. at 522; *Chastain II*, 289 N.C. App at 294. As such, the statute—standing alone—is not a substantive standard that

may supplant an applicable constitutional standard. *Chastain I*, 281 N.C. App. at 522 (citing *Baker v. Martin*, 330 N.C. 221, 334–37 (1991)). Put differently, the General Assembly lacks the authority to set a different disqualification or removal standard where our Constitution has already spoken. *See id*.

Third, § 7A-105 is inapplicable because it is not the standard the trial court was required to apply—and actually applied—below. Instead, the *Chastain I* remand required the trial court to apply the facts and evidence to one and only one legal standard: "corruption or malpractice" under Article VI. Appellee may not now relitigate the hearing on appeal, asking this Court to reweigh the evidence against an entirely different legal standard than that applied by the trial court. Again, if this Court were to determine that the trial court applied the wrong standard below (it should not), the only appropriate remedy would be to vacate the trial court's second order. Any further removal rehearing would be moot because Ms. Chastain has already been removed for the remainder of her 2018 term.

Accordingly, *Chastain I* correctly determined that only one legal standard applies here: "corruption or malpractice" under Article VI. That is the only standard applied below, and the only standard that this Court should consider here.

B. The Article VI "Corruption or Malpractice" Standard is Extraordinarily High.

Article VI's "corruption or malpractice" standard for permanent disqualification of any elected official from any future public office is extraordinarily high. Both *Chastain I* and *Chastain II* make clear that this standard is higher than both "misconduct" and "willful misconduct," as it "include[s] only acts of willful misconduct which are egregious in nature;" those that "are extremely or remarkably bad." *Chastain II*, 289 N.C. App. at 276.

This extraordinary standard is supported by the constitutional text. This Court has defined corruption as an act of criminal magnitude in which "an official or fiduciary person . . . unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." *State v. Agnew*, 294 N.C. 382, 392–93 (1978) (quoting *State v. Shipman*, 202 N.C. 518, 540 (1932)). Similarly, "[i]t can be inferred" from applicable statutes and appellate rulings "that 'malpractice in office' under Article VI requires at a minimum *not only* the specific intent to willfully violate one's official duties under law[,] *but also* proof that such conduct was egregious and proximately caused injury to the claimant or the public." *Chastain II*, 289 N.C. App. at 299 (Wood, J., dissenting) (emphasis added).

Among various levels of misconduct, therefore, "corruption or malpractice" stands above and alone. Just as not all "misconduct" rises to "willful misconduct," not all "willful misconduct" can or should rise to "corruption or malpractice." *See Chastain I*, 281 N.C. App. at 527–28 (distinguishing between these levels of misconduct). Indeed, even Appellee acknowledges that the "corruption or malpractice" standard lies separate and apart from—and markedly higher than—both regular "misconduct" and "willful misconduct." (*See* Appellee Br. at 16, 24).

Accordingly, this Court has only approved of the disqualification or removal of elected officials where the official's misconduct was distinctly egregious or criminal in nature. For example, in *In re Peoples*, this Court disqualified and removed a district court judge who repeatedly (and over the course of many years) unilaterally disposed of select cases and accepted money from criminal defendants in exchange for "taking care of" their charges. 296 N.C. 109 (1978). In *In re Hunt*, this Court disqualified and removed a district court judge who repeatedly accepted money "in exchange for his assistance in protecting illegal gambling and drug smuggling activities." 308 N.C. 328, 329 (1983). And in *In re Kivett*, this Court disqualified and removed a superior court judge whose repeated acts of misconduct included having sex with a juror, sexually assaulting a probation officer, and giving favorable treatment to the clients of a bail bondsman who provided him with sexual partners. 309 N.C.

635 (1983).[6] The egregious and repeated bad acts of these officials each exhibited vintage hallmarks of corruption: dishonesty, moral turpitude, and exploiting professional power for personal gain. *See In re Martin*, 302 N.C. 299, 316 (1981) (noting these characteristics).

Contrastingly, this Court has consistently disapproved of the disqualification or removal of elected officials where the official's conduct, while undoubtedly disfavored, falls short of egregious. For example, in *In re Martin*, this Court declined to remove a judge who repeatedly presided over hearings out of term, conducted improper *ex parte* hearings, and entered orders without notice to or the presence of the defendants or defense counsel. 295 N.C. 291 (1978).[7] In *In re Brown*, this Court declined to remove (or even censure) a judge who improperly drafted and entered her own sanctions order, then presided over the hearing to reconsider the order, where she ruled on objections, testified as a witness, and called her own witness. 358 N.C. 711 (2004). And in *In re Hayes*, this Court declined to remove a judge who allegedly

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[6] Because these cases involved judges, they often involved the application of a "willful misconduct" standard under N.C.G.S. § 7A-376. Here, as noted above, the applicable standard of "corruption or malpractice" is even higher.

[7] Notably, the Court considered in its determination "that Judge Martin's indiscretions to some degree resulted from lack of legal training." *Id.* at 306. Here, Ms. Chastain—like many clerks of superior court—was not an attorney and had no formal legal training.

repeatedly sexually harassed and assaulted a deputy clerk of court because the evidence was equivocal. 356 N.C. 389 (2002).

Article VI's disqualification standard is rightfully high. The disqualification of our elected officials "is no mere firing of an employee." *Chastain II*, 289 N.C. App. at 312 (Wood, J., dissenting). Rather, it "is a matter of the most serious consequences," with grave implications not just for the official, but also for the people who duly elected her. *Hayes*, 356 N.C. at 399. Disqualification not only overturns the will of the voting public, but also forever deprives the public of the opportunity to elect that person to serve them in any elected capacity, anywhere in the state, permanently. To be sure, that severe consequence is appropriate where an official commits truly egregious misconduct. But the extraordinary nature of this consequence warrants a correspondingly extraordinary standard.

C. Ms. Chastain's Conduct Does Not Meet This Standard.

Here, the four acts upon which the trial court based its order fail to meet the extraordinary "corruption or malpractice" standard. Whether considered independently or cumulatively (as Appellee wrongly contends they should), these acts cannot be fairly equated with misconduct that this Court has previously deemed sufficient for removal or disqualification, or even conduct that this Court has deemed *insufficient* for these consequences.

Machada Affidavit. First, the trial court erred in concluding that the Machada Affidavit incident constitutes corruption or malpractice. (*See* R p 158–59 ¶ 3). Rather, ensuring an indigent defendant's completion of an Affidavit of Indigency is an express statutory duty of the Clerk of Court, and Ms. Chastain correctly observed that Machada had not yet completed this affidavit. (*See* R pp 151–52 ¶¶ 17, 18). These are undisputed facts. Fulfilling a professional obligation cannot be fairly considered misconduct, let alone egregious misconduct or corruption or malpractice. *See Chastain II*, 289 N.C. App. at 302 (Wood, J. dissenting). This basis for the trial court's ruling fails.

Gayden/Diaz Visit. Second, the trial court erred in concluding that the Gayden/Diaz home visit constitutes corruption or malpractice. (*See* R p 159 ¶¶ 5, 6). There, Ms. Chastain earnestly sought to help peaceably resolve an ongoing conflict between neighbors. Her conduct "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).

Contrary to Appellee's theatrical mischaracterization, Ms. Chastain was not "finally caught on camera." (Appellee Br. at 2). Instead, she *expressly requested* a police officer with prior knowledge of the dispute to be present with

her during the visits and to help her resolve the situation peacefully.[8] It would be odd indeed to invite law enforcement to witness and record one's corruption or malpractice. This basis for the trial court's ruling likewise fails.

Magistrate Phone Call. Third, the trial court erred in concluding that the magistrate phone call constitutes corruption or malpractice. (*See* R p 159 ¶ 7). As an initial matter, both the record evidence and the trial court's factual findings are inconsistent and insufficient to support its conclusion that Ms. Chastain used "vulgarity in the presence of members of the public to describe her feelings toward Chief District Court Judge Davis." *Id.*; *see Chastain II*, 289 N.C. App. at 308.

In any event, using a curse word when speaking to or about a fellow public official on one occasion does not meet this Court's standard for basic misconduct, let alone corruption or malpractice. Even where our courts have held that an elected official's speech alone supports removal, the speech was egregious, repeated both verbally and in writing, highly publicized, and stated with actual malice. *See In re Cline*, 230 N.C. App. 11 (2013) (*rev. denied*, *In re Cline*, 367 N.C. 293 (2014)). None of those factors are present here.

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[8] Appellee is correct that this video footage speaks for itself. (Appellee Br. at 2). Ms. Chastain respectfully invites the Court to view the footage in its entirety to consider whether Ms. Chastain's actions constitute "corruption or malpractice" worthy of permanent disqualification from elected office.

Finally, because Clerks of Court have "the statutory obligation to nominate all magistrates for selection by the senior resident superior court judge[,] . . . it does not strain credibility that [Ms. Chastain] may have felt authorized to call the chief magistrate when she found the magistrate's office unmanned." *Chastain II*, 289 N.C. App. at 308–09 (Wood, J., dissenting). Accordingly, this basis for the trial court's ruling likewise fails.

Audit. Fourth, the trial court erred in concluding that the Audit Report's findings constitute corruption or malpractice. (*See* R p 159–60 ¶ 8). True, the Audit Report identified several ways in which Ms. Chastain's office could improve its practices. But as the trial court noted, the Audit 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). Contrary to Appellee's mischaracterization, neither the Audit Report nor the trial court found that Ms. Chastain "misused funds," (Appellee Br. at 41), nor is there any evidence to support that exaggeration. "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. App. at 311 (Wood, J., dissenting); s*ee also In re Nowell*, 293 N.C. 235, 248 (1977) (holding that "wil[l]ful misconduct in office . . . involves more than an error of judgment or mere lack of diligence.") Accordingly, this basis for the trial court's ruling likewise fails.

Comingling of Allegations. Fifth, the trial court erred in alternatively concluding that Ms. Chastain's separate acts constitute "corruption or malpractice" when comingled and considered collectively. (*See* R p 160 ¶¶ 9, 10). Because the acts relied upon by the trial court "were singular, isolated occurrences, separated by substantial time, place, and parties involved," they do not constitute "knowingly and wil[l]fully persist[ing] in indiscretions and misconduct," which this Court has previously held may rise to willful misconduct. *Chastain II*, 289 N.C. App. at 311 (Wood, J., dissenting). "The trial court cannot comingle and combine separate acts that are not egregious and willful to reach the highest bar of corruption and malpractice under Article VI." *Id*. [9] Tellingly, Appellee has not cited any case in which this Court has approved of such comingling of distinct acts.

Outside Evidence. Finally, the trial court's substantive consideration of acts not alleged in the Charging Affidavit violates Ms. Chastain's due process rights. *See Chastain I*, 281 N.C. App. at 528–29. The trial court's reference to and reliance on Ms. Chastain's alleged "repeated warnings from Judge Davis and District Attorney Waters" plainly belie its invocation of its remand instructions to only consider outside evidence toward assessing

[9] This is a binary choice: either an act rises to corruption or malpractice or it does not. No matter how many zeros are added together, the sum can never equal one.

credibility. (*See* R p 159 ¶¶ 4, 6). This constitutional error independently warrants reversal by this Court.

* * *

Whether considered individually or cumulatively, the four isolated acts relied upon by the trial court fail to meet the extraordinarily high standard of "corruption or malpractice" required to justify Ms. Chastain's permanent disqualification from all public office under Article VI. When honestly compared to this Court's previous disqualification and removal cases, the facts here are not just different in degree, they are different in kind. *See Chastain II*, 289 N.C. App. at 299 – 300 (Wood, J., dissenting). There is no intentional abuse of professional power for personal benefit. There is no consistent repetition of the same misconduct. There is no exchange of money, drugs, or sex. There is no physical or sexual assault. There is no dishonesty or moral turpitude. Put simply, there is no corruption or malpractice. Accordingly, this Court should reverse.

II. Even if a Lower Standard Applied, Ms. Chastain's Conduct Does Not Meet that Standard.

As explained above, Ms. Chastain's acts fail to meet the only standard applicable here: "corruption or malpractice" under Article VI, § 8. If this Court determines that a different standard applies, the only appropriate remedy

would be to vacate the trial court's second order, as any further removal rehearing on remand would be moot.

However, even if this Court chooses to reweigh the evidence and factual findings against a lower standard of either "willful misconduct" under N.C.G.S. § 7A-105 or "misconduct" under Article VI, § 17 (it should not), Ms. Chastain's conduct likewise does not meet those standards. For the reasons noted above, Ms. Chastain's actions amount to: (1) fulfilling a duty of her office; (2) earnestly attempting to resolve a dispute among neighbors; (3) using a curse word in a conversation involving a fellow elected official; and (4) receiving feedback from an audit. These acts were separated in time, place, substance, and involved parties. The Charging Affidavit included no allegations of malice, bad faith, or repeated or knowing transgressions. Accordingly, Ms. Chastain's conduct would likewise fail to warrant disqualification or removal under any standard.[10]

[10] Appellee's false assertion that "[e]ven Ms. Chastain's counsel (at 56) are no longer willing to 'endorse[ ] [or] condone [ ] Ms. Chastain's acts at Clerk of Court" is a patent and offensive misrepresentation. (Appellee Br. at 20). Rather, Ms. Chastain's principal brief notes that, just like in a reversal of a criminal conviction on appeal, this Court's acknowledgement that the Court of Appeals committed legal error would not amount to the Court's approval of the underlying conduct at issue. That remains true here despite Appellee's gross misrepresentation.

III. Appellee Fails to Address Statewide Consequences of a Diluted Disqualification Standard.

Finally, Appellee conspicuously fails to engage with or even acknowledge the potential statewide consequences of the ruling below. Because those consequences are both drastic and far reaching, they bear additional emphasis.

The *Chastain II* majority held that the trial court did not err in ordering Ms. Chastain permanently disqualified from serving as Franklin County's Clerk of Superior Court under Article VI. 289 N.C. App. at 295. But this ruling under Article VI does not only apply to Ms. Chastain. It does not only apply to Franklin County. And it does not only apply to Clerks of Superior Court.

Rather, Article VI, § 8 establishes the standard under which ***any*** elected official, in ***any*** county, may be permanently disqualified from ***any*** public office. Accordingly, if this Court affirms, it will approve the application of a significantly diluted "corruption or malpractice" standard for the disqualification of any legislator, judge, district attorney, sheriff, county commissioner, or other public official. Just as Ms. Chastain was disqualified for an *ex parte* conversation with neighbors, any other public official could be, too. Just as Ms. Chastain was disqualified for using a curse word in a discussion involving another public official, any other public official could be, too. Just as Ms. Chastain was disqualified for audit improvements, any other public official could be, too.

Put simply, affirming the ruling below would drastically lower the bar for what constitutes "corruption or malpractice," thus diluting the standard under which any public official could be permanently disqualified from all public office. This diluted standard would invite the undue subversion of the political power exclusively "vested in and derived from the people," with stark negative consequences for our democracy. N.C. Const. art. I, § 2.

This Court need not follow this precarious path. Instead, because the trial court and *Chastain II* majority misapplied this extraordinary constitutional standard, this Court should reverse.

IV. Even If the Trial Court Correctly Applied Article VI, Due Process Requires Retrial.

Alternatively, even if this Court agrees with Appellee that the trial court correctly determined that Ms. Chastain's acts rise to the extraordinary level of "corruption or malpractice" under Article VI (it should not), the only appropriate remedy would be remand for a retrial under that standard.

Given the extraordinary potential consequences of disqualification and removal proceedings, "fundamental fairness entitles the [official] to a hearing which meets the basic requirements of due process." *Nowell*, 293 N.C. at 241–42; *see also In re Spivey*, 345 N.C. 404, 413–14 (requiring the official "whose removal from office is sought [to be] accorded due process of law"). Similar to criminal proceedings, due process in disqualification and removal proceedings

require—at minimum—sufficient notice of the legal and factual bases upon which the proceedings are being brought. *See In re Inhaber*, 290 N.C. App. 170, 174 (2023) ("[O]ur Supreme Court has held where sanctions may be imposed, the parties must be notified in advance of the charges against them") (citing *Griffin v. Griffin*, 348 N.C. 278, 280 (1998)).

Here, Appellee's Charging Affidavit only sought the immediate suspension and removal of Ms. Chastain from her remaining term as Franklin County Clerk of Court. (*See* R p 10). It never sought Ms. Chastain's permanent removal or disqualification from all public office under Article VI's "corruption or malpractice" standard. Likewise, neither the Suspension Order nor the First Removal Order cite or even mention Article VI or "corruption or malpractice."

Further, the remand instructions in *Chastain I* only allowed for "a rehearing before Judge Lock . . . limited to whether the acts alleged in the affidavit before him rose to the level of 'corruption or malpractice' in office under Article VI." 281 N.C. App. at 530. It did not order a new trial. No where in the extensive procedural history of this case, therefore, was Ms. Chastain provided notice or an opportunity to prepare a defense, submit evidence, and present witnesses against allegations of "corruption or malpractice" with the potential sanction of permanent disqualification from all public office. Put differently, Ms. Chastain was never "notified in advance of the charges against [her]." *In re Inhaber*, 290 N.C. App. at 174.

Accordingly, even assuming *arguendo* that the record below includes sufficient evidence that Ms. Chastain's acts meet the extraordinary standard of "corruption or malpractice" under Article VI, this Court still should not affirm. Doing so would violate Ms. Chastain's fundamental due process right to a trial with proper notice of the charges levied against her and fair opportunity to defend against their potential consequences. Instead, the appropriate course would be to remand for a retrial under the Article VI standard with proper notice, in which Ms. Chastain would have the opportunity to create a proper evidentiary record at trial in defense of her right to seek and hold future public office.

CONCLUSION

Based on the foregoing, Ms. Chastain respectfully requests that this Court reverse the Court of Appeals *Chastain II* majority opinion affirming the trial court's order.

Respectfully submitted, this 15th day of May, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellant's Reply 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 Appellee by United States mail, postage prepaid, as well as electronic mail, as follows:

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Respectfully submitted, this 15th day of May, 2024.

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