08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Article 15A shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163-182.9(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: Herman E. Lewis County of Residence: Columbus
Email: herman.lewis4@embarqmail.com Phone: 661-609-4637
Mailing Address: 3860 Peacock Road, Whiteville NC 28472

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel? X Yes ☐ No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

☐ Candidate for the office of _____
X Registered voter eligible to participate in the protested election contest
☐ Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)	**Current Vote Margin** (subtract runner-up totals from apparent winner's totals)
Example: Mayor of Townsville	**75**
Columbus County Sheriff	1,589

5. This protest alleges *(select at least one)*:

☐ A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
X A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

FACTUAL BASIS & LEGAL ARGUMENT

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

See attached memorandum of law in support of the protest.

7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple individuals, summarize the facts of which the individual has personal knowledge.

__District Attorney Jon David - knowledge re: Greene's October 4 removal from the office of Sheriff_____
__Curtis Hill, Columbus County voter - knowledge re: Green's October 4 removal from office of Sheriff___
__Jody Greene - knowledge re: his October 4 removal from office of Sheriff_____

8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

__See attached memorandum of law_____

RELIEF

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

X The electoral outcome of the protested contest(s) will change.
□ The electoral outcome of the protested contest(s) will not change.
□ I am uncertain whether the outcome of the contest(s) will change.
X Other __The candidate with the highest vote total is legally disqualified from holding office

10. What relief do you seek?

□ Correct the vote count
X A new election
X Other: __fill the vacancy pursuant to law

ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

__Counsel idnetified in the Counsel Certification Addendum_____

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. *See* 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

X Yes
□ No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

□ Yes
X No

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

Affected Party	*Service Address*
S. Jody Greene	P.O. Box 67, Cerro Gordo, NC 28430
	jgreene@columbussheriff.com
	jgreene@columbusco.org

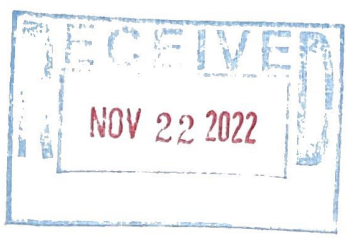
PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, Herman E. Lewis *(full name)*, swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(initial)

HL I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
HL My protest must originate with a filing at the county board of elections.
HL I must timely serve all Affected Parties.
HL I must prove by ***substantial evidence*** either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
HL It is a crime to interfere unlawfully with the conduct and certification of an election.
HL It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
HL The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.



Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: Herman E Lewis Date: 11/22/22
(This signature must be signed in the presence of a notary)

State of North Carolina, County of Moore

Sworn to (or affirmed) and subscribed before me this the 22nd day of November 2022.

(Official Seal)

Talia Ray
Official Signature of Notary

Talia Ray, Notary Public
Printed Name

My commission expires: 11-6-2024

Date/Time Filed with County Board
11-22-22 4:12 pm
(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:

Protestor Name: Herman E. Lewis Protestor County: Columbus County
Attorney Name: Allison J. Riggs
Attorney Email: allison@scsj.org Attorney Phone: 919-323-3909

X☐ I am a member in good standing with the North Carolina State Bar
☐ I am not licensed to practice law in North Carolina but am a member in good standing in _____ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: Southern Coalitionf or Social Justice
Bar Number: 40028

I (choose one) ☐ am X am not
Subject to any order of any court or administrative agency disbarring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes

Allison J Riggs
Attorney Signature

11/22/22
Date

History Note: Authority G.S. 163-22; 163-182.9;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018;
Amended Eff. November 1, 2020.

IN RE: PROTEST OF COLUMBUS COUNTY SHERIFF RACE	)	STATE OF NORTH CAROLINA County of Columbus

MEMORANDUM IN SUPPORT OF ELECTION PROTEST

Protestor Herman Lewis submits this memorandum in support of his Election Protest submitted pursuant to Article 15A of Chapter 163 of the North Carolina General Statutes and Chapter 02 of Title 08 of the North Carolina Administrative Code, challenging the outcome of the Columbus County Sheriff's race in the November 8, 2022 General Election.

INTRODUCTION

The voters of Columbus County are on the verge of experiencing a manifest injustice, particularly Black voters. A man who should have been permanently removed from office was wrongly permitted to run again—a man who is known to bear extreme antipathy toward Black residents and has acted on that antipathy in a multitude of ways—and won in a county marked by significant racially polarized voting. This man, S. Jody Greene, was suspended by a Superior Court judge, but tried to game the system and avoid the full consequences of his misconduct by resigning on the day the removal proceeding would have been carried to completion. Though the District Attorney has publicly committed to renewing these removal proceedings at some future date, this Board need not wait for that occurrence to assess Greene's ineligibility for the office he seeks. That is because under the unique facts of this case, including the prior removal proceedings and Greene's bad faith attempt to end them prematurely, Greene has already been adjudged guilty of disqualifying conduct under North Carolina Constitution Article VI, Section 8.

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North Carolina law supports this conclusion. The North Carolina Supreme Court, in an analogous case involving a judge, has stated that: "[I]t would indeed be a travesty if a judge could avoid the full consequences of his misconduct by resigning from office after removal proceedings had been brought against him." *In re Peoples*, 296 N.C. 109, 150-51, 250 S.E.2d 890, 914 (1978). And that case acknowledges the breadth of the scope of the constitutional provision addressing disqualifications for office. *Id.* at 165.

The facts in this matter are outrageous and uncontested, and the relief sought by this protest is necessary to protect Columbus County voters, especially its Black residents that have been subject to discriminatory treatment by an individual charged with upholding the law and the dignity of public office. A protest such as this, alleging that a candidate is not qualified to hold the office to which the candidate has filed for or even has been elected to, is properly sustained where the protestor demonstrates that the candidate was legally and effectively adjudged guilty of corruption or malpractice in office through appropriate legal channels. This protest is proper and timely filed pursuant to N.C.G.S. § 163-127.2(c), and should be sustained, thus disqualifying Jody Greene from officially resuming office.

FACTUAL BACKGROUND

Jody Greene has long been a problematic candidate and public official in Columbus County, N.C. Prior to his first election in Columbus County in 2018, serious questions were raised about Greene's qualifications for office based on the allegation that he did not reside within the county.[1] Green was also alleged to have employed for his campaign that year the same consulting

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[1] Ann McAdams, *Evidence indicates Sheriff Jody Greene may not live in Columbus County*, WECT.COM, Dec. 14, 2018, https://www.wect.com/2018/12/13/evidence-indicates-sheriff-jody-greene-may-not-live-columbus-county/.

firm investigated for perpetuating widescale election fraud in Congressional District 9.[2] Nevertheless, Greene narrowly defeated the incumbent, Lewis L. Hatcher, by 34 votes in the Columbus County Sheriff's race in the November 6, 2018 General Election.[3] Several election protests were filed formally challenging Greene's eligibility for office. Jody Greene was sworn in on December 3, 2018,[4] while the challenges to the election outcome were still pending before the North Carolina State Board of Elections (which was temporarily unable to perform its duties because the Board was legally dissolved for a time). Ultimately, despite finding "substantial evidence does support [protestors'] claim that certain irregularities and perhaps even misconduct did occur in Columbus County," the State Board concluded that such occurrences did not affect the outcome of the Sheriff's race and affirmed the dismissal of the protests filed before the county board of elections.[5]

During Greene's time as sheriff, he was recorded making a series of highly inappropriate and racially charged statements. These statements were purportedly made in 2019 during a time in which Greene was temporarily suspended from office pending resolution of the State Board of Elections inquiry concerning Greene's residence status.

On October 4, 2022, District Attorney Jon David, the District Attorney for the 15th Prosecutorial District, instituted removal proceedings against Jody Greene, invoking his power

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[2] Emily Featherston, *Columbus County sheriff paid group under investigation for NC9 election fraud*, WECT.COM, Dec. 10, 2018, https://www.wect.com/2018/12/10/columbus-county-sheriff-jody-greene-paid-group-under-investigation-election-fraud/.

[3] 11/08/2018 Official General Election Results – Columbus, N.C. State Bd. of Elections, https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=24&office=LOC&contest=6.

[4] *Swearing in: Columbus Co. Has first Republican Sheriff*, WECT.COM, Dec. 3, 2018, https://www.wect.com/2018/12/03/swearing-columbus-co-has-first-republican-sheriff/.

[5] *See* Order ¶ 15, *In re Consolidated Protests*, N.C. State Bd. of Elections, May 29, 2019, https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Protest%20Appeals/Greene_2019_Columbus.pdf.

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under N.C.G.S. § 128-19 to seek a court order removing Greene from the office of Columbus County Sheriff. That verified petition, treated under law as a sworn affidavit, set forth the behavior that the District Attorney contended showed that Green "committed willful misconduct and maladministration in office," and that "[t]he acts committed by [Greene]... constitute corruption while in office."[6]

Specifically, in that 2019 recorded conversation provided to the District Attorney by the State Board of Investigation, Greene made bigoted and threatening statements, such as:

- "I'm sick of it. I'm sick of these Black bastards. I'm gonna clean house and be done with it."[7]
- "I ain't gonna have it. I'm going to cut the snake's fucking head off. Period...and Melvin Campbell is as big a snake as Lewis Hatcher ever dared to be. Every Black that I know, you need to fire him to start with, he's a snake. I'm gonna keep my part."[8]

These are just two of several excerpts from this graphic recording in which Greene illegally racially profiled government employees and threatened to take illegal employment actions. The District Attorney averred that at least one Black employee was fired as Greene indicated was his intent during the recording.[9] Indeed, the District Attorney had also issued a letter pursuant to *Giglio*

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[6] *See* Verified Petition for Removal Pursuant to NCGS § 128-16, et. Seq. And Motion to Immediately Suspend from Office ¶¶ 3, 4, *North Carolina Ex. Rel. David v. Greene,* No. 22CVS990 (Columbus Cty Super. Ct. Oct. 4, 2022), available at https://www.scribd.com/document/598539202/District-Attorney-Jon-David-files-petition-to-remove-Jody-Greene-from-his-office-and-a-motion-to-suspend-him.

[7] *See* Verified Petition ¶ 3(c), *supra* note 6.

[8] *See* Verified Petition ¶ 3(c)(vii), *supra* note 6. Lewis Hatcher was the African American sheriff before 2018 and Melvin Campbell is an African American sergeant in the Sheriff's Office. *See* Ann McAdams, *Sheriff: "I'm sick of these Black bastards.... Every Black that I know, you need to fire him...",* WECT.COM, Sept. 28, 2022, https://www.wect.com/2022/09/28/sheriff-im-sick-these-black-bastards-every-black-that-i-know-you-need-fire-him/.

[9] *See* Verified Petition ¶ 3(d), *supra* note 6.

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v. United States, 405 U.S. 150 (1972) indicating that, because of this demonstrated bias, the State of North Carolina could no longer call him as a witness in criminal hearings.[10]

The matter was heard later in the day on October 4th, and upon the substantial sworn evidence before it, including evidence of corruption and willful misconduct, Superior Court Judge Douglass Sasser found sufficient cause to "immediately suspend S. Jody Greene from the Office of Sheriff of Columbus County." Order Pursuant to N.C.G.S. § 128-19 at 1, *North Carolina v. Greene*, File No. 22CVS990, (Sup. Ct. Columbus Cty. Oct. 4, 2022) [hereinafter "Order"].[11] Judge Sasser ordered the vacancy to be filled forthwith, *id.*, an order the Columbus County Board of Commissioners satisfied by convening an emergency session on October 5 to appoint an interim sheriff.[12] Superior Court Judge Douglass Sasser further set the matter for hearing and final determination on October 24, 2022. *See* Order at 1.

On October 21, 2022, District Attorney David filed an Amended Petition for Removal, noting that after the initial Petition for Review, "numerous individuals disclosed a concern about Defendant and his agents engaging in intimidation and abusing Defendant's authority granted to him by way of his elected office for personal and political gain."[13] The District Attorney provided additional evidence of acts constituting willful misconduct or maladministration in office and corruption, including arresting residents without basis, threatening county commissioners, seeking

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[10] *See* Amended Verified Petition for Removal Pursuant to NCGS § 128-16, et. seq. ¶ 3g, *North Carolina Ex. Rel. David v. Greene,* No. 22CVS990 (Columbus Cty Super. Ct. Oct. 21, 2022), available at https://www.scribd.com/document/602054684/An-amendment-to-the-petition-for-removal-of-Columbus-County-Sheriff-Jody-Greene#download&from_embed.

[11] Available at https://www.wect.com/2022/10/04/columbus-county-sheriff-suspended-office-after-district-attorney-files-petition-removal/.

[12] Mara McJilton, *'Rest assured I'm going to do what's right': Columbus Co. Commissioners appoint acting sheriff after Jody Greene's suspension*, WECT.COM, Oct. 5, 2022, https://www.wect.com/2022/10/05/columbus-co-commissioners-appoint-interim-sheriff-fill-vacant-position/.

[13] *See* Amended Verified Petition ¶ 5a, *supra* note 10.

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criminal charges against County Commissioners in order to gain "unfair leverage against all county commissioners," and engaging in a sexual relationship with a female employee while on duty.[14]

In particular, Greene allegedly sought to fire Joshua Harris, a deputy who served under him, in retaliation, stating that Harris didn't support him and that Harris was talking "junk" about Greene.[15] Further, in a phone call with Whiteville City Manager Darren Lee Currie, Greene allegedly threatened to arrest former Columbus County Captain, Jason Soles, and to impound his car for going to the County Magistrate's Office to pick up some warrants.[16] Greene also sought to retaliate against the Columbus County Board of Commissioners for denying Greene's request for riot gear and more robust salary increases for employees of the Columbus County Sheriff's Office, threatening to remove AC units from a gymnasium that was being used as a courthouse during the COVID-19 pandemic, and threatening to call OSHA allegedly "in an attempt to get the facility shut down and cost the county money."[17] In connection with the denial of these resources, Greene also allegedly tried to intimidate County Commissioners by having uniformed deputies line the path that County Commissioners had to walk in order to get to their chambers.[18]

On October 24, 2022, the day set for the hearing and final determination of the removal proceeding, counsel for Jody Greene appeared in Court and gave notice that his client resigned, after which District Attorney David,[19] while stating publicly that he would renew the proceedings

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[14] *See, e.g.*, Amended Verified Petition ¶¶ 5-9, *supra* note 10.

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[15] Amended Verified Petition, Exh. C at ¶ 6

[16] Amended Verified Petition, Exh. F at ¶ 5.

[17] Amended Verified Petition, Exh. I at ¶ 4.

[18] Amended Verified Petition, Exh. K at ¶ 5.

[19] Zach Solon & Lauren Schuster, *Columbus County Sheriff resigns effective immediately*, WECT.COM, Oct. 24, 2022, https://www.wect.com/2022/10/24/hearing-be-held-today-suspended-columbus-county-sheriff/.

if Jody Greene were re-elected, dismissed the matter.[20] Upon information and belief, District Attorney David has neither renewed removal proceedings nor commented on the matter publicly since October 24, 2022.

On November 8, 2022, Columbus County conducted elections with some reported delays in opening sites.[21] Based on reported election results, it appears that Jody Greene received more votes than his opponent, Jason Soles.[22]

STANDARD

For an election protest to be sustained, a county board must find "substantial evidence of an irregularity or misconduct that impacted the election's results," including challenges challenge to a candidate's eligibility. *See* Election Protest Procedures Guide at 7, N.C. State Bd. Of Elections (Nov. 8, 2017) (hereinafter "EP Guide")[23]; *see also* N.C. Gen. Stat. § 163-182.10(d). The protestor bears the burden of proving facts sufficient to constitute substantial evidence of an outcome-determinative violation of election law, irregularity, or misconduct. *See* 08 NCAC 02.0111 (noting on the "Protestor Certification" page that the protestor "must prove [his allegations] by substantial evidence . . . .").

[20] ~~Zach~~ ~~Solon~~. *District Attorney plans to file new petition to remove Columbus County sheriff-elect,* WECT.COM, Nov. 9, 2022, https://www.wect.com/2022/11/09/district-attorney-plans-file-new-petition-remove-columbus-county-sheriff-elect/.

[21] *See Voting extended additional hour at Columbus County precinct after delayed start,* WECT.COM, Nov. 8, 2022, https://www.wect.com/2022/11/08/voting-be-extended-an-hour-columbus-county-precinct-after-delayed-start/; *See also Emergency Meeting on Nov. 8, 2022,* N.C. State Bd. of Elections, video available at https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2022-11-08/NCSBE%20Emergency%20Meeting%20%231.mp4.

[22] 11/08/2022 Official General Election Results - Columbus, N.C. State Bd. of Elections, https://er.ncsbe.gov/?election_dt=11/08/2022&county_id=24&office=LOC&contest=5.

[23] Available at https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2020/Election%20Protest%20Procedures%20Guide.pdf (last updated June 27, 2022).

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ARGUMENT

Under Article VI, Section 8 of the North Carolina Constitution, a person is disqualified from any office, and therefore ineligible to run, if he or she was "adjudged guilty of corruption or malpractice in any office" or "has been removed by impeachment from any office." For the office of Sheriff, there is a statutory removal process set forth, which provides as follows:

> Any sheriff or police officer shall be removed from office by the judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:
>
> (1) For willful or habitual neglect or refusal to perform the duties of his office.
> (2) For willful misconduct or maladministration in office.
> (3) For corruption.
> (4) For extortion.
> (5) Upon conviction of a felony.
> (6) For intoxication, or upon conviction of being intoxicated. (P.L. 1913, c. 761, s. 20; 1919, c. 288; C.S., s. 3208; 1959, c. 1286; 1961, c. 991; 1973, c. 108, s. 82.)

N.C. Gen. Stat. § 128-16. After a petition for removal is filed, the judge may suspend the accused from office "if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein." N.C. Gen. Stat. § 128-19. Under N.C. Gen. Stat. § 128-20, the final trial of the cause shall be advanced and take precedence over all other causes upon the court calendar.

The disqualification provision in Article VI Section 8 of the North Carolina Constitution states that "any person who has been adjudged guilty of corruption or malpractice in any office" shall be disqualified from holding office. This language was specifically amended to broaden the types of adjudications that disqualify North Carolinians from holding office. Previously, Article VI Section 8 disqualified individuals who had been "convicted" of corruption or malpractice. *Peoples*, 296 N.C. at 165. But in 1971, "convicted" was substituted for "adjudged guilty." *Id.* This

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change broadened the grounds for disqualification to include not just criminal convictions for corruption or malpractice, but to encompass any judicial or quasi-judicial proceeding in which a candidate or officeholder was "adjudged guilty" of corruption or malpractice in any office. *See id.* Notably, this "does not necessarily mean or require criminal conviction or the finding of a jury." *Id.* "Certainly these definitions are broad enough to encompass an adjudication...that [an officeholder] is guilty of willful misconduct in office." *Id.*

That is exactly this case. Greene's suspension from office, in response to a verified petition of removal, and his subsequent decision to resign rather than face a full removal hearing, constitutes the type of circumstance contemplated by the broader version of Article VI Section 8. The allegations in the petition are both verified (and thus treated as a sworn affidavit under the law) and undisputed, and the Court found "sufficient cause to immediately suspend" the officeholder "upon consideration of the Petition and Verification," see Order at 1. Where there is no factual dispute and disciplinary action has been taken, Article VI Section 8 applies, and that candidate has been "adjudged guilty" and thus disqualified under the version of Article VI Section 8 presently in effect.

This conclusion is supported by precedent. North Carolina courts have faced similar circumstances in at least two different cases: *In re Peoples*, 296 N.C. 109 (1978), and *In re Chastain*, 281 N.C. App. 520 (2022).

In *In re Peoples*, the North Carolina Supreme Court considered whether a judge's resignation after disciplinary proceedings by an administrative entity, the Judicial Standards Commission, mooted the administrative action. 296 N.C. 109, 143. The Court explained that resignation cannot moot disciplinary proceedings where potential sanctions include more than vacancy from office. If the only purpose of the proceeding against a public officer is to vacate the

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office, it has been held that the proceeding becomes moot upon the incumbent's resignation. *Id.* at 148. But where a controlling statute imposes sanctions in addition to ouster, such as "disqualification from future office, and loss of retirement benefits," the proceeding are not rendered moot. *Id.*[24]

Of particular relevance to the instant matter, the North Carolina Supreme Court in *In re Peoples* also recognized that resignation from office to prevent final adjudication of disciplinary proceedings is evidence of guilt or inability to combat the allegations. *Id.* at 152. In that case, the Respondent did not file an answer or denial to the charges before or after his motion to dismiss was denied, and did not testify or appear in person at the hearing. The Court noted that "[s]urely, no judge but one with a 'substantial fear of the results of the investigation' would have made the elections and followed the course which respondent has taken in this case." *Id.*

More recently, the North Carolina Court of Appeals considered an analogous matter in *In Re Chastain*. The Court of Appeals there reviewed removal proceedings that were brought in Franklin County, North Carolina, seeking the ouster of the Clerk of Superior Court. 281 N.C. App. at 521. In assessing the lower court decision, the Court of Appeals provided helpful understanding for removal proceedings in general, noting: [a] proceeding regarding the removal of an elected official is neither a civil nor a criminal action. Rather, it is merely an inquiry into the conduct of one exercising [official power] to determine whether [s]he is unfit to hold [her office]. Its aim is not to punish the individual but to maintain the honor and dignity of the [office]." *Chastain*, 281

[24] Under *In re Peoples*, it also appears that the District Attorney was not required to take a voluntary dismissal on this matter, and indeed, should not have done so, as a final determination by the Superior Court would have inarguably disqualified Greene for the office of Sheriff in November of 2022. *See In re Peoples*., 296 N.C. at 150 (holding that determination of whether Judge's conduct "would have merited his removal from office in order to determine whether these additional sanctions" including disqualification from future judicial office and loss of retirement benefits pursuant to N.C.G.S. § 7A-376, "should be imposed" and that "[t]he resolution of that question is in no way affected by his resignation.").

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N.C. App. at 521-22 (internal citations and quotations omitted). The Court of Appeals explained that because Article VI of the North Carolina Constitution does not specify a procedure to make disqualification determinations based on acts of corruption or malpractice, the General Assembly may prescribe a procedure. For office of Sherriff as explained above, the statutory procedure is set forth in N.C. Gen. Stat. §§ 128-16 through 128-20. The Court of Appeals further explained that permanent removal from office under a statutory process is therefore akin to constitutional disqualification.[25]

From this precedent, including Green's unabashed procedural gamesmanship and his tarnishing of the "honor and dignity" of the Sheriff's office, the case for applying article VI, Section 8 to the Superior Court's adjudication in the removal proceedings is strong. On October 21, District Attorney David filed an amended petition that levied additional allegations of willful misconduct against Greene, supported by no less than 15 affidavits from witnesses to a litany of corrupt acts committed by Greene. A permanent removal hearing was scheduled for October 24, at which many of these witnesses planned to testify. But rather than face this final adjudication, Greene resigned from office.

There is no dispute that had Greene been removed from office pursuant to the October 24 hearing, he would have been disqualified from holding office again, regardless of the outcome of the November 8 general election. There is also no dispute that Greene was on full notice of the allegations made against him in the amended petition. But instead of defending against those allegations in the removal process, where he possessed full due process rights and the right to seek appellate review of any adverse determination, Greene resigned his office so as to frustrate the

[25] In *In re Chastain*, the Court of Appeals ultimately found that the lower court violated respondent's due process rights by considering acts and conduct that were outside of the sworn affidavit. That is not an issue in this case, in which the Superior Court's suspension was based on the verified complaint and evidence attached thereto.

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adjudication. Tellingly, Greene continued in his candidacy for Sheriff in the upcoming November election, forfeiting his right to contest the allegations while ensuring that he could not be officially deemed disqualified from office prior to the election by the Superior Court.

This procedural gambit cannot be allowed to defeat Greene's disqualification here. "[I]t would indeed be a travesty if [an officeholder] could avoid the full consequences of his misconduct by resigning from office after removal proceedings had been brought against him." *Peoples*, 296 N.C. at 150–51. The sole purpose of Greene's premature resignation was to stop the October 24 removal proceedings, and to avoid an official, final ruling that would disqualify him from holding office. There are no issues of notice, nor of due process, nor disputed issues of fact. Greene's conduct operates only to frustrate the formal process of removal. But as discussed above, the October 4 suspension operates to disqualify Greene under Article VI, Section 8 regardless. The necessity of this result is made all the more clear by the fact that Greene has, instead of contesting the sufficiency or accuracy of that determination or the facts upon which it was based, attempted instead to slip out through a procedural loophole. As the North Carolina Supreme Court held in *In re Investigation of Death of Eric Miller*, 357 N.C. 316, 322 (2003):

> Occasionally, however, the prescribed procedures of a statutory scheme fail to embrace the unanticipated and extraordinary proceeding such as that disclosed by the record before us. In similar situations, it has been long held that courts have the inherent power to assume jurisdiction and issue necessary process in order to fulfill their assigned mission of administering justice efficiently and promptly. We believe that this is one of those extraordinary proceedings and that our rules of procedure should not be construed so literally as to frustrate the administration of justice.

Where Greene has not only failed to contest the facts and conclusions thereof, but actively sought to frustrate their adjudication, his gamesmanship cannot prevail.

* * * * *

Just a month ago, an officeholder charged with very serious public responsibilities attempted to game the system that seeks to ensure that those who would bring great disrepute to

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important state offices, and one who has the power to inflict serious damage on our state's most vulnerable and historically mistreated communities, would not hold or be qualified for this office. This Board should not allow such gamesmanship to be rewarded, and should find as a matter of law that S. Jody Greene is not qualified to hold office, and sustain the election protection on that ground.

CONCLUSION

For the foregoing reasons, Protestor Herman Lewis respectfully requests that the Columbus County Board of Elections find that S. Jody Green is disqualified to hold office under N.C. Const. Article VI and orders that the office be filled pursuant to law by a qualified officeholder.

Respectfully submitted this the 22nd day of November 2022.

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