IN RE: DISMISSAL OF ELECTION PROTEST BY HERMAN E. LEWIS CONCERNING COLUMBUS COUNTY SHERIFF	)	APPEAL TO THE NORTH CAROLINA STATE BOARD OF ELECTIONS

MEMORANDUM IN SUPPORT OF APPEAL

Protestor Herman E. Lewis submits this memorandum in support of his appeal of the November 30, 2022 Order of the Columbus County Board of Election ("County Board") dismissing his Election Protest 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 and disqualified from office was 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, Jody Greene, was suspended by a Superior Court judge based on sworn evidence of his willful misconduct and corruption of office, but tried to game the system and avoid the full consequences of his actions by resigning on the day that the removal proceeding would have been carried to completion. Thereafter, the Columbus County District Attorney, who sought the initial removal and suspension, publicly committed to renew the action against Greene if he ever were to again take office. Though that may ultimately occur, until then, the prior removal proceedings and Greene's bad faith attempt to end them prematurely cannot be simply disregarded. That is because under those unique circumstances,

Greene has already been adjudged guilty of disqualifying conduct under North Carolina Constitution Article VI, Section 8.

Greene's ineligibility for office under that constitutional provision is the basis for the instant Election Protest and it is clear than an ineligible candidate cannot be permitted to run for office, let alone actually take office once the votes are counted. Faced with substantial evidence supporting a legally significant challenge to this candidate's eligibility, the County Board was obligated under North Carolina election law to, at minimum, hold a hearing to assess the allegations concerning Greene's qualifications. Not only did the County Board fail to allow that initial step, but it hid its deliberation from the public, in violation of open meeting laws, and then failed to address the grounds for disqualification stated in the protest in its dismissal order, as was statutorily required. These procedural infirmities alone are grounds for granting this appeal.

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, who have been subject to discriminatory treatment by an individual charged with upholding the law and the dignity of public office. There can be no dispute that a protest such as this one—one that alleges a candidate is not qualified under the North Carolina Constitution to hold the office to which they have filed for or even have been elected to—surely establishes probable cause of an outcome-determinative irregularity, violation of law, or misconduct. The County Board's blind refusal to acknowledge that straightforward fact should be rejected by the State Board and a hearing before this State Board to assess Greene's eligibility to hold office should be ordered forthwith.

PROCEDURAL BACKGROUND

On November 22, 2022, Herman E. Lewis filed a timely and statutorily-compliant election protest with the Columbus County Board of Elections challenging the outcome of the Columbus

County Sheriff's race. *See* Election Protest of Herman E. Lewis (**Exhibit A**) [hereinafter "Protest"]. The basis for the Protest was that Jody Greene—the apparent candidate elect in the Sheriff's race[1]—was not eligible to run because prior to the election he had been disqualified from holding office under Article VI Section 8 of the North Carolina Constitution. *Id*.

On November 28, 2022, the Columbus County Board of Elections convened a public meeting for preliminary consideration of the Protest, as well as another election protest filed by Columbus County resident, Dr. Calvin Norton. Within minutes of beginning the meeting, the Board moved to go into closed session. Based on the written agenda, the closed session was called to discuss "personnel issues." *See* Columbus County Board of Elections November 28, 2022 Agenda (**Exhibit B**). The County Board requested that the county attorney join them in the closed session. It is not clear that the County Board actually invoked any of the "Permissible Purposes" listed in G.S. 143-318.11(a) when making its motion to go into closed session. After a nearly hour-long closed session, the County Board returned to the public meeting and immediately took up a motion by Secretary David McPherson to reject both election protests. It only became clear at that point that the County Board had actually gone into closed session to discuss the election protests. No County Board deliberation occurred in the public's view prior to the motion being made, though there was subsequent discussion about the effect of an abstention vote prior to the members voting. Thereafter, two members of the Board voted to approve the motion to dismiss the election protests, while one voted against and two abstained.

At that point, members of the public who were seated in the audience and had come to hear the preliminary consideration of the protests began demanding answers. Secretary David

[1] 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.

McPherson offered only a vague post-hoc explanation that he did not believe there was an irregularity in the election that would affect the results of the election. One of the undersigned counsel for Mr. Lewis, Noor Taj, was present at the meeting and asked for clarification as to (1) why the County Board went into closed session; and (2) whether any deliberations regarding the protests occurred while in closed session. The County Board members acknowledged that they went into closed session to obtain attorney-client advice regarding the election protests. No clear answer was given as to whether any deliberations occurred, and the members refused to provide a meaningful discussion as to what occurred during the closed session.

On November 30, 2022, the County Board issued a written order dismissing the Protest. *See* Columbus County Board of Elections November 30, 2022 Order Concerning the Protest Filed by Herman E. Lewis (**Exhibit C**) [hereinafter "Order"]. On December 1, 2022, Herman Lewis timely served a notice of appeal on the County Board. This Appeal has been timely filed with the State Board of Elections pursuant to N.G. Gen. Stat. 163-182.11.

FACTUAL BACKGROUND

Jody Greene has long been a problematic candidate and public official in Columbus County. Prior to his first election in 2018, Greene's qualifications for office were challenged based on credible allegations that he did not reside within the county.[2] Greene was also alleged to have employed the same consulting firm investigated for perpetuating widescale election fraud in Congressional District 9.[3] Nevertheless, Greene narrowly defeated the incumbent, Lewis L.

[2] 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/.

[3] 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/.

Hatcher, by 34 votes in the November 6, 2018 Columbus County Sheriff's General Election race[4] and was improperly sworn in on December 3, 2018,[5] while several election protests 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.[6]

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 eligibility based on residence.

On October 4, 2022, Jon David, the District Attorney for the 15th Prosecutorial District, instituted removal proceedings against Jody Greene, invoking his power 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 Greene "committed willful misconduct and maladministration in office," and that "[t]he acts committed by [Greene]... constitute corruption while in office."[7]

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[4] 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.

[5] *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/.

[6] *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.

[7] *See* Verified Petition for Removal Pursuant to NCGS § 128-16 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) (**Exhibit D**).

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."
- "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 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]

Based upon the substantial sworn evidence before the court, 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) (**Exhibit E**) [hereinafter "Removal Order"]. Judge Sasser ordered

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

[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) (**Exhibit F**).

the vacancy to be filled forthwith, an order the Columbus County Board of Commissioners satisfied with an emergency session on October 5 to appoint an interim sheriff.[11] Judge Sasser set the matter for hearing and final determination on October 24, 2022. Remedial 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."[12] 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 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.[13] 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,[14] while stating publicly that he would renew the proceedings if Jody Greene were re-elected, dismissed the matter.[15] Upon information and belief, District Attorney David has neither renewed removal proceedings nor commented on the matter publicly since October 24, 2022.

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[11] 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/.

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

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

[14] 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/.

[15] 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/.

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 to a candidate's eligibility. *See* Election Protest Procedures Guide at 7, N.C. State Bd. Of Elections (June. 27, 2022) [hereinafter "EP Guide"][16]; *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 . . . .").

At the preliminary consideration stage, the county board will review the filed protest to consider whether it establishes probable cause of an outcome-determinative irregularity, violation of law, or misconduct. EP Guide at 6. Probable cause is a "commonsense, practical standard" that asks whether the material submitted by the protester is "sufficient for a reasonable and prudent person to believe that the apparent result of the election was swayed by election law violations, irregularity, or misconduct. It does not mean that such a belief is necessarily correct or more likely true than false. A probability of an outcome-determinative irregularity is sufficient." *Id*.

In reviewing whether the County Board's decision was supported by adequate proof, the State Board applies "the whole record test, which necessitates an examination of all competent evidence before the Board and a determination as to whether the Board's decision was based upon substantial evidence." *See Farnsworth v. Jones*, 114 N.C. App. 182, 185 (1994). Conclusions of law are renewed de novo. *NC Dept. of Env't & Nat Res v. Carroll*, 358 N.C. 649, 660 (2004).

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

When considering the application of laws or if rights have been violated, the reviewing body "considers the matter anew and freely substitutes its own judgment for the agency's judgment." *Mann Media, Inc. v. Randolph County Planning Bd.*, 356 N.C. 1, 13 (2002).

ARGUMENT

I. The County Board Committed Multiple Legal Errors In Its Consideration of the Protest

a. The County Board Was In Violation of Open Meeting Laws When It Considered the Protest in Closed Session

The local board of elections is a public body defined by N.C.G.S. § 143.318.10(b) and is required to act in public session "because they serve the public-at-large." *Knight v. Higgs*, 659 S.E.2d 742, 747 (2008). The North Carolina Open Meetings law statute states, providing exceptions, that "each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting." N.C.G.S. § 143-318.10(a). Official meetings are defined by N.C.G.S. § 143-319.10(d), stating that it is any "meeting, assembly, or gathering together at any time or place ... for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body."

There are explicit exceptions to the open meetings law in N.C.G.S. § 143-318.11(a); one of the exceptions is to maintain attorney-client privilege. The statute states:

> To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. . . .

N.C.G.S. § 143-318.11(a)(3). Proper procedure must be followed by a board when going into a closed session and when specifying the exception justifying the closed session. This procedure is defined in N.C.G.S. §143-118.11(c):

> A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

Going into closed session for attorney-client privilege "to discuss procedure does not fit under any of the exceptions set forth in subparagraph (a)." *Knight*, 659 S.E.2d at 748. Following a closed session, the board is required make public a "general account" of the closed session so that "a person not in attendance would have a reasonable understanding of what transpired." *See* N.C.G.S. § 143-318.10(e); *Multimedia Publ'g of NC, Inc. v. Henderson County*, 550 S.E.2d 846, 849 (2001).

As noted above, during the preliminary consideration hearing for this Protest, the County Board went into closed session for almost the entirety of the public meeting on the purported basis of maintaining "attorney-client privilege." The County Board, however, failed to cite that as the permissible purpose for going into closed session nor identified the information needed to support such a motion. See N.C.G.S. § 143-318.11(c) (requiring "the name or citation of the law that renders the information to be discussed privileged" or "the parties in each existing lawsuit concerning which the public body expects to receive advice"). When the board returned, they did not give an oral summary of the closed session nor did they offer minutes to give a general account of the session, as they were required to do. N.C.G.S. § 143-318.10(e).

Part of the scope of review of the State Board is to ensure that procedures specified by law are followed and the appropriate due process rights of a protester are protected. Here, the County

Board was in violation of the open meetings law by meeting in closed session to discuss matters not identified by the County Board but appearing to relate to the Protest.

b. The County Board's Consideration of the Protest Did Not Comply with N.C.G.S. § 163-182.10

A county board presented with a timely protest filed under N.C.G.S. § 163-182.9 "must as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. § 163-182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred." N.C.G.S. § 163-182.10(a)(1). If the county board dismisses the protest at the preliminary consideration stage, it must "memorialize its decision in the form of a written order and provide the decision to the protester and the State Board." *See* EP Guide at 6; N.C.G.S. § 163-182.10(d) (requiring a "written decision on each protest which shall state separately" findings of fact and conclusions of law supporting the decision).

Here, although the County Board created a document that on its face appears to meet the technical requirements of N.C.G.S. § 163-182.10(d)—i.e., it is a "written decision" that includes "Findings of fact" and "Conclusions of law"—the substance of the Order betrays any possibility that the County Board considered the substance of the Protest or whether its allegations satisfied the probable cause standard, as is required under N.C.G.S. § 163-182.10(a). In particular, the Order stated that its conclusion that probable cause was lacking was "*based upon the foregoing findings of fact*," but those findings only establish five things that were never in dispute in the first place:

- That there was an election held for sheriff (Order, Finding #3),
- that Jody Greene and Jason Soles were the candidates (*id*., Finding #4),
- that Mr. Lewis filed an election protest (*id*., Finding #5),
- that Mr. Lewis received notice of a preliminary consideration (*id*., Finding #2), and
- that the County Board held a preliminary consideration hearing (*id*., Finding #1).

Nowhere in those findings is there any consideration (or even acknowledgement) of the allegations found in the Protest concerning Greene's eligibility to run for office. And it simply defies logic to say that those findings could support the County Board's conclusions of law as to the absence of probable cause necessary to allow for a full protest hearing.[17] It is thus clear from the County Board's own words and actions that the merits of the Protest were never considered and that dismissal of the Protest was a foregone conclusion.

As with the violation of the open meeting laws, the State Board should not let stand this disregard for administrative law and due process.

II. Jody Greene Is Ineligible to Hold the Office of Columbus County Sheriff

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 in N.C. Gen. Stat. § 128-16, 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.

[17] By way of example, if Mr. Lewis's protest alleged a challenge based on the statutory requirement of residency, rather than constitutional disqualification, one would expect the findings of fact relating to any probable cause determination to at least superficially discuss issues of domicile abandonment, acquisition and intent, as set out in G.S. § 163-127.5. The absence of any findings relating to those factors would be strong indicia that the county board had erred in its approach to the preliminary consideration. That same logic applies forcefully here.

> (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.)

After a petition for removal is filed, the judge may suspend the accused from office, pending a final trial of the matter, "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 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 term "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 by [a] Court…that [an officeholder] is guilty of willful misconduct in office." *Id.*

That is exactly this case here. Greene's suspension from office, in response to a verified petition for removal, and his subsequent decision to resign rather than face a full removal hearing, constitutes the type of circumstance contemplated by the broader amended version of Article VI Section 8 of the North Carolina Constitution that would constitute permanent disqualification.

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 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*.

Of particular relevance to the instant matter, the North Carolina Supreme Court 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*. In that case, the Court of Appeals 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 statutory removal proceedings authorized by Article VI Section 8. First, it noted that 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]." *Id*. at 521-22 (internal citations and quotations omitted). Second, 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. Finally, the Court of Appeals construed "corruption or malpractice" as used in Article VI to include "at a minimum acts of willful misconduct which are egregious in nature." *Id*. at 528.

From this precedent, including Greene's unabashed procedural gamesmanship and his egregious conduct tarnishing 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 Verified 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 Verified 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 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. As the North Carolina Supreme Court has acknowledged, "it 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. 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 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. The County Board and this State Board should not allow such gamesmanship to be rewarded.

CONCLUSION

For the foregoing reasons, Protestor Herman Lewis respectfully requests that the North Carolina State Board of Elections vacate the dismissal order of the Columbus County Board of

Elections and schedule a hearing to allow full consideration Jody Greene's eligibility for office under Article VI Section 8 of the North Carolina Constitution.

Respectfully submitted this the 5th day of December 2022.

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