

No. COA26-504

DISTRICT ONE

NORTH CAROLINA COURT OF APPEALS

IN THE MATTER OF:	)	
	)	<u>From Dare County</u>
MATTHEW GEOFFRION	)	No. 23CR000212-270
	)	

AMICI CURIAE BRIEF OF JUDGE WANDA BRYANT, JUDGE LUCY
INMAN, JUDGE RICHARD D. BONER, JUDGE CARL FOX,
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,
AND NORTH CAROLINA ADVOCATES FOR JUSTICE
IN SUPPORT OF MATTHEW GEOFFRION

INDEX

TABLE OF CASES AND AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF IDENTITY OF <i>AMICI CURIAE</i>	3
ISSUE TO BE ADDRESSED.....	4
ARGUMENT.....	5
I. THE TRIAL COURT ERRED BY FAILING TO FOLLOW SPECIFIC PROCEDURES MANDATED BY STATUTE	5
A. Written statements in affidavits not presented during court proceedings do not meet the statutory elements of criminal contempt	5
B. The trial court erred by presiding in a contempt proceedings arising from counsel's challenge to the trial court's objectivity.....	9
II. THE USE OR THREATENED USE OF A TRIAL COURT'S CONTEMPT POWER AGAINST COUNSEL IN A CRIMINAL TRIAL WHERE THERE IS NO ACTUAL OBSTRUCTION OF THE PROCEEDINGS NECESSARILY UNDERMINES THE CRIMINAL DEFENDANT'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT DUE PROCESS RIGHTS AND THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL	11

INDEX

A.	The Supreme Court of the United States has upheld summary contempt against an attorney only when conduct causes an actual obstructions of the court's proceedings contempt	12
B.	The trial court cannot be permitted to use their authority to constructively deny criminal defendants the right to counsel	14
III.	THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT ADMONISHES TRIAL COURTS NOT TO PRESIDE IN PROCEEDINGS ARISING FROM CHALLENGES TO THE COURT'S IMPARTIALITY	16
	CONCLUSION	18
	CERTIFICATE OF COMPLIANCE.....	20
	CERTIFICATE OF SERVICE.....	21

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Cooke v. United States</i> , 267 U.S. 517, 46 S. Ct. 390, 69 L. Ed 757 (1925).....	8, 18
<i>Geders v. United States</i> , 425 U.S. 80, 96 S.Ct. 1330, 47 L. Ed 2d 592 (1976).....	15
<i>Gideon v. Wainwright</i> , 372 U.S. 335, 82 S.Ct. 792, 9 L. Ed 2d 799 (1963).....	12
<i>Herring v. New York</i> , 422 U.S. 853, 95 S. Ct 2550, 45 L. Ed 2d 593 (1975).....	15
<i>Holt v. Virginia</i> , 381 U.S. 131, 85 S. Ct. 1375, 14 L. Ed 2d 290 (1965).....	14,15
<i>In re McConnell</i> , 370 U.S. 230, 82 S. Ct 1288, 8 L. Ed. 2d 434 (1962).....	12,14,16
<i>Pounders v. Watson</i> , 521 U.S. 982, 117 S. Ct 2359, 128 L. Ed 2d 976 (1997).....	13
<i>Sacher v. United States</i> , 343 U.S. 1, 72 S. Ct 451, 96 L. Ed 717 (1952).....	13
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct 2052, 80 L. Ed 674 (1984).....	12
<i>Webb v. Texas</i> , 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed 2d 330 (1972).....	12

NORTH CAROLINA STATE CASES

<i>Ponder v. Davis</i> , 233 N.C. 699, 65 S.E. 2d 356(1951).....	10,11,17
---	----------

TABLE OF AUTHORITIES

<i>State v. Yancy</i> , 4 N.C. 133 (1814).....	7
<i>In re Bonding Co.</i> , 16 N.C. App. 272, 192 S.E.2d 33 <i>cert.denied and appeal dismissed</i> , 282 N.C. 426, 192 S.E.2d 837 (1972).....	17
<i>In re Faircloth</i> , 153 N.C. App. 565, 571 S.E.2d 65 (2002).....	18
<i>In re Nakell</i> , 104 N.C. App. 638, 411 S.E. 2d 159 (1991).....	8
<i>State v. Land</i> , 273 N.C. App. 384, 848 S.E.2d 564 570 (2020).....	6

OTHER STATE CASES

<i>Haslam v. Morrison</i> , 113 Utah 14, 190 P.2d 520, (1948).....	17
---	----

STATUTES

N.C. Gen. Stat. § 5A-13.....	6
N.C. Gen. Stat. § 5A-15(a).....	7,9,10,11

CODE OF JUDICIAL CONDUCT

North Carolina Code of Judicial Conduct Canon 3.....	16
--	----

TABLE OF AUTHORITIES

LAW REVIEW ARTICLES

Earl C. Dudley, Jr., <i>Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempt</i> , 79 Va. L. Rev. 1025 (1993).....	17
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AND NORTH CAROLINA ADVOCATES FOR JUSTICE
IN SUPPORT OF MATTHEW GEOFFRION¹

INTRODUCTION

A sitting trial judge summarily convicted a criminal defense attorney in a capital murder trial of direct criminal contempt and sentenced him to thirty days in jail. This conviction arose not from

¹ Pursuant to Rule 28.1(b)(3)c. of the North Carolina Rules of Appellate Procedure, no other person or entity—other than *amici curiae*, their members, and their counsel—have directly or indirectly written this brief or contributed money to its preparation.

courtroom conduct but upon an affidavit, filed outside of court, supporting a motion to disqualify the trial judge based on statements and conduct disparaging defense counsel. *Amici Curiae*, who are former trial and appellate judges and leading professional organizations for lawyers, file this brief to emphasize that (1) trial judges must follow statutory criminal procedure and (2) a criminal contempt proceeding in response to a motion to disqualify a trial judge undermines the ability of lawyers to competently and zealously represent their clients, casts doubt upon the integrity of the judiciary, and violates a criminal defendant's right to a fair trial.

This case can and should be reversed based simply upon statutorily mandated procedure. By statute, the alleged conduct resulting in the contempt conviction unmistakably was not direct contempt, but indirect contempt, which the statute provides is punishable only following reasonable notice and an opportunity for the contempt defendant to respond to the charge. Mr. Geoffrion alerted the trial court to this necessity, but his demand for due process was flatly denied. This Court should reverse the trial court's contempt judgment to enforce statutorily

mandatory contempt procedures and to preserve the integrity of our judicial system.

STATEMENT OF IDENTITY OF *AMICI CURIAE*

Judge Richard D. Boner, Judge Wanda Bryant, Judge Carl Fox, and Judge Lucy Inman are former members of North Carolina's Court of Appeals and Superior Court. They have an interest in protecting the actual and perceived legitimacy, independence, and integrity of our courts.

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just

administration of justice. NACDL files numerous *amicus* briefs each year in the United States Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

North Carolina Advocates for Justice (“NCAJ”) is a non-profit professional organization of more than 1,800 North Carolina lawyers that advocates for fair laws and a level playing field across all branches of government for its members and those the members represent. NCAJ regularly participates in the legislative process and appears as *amicus curiae* before state and federal courts. Members of NCAJ represent clients across numerous practice areas – including criminal defense – in the state and federal courts of North Carolina. NCAJ has a significant interest in protecting the fair administration of justice and the ability of lawyers to zealously and professionally advocate for their clients.

ISSUE TO BE ADDRESSED

Amici address whether the trial court’s order holding Attorney Matthew Geoffrion in direct criminal contempt should be reversed.

ARGUMENT

I. THE TRIAL COURT ERRED BY FAILING TO FOLLOW SPECIFIC PROCEDURES MANDATED BY STATUTE.

The trial court's decision to conduct a summary contempt proceeding in and of itself constitutes reversible error. Even after the applicable statute was brought to the trial court's attention, the trial court ignored the law and went forward with summary contempt, committing reversible error and continuing a pattern of conduct prejudicial to the administration of justice.

A. Written statements in affidavits not presented during court proceedings do not meet the statutory elements of direct contempt.

Mr. Geoffrion's affidavit supporting the defendant's motion to recuse the trial judge was filed hours earlier with the Clerk of Court—not in the courtroom—as was the affidavit Mr. Geoffrion had filed two weeks earlier. Insisting that Mr. Geoffrion's written statements were direct criminal content, the trial court ignored the plain language of Chapter 5A and went forward with summary proceedings.

The statute draws a sharp distinction between direct and indirect criminal contempt. Direct criminal contempt is an act (1) committed “within the sight or hearing of a presiding judicial official;” (2) committed in or immediately proximate to “the room where proceedings are being held before the court”; and (3) “likely to interrupt or interfere with matters then before the court.” N.C.G.S. § 5A-13 (2026). When a trial court observes, for instance, contemptuous conduct that interrupts a hearing, said court is authorized to use its contempt power “in summary fashion to maintain authority over its courtroom.” *State v. Land*, 273 N.C. App. 384, 392, 848 S.E.2d 564, 570 (2020). This makes sense, because when proceedings are disrupted, the trial court needs the authority to restore order without delay.

By contrast, “[a]ny other act that is considered criminal contempt is indirect criminal contempt” and punishable only after a plenary proceeding. *Id.*; § 5A-13(b). So, instead of summarily holding a person in contempt, the trial court must first issue “an order directing the person to appear before a judge at a reasonable time specified in the order and

show cause why he should not be held in contempt of court.” N.C.G.S. § 5A-15(a) (2026).

Here, the trial court found that Mr. Geoffrion’s affidavits, although weeks apart, were “substantially contemporaneous,” (R pp 46 & 47-48) and constituted contemptuous conduct committed “during the sitting of a court in its immediate view and presence.” (R p 40) The trial court also noted the previous plan to hold a contempt hearing days earlier that was delayed by a juror’s illness and because the court “needed to confer with authorities and also to get a transcript.” (R p 46)

These statutes codify the long-held will of this Court, with which the trial court’s mischaracterization of indirect criminal contempt as direct criminal contempt also conflicts. In *State v. Yancy*, 4 N.C. 133 (1814), a case long predating Chapter 5A, the North Carolina Supreme Court affirmed a summary contempt conviction arising from a physical assault during a court proceeding. *See* 4 NC 133 (holding that in cases of direct contempt, the judicial response “must be immediate, or it would be ineffectual, as it is designed to suppress an outrage, which impedes the business of the court.”); *see also Cooke v. United States*, 267 U.S. 517, 534

(1925) (quoted in *Land* at 392) (“To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court when occurring in open court.”).

The trial court also misconstrued and misapplied this Court’s decision in *In re Nakell*, 104 N.C. App. 638, 411 S.E. 2d 159 (1991). It asserted that Mr. Geoffrion’s statements in an affidavit filed two weeks earlier were “contemporaneous” and thus constituted direct contempt occurring in the trial court’s presence. In *Nakell*, criminal defense counsel was charged with direct contempt after repeatedly interrupting the trial court despite the denial of his request to appear and be heard, disobeying the court’s orders to sit down and say nothing, prompting outbursts by the defendant and several other people in the courtroom. *Id.* at 645. Unlike this case, *Nakell* involved conduct in the courtroom that disrupted the ongoing proceeding.

The record shows that Mr. Geoffrion’s statements in affidavits, even assuming they could support a contempt charge, did not occur in the presence of the trial court, did not disrupt the trial, and did not meet the

criteria for direct contempt. The trial court was required to follow the procedure for indirect criminal contempt but erred by failing to schedule a plenary contempt hearing on a later date as required by the statute.

B. The trial court further erred by presiding in a contempt proceeding arising from counsel's challenge to the trial court's objectivity.

Mr. Geoffrion also should have had a different judge. Section 5A-15(a) provides that when criminal attempt is charged based on "acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge." § 5A-15(a).

By October 30, when the trial court commenced the summary contempt proceeding and found Mr. Geoffrion guilty of contempt, the trial court's objectivity was without a doubt in question. Mr. Geoffrion and his co-counsel had filed repeated motions to disqualify the trial court based on its statements and conduct during earlier weeks of trial. Mr. Geoffrion's affidavits filed on October 11, 2023 and October 30, 2023 described disparaging statements by the trial court in the presence of

jurors as well as hostile body language which would not be recorded in a transcript. (ROA pp. 14-15; 36-38).

Mr. Geoffrion and his co-counsel on October 13 filed a renewed motion to disqualify the trial court based on its statements disparaging counsel, berating counsel, and reacting angrily and animatedly toward potential jurors who said they were unable to follow the law. (ROA pp. 4-8). In addition to his own affidavit, Mr. Geoffrion filed in support of the renewed motion affidavits by other counsel, including an attorney not involved in the trial. (ROA pp. 17-22) The trial court here ignored the mandate of Section 15A-15(a) and refused to consider it even when counsel pointed it out, thereby committing reversible error.

While the case at bar provides a stark example of why the statute calls for a different judge, case law drives home this point. In *Ponder v. Davis*, a case as famous for its underlying facts as the decision, the North Carolina Supreme Court established that a trial court cannot wield the contempt power to punish those who challenge the court's objectivity. There, a trial judge had issued an order to show cause why it should not hold in contempt a former sheriff who, after losing a hotly contested re-

election campaign, refused to surrender his office and the county jail to the newly sworn sheriff. *Ponder v. Davis*, 233 N.C. 699, 706, 65 S.E. 2d 356 (1951). When counsel for the former sheriff filed a motion asking the judge to recuse himself because he had been actively involved in the same election campaign, the judge found as a fact that the motion was “scurrilous and untrue” and the conduct of the attorneys who filed it “unethical.” In a later hearing, the same judge found the former sheriff in contempt. This Court vacated the contempt order and judgment, holding that Chapter 5 Section 9 of the General Statutes, predecessor to Chapter 5A-15, “declares a sound public policy that no judge should sit in his own case, or participate in a matter in which he has a personal interest, or has taken sides therein.” 233 N.C.at 703. The same reasoning applies here.

II. THE USE OR THREATENED USE OF A TRIAL COURT’S CONTEMPT POWER AGAINST COUNSEL IN A CRIMINAL TRIAL WHERE THERE IS NO ACTUAL OBSTRUCTION OF THE PROCEEDINGS NECESSARILY UNDERMINES THE CRIMINAL DEFENDANT’S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE DUE PROCESS OF LAW AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

Criminal defendants have a fundamental Sixth Amendment right to the effective assistance of counsel at their trial. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). This is true regardless of whether the person can afford counsel or has had counsel appointed. *Gideon v. Wainwright*, 372 U.S. 335, 82 S. Ct. 792, 9 L. Ed 2d 799 (1963). Criminal defendants also enjoy a Due Process right to be free from threats and intimidation by a trial court which thwart their efforts to defend themselves in court. *Webb v. Texas*, 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed 2d 330 (1972).

North Carolina trial courts have contempt power to govern the conduct of persons who appear before them; the use of that power against counsel must be constrained to situations of actual obstruction in order to avoid infringing upon the Fifth and Sixth Amendment rights of the defendant. *In re McConnell*, 370 U.S. 230, 82 S. Ct 1288, 8 L. Ed. 2d 434 (1962).

- A. The Supreme Court of the United States has upheld summary contempt against attorneys only when conduct causes an actual obstruction of the court's proceedings.

While the Supreme Court of the United States has authorized the use of summary contempt by trial courts against attorneys who appeared before the court, the Court has limited those situations to circumstances which are so egregious to cause an obstruction of the court proceedings.

In *Sacher v. United States*, 343 U.S. 1, 72 S. Ct 451, 96 L. Ed 717 (1952), the Court upheld summary contempt upon several attorneys during a nine-month long trial, by noting that the conduct:

“took place in front of the trial judge; it consisted of breaches of decorum and disobedience in the presence of the jury of his orders and ruling upon the trial; the misconduct was professional in that it was that of lawyers, or of a layman acting as his own lawyer. In addition, conviction is not based on an isolated instance of hasty contumacious speech or behavior but upon a course of conduct long-continued in the face of warning that it was regarded by the court as contemptuous.”

343 U.S. at 5. Similarly, in *Pounders v. Watson*, 521 U.S. 982, 117 S. Ct 2359, 128 L. Ed 2d 976 (1997), the Court upheld the imposition of summary contempt where counsel violated a trial court’s ruling and those actions “disrupted and frustrated an ongoing proceeding.” 521 U.S. at 990.

Conversely, in *In re McConnell, supra*, the Court reversed a finding of contempt where the attorneys for a plaintiff insisted on making an offer of proof. *Id.* at 233. The Court concluded that to show a proper exercise of the summary contempt power there must be: “[a]n obstruction to the performance of judicial duty resulting from an act done in the presence of the court...” *Id.* at 234. The Court then articulated that: “the arguments of a lawyer in presenting his client’s case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty.” *Id.* at 236.

This principle was reinforced when in *Holt v. Virginia*, 381 U.S. 131, 85 S. Ct. 1375, (1965), the Court reversed a finding of contempt after an attorney alleged judicial bias in motions to disqualify the judge and change venue. *Id.* at 136. The Court noted that the contempt defendant had a Due Process and Sixth Amendment right to be heard and to file the motions at issue. *Id.* at 236. The Court further concluded that since there was no offensive language within the motions, those filings could

not form the basis for contempt. *Id.* at 137. The same concepts apply here and constitute a stand-alone basis for reversal.

B. Trial courts cannot be permitted to use their authority to constructively deny criminal defendants the right to counsel.

Our adversary system demands that trial courts be neutral and impartial. When trial courts interject themselves into the judicial process to threaten or intimidate a criminal defendant and/or his counsel, this conduct amounts to the constructive denial of the right to counsel.

The Supreme Court prohibits a variety of practices which it has deemed to constructively deny a criminal defendant the right to counsel. *See, e.g., Geders v. United States*, 425 U.S. 80, 96 S. Ct. 1330, 47 L. ed 2d 592 (1976) (prohibiting counsel from communicating with his client during an overnight recess); *Herring v. New York*, 422 U.S. 853, 95 S. Ct 2550, 45 L. Ed 2d 593 (1975) (holding that a law which prohibited counsel from giving a summation in a bench trial violated the client's constitutional rights). Here, the trial court wielded its summary contempt power to threaten and intimidate a criminal defense attorney during a capital murder trial. Nothing in the record of this case

demonstrates that counsel took any action that constitutes “an obstruction which blocks the judge in the performance of his judicial duty.” *McConnell*, 370 U.S. at 236. This is untenable.

Absent a showing of actual obstruction, the trial court’s use of the summary contempt power can only be understood as an effort to threaten and intimidate counsel and to constitute the constructive denial of the right to counsel. The gravity of that action is all the more serious given its timing during an important phase of a capital murder trial. Both the impropriety of and dangers associated with such an action require reversal of the contempt conviction.

III. THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT ADMONISHES TRIAL COURTS NOT TO PRESIDE IN PROCEEDINGS ARISING FROM CHALLENGES TO THE COURT’S IMPARTIALITY.

Canon 3(C)(1)(a) of the North Carolina Code of Judicial Conduct provides that a judge “should disqualify himself/herself in a proceeding in which the judge’s impartiality may reasonably be questioned,” including when the judge has “personal knowledge of disputed evidentiary facts concerning the proceedings.” Conduct Canons 3C(1)(a);

Ponder, 233 N.C. at 706 (quoting *Haslam v. Morrison*, 113 Utah 14, 20, 190 P.2d 520, 523 (1948)).

Also, questions about attorney ethics are ordinarily for the consideration of the North Carolina State Bar. *E.g.*, *In re Bonding Co.*, 16 N.C. App. 272, 275 192 S.E.2d 33, 35, *cert. denied and appeal dismissed*, 282 N.C. 426, 192 S.E.2d 837 (1972) (citations omitted).

The use or threatened use of contempt charges in response to motions to disqualify or motions to recuse present an acute risk of apparent partiality. Disqualification and recusal motions often challenge the judge's objectivity. Contempt proceedings in criminal cases involving acts before the judge raise whether the judge has prejudged guilt, especially when the judge's statements and conduct are questioned.

In contempt proceedings generally, "the roles of victim, prosecutor, and judge are dangerously commingled." Earl C. Dudley, Jr., *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempt*, 79 Va. L. Rev. 1025, 1028 (1993). That dynamic is especially true when one of the parties is a lawyer who was involved in the underlying case. Courts have long noted that the risk of

bias by the presiding judge—and necessity for recusal—may be highest “where the contempt charged has in it the element of personal criticism or attack upon the judge.” *Cooke v. United States*, 267 U.S. 517, 539, 46 S.Ct. 390, 69 L. Ed 757 (1925).

A recusal motion itself can require a judge to recuse himself or refer the motion to another judge in at least two circumstances. If “there is sufficient force to the allegations contained in a recusal motion to proceed to find facts[,]” then the trial judge should recuse or refer the motion to another judge. *In re Faircloth*, 153 N.C. App. 565, 570, 571 S.E.2d 65, 69 (2002). Or if a reasonable person “knowing all the circumstances would have doubts about the judge’s ability to rule on the motion to recuse in an impartial manner, the trial judge should either recuse himself or refer the recusal motion to another judge.” *Id.* at 570, 571 S.E.2d at 69.

The trial court should have noticed a contempt hearing before a different judge even absent counsel’s recusal motion during the summary contempt proceeding. Trial courts are not held to a standard of perfection. We are all human and do the best we can, but certain circumstances should not be validated, particularly when the trial judge’s

conduct raises implications about judicial standards and threatens the integrity of the jury's verdict and the right to effective assistance of counsel.

CONCLUSION

For the reasons stated above, this Court should vacate and reverse the trial court's contempt judgment.

/s/ Andrew B. Banzhoff
Andrew B. Banzhoff
Devereux & Banzhoff, PLLC
110 Lyman Street
Asheville, NC 28801
(828) 285-9455
abanzhoff@dblawoffices.com
State Bar No. 26432

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

/s/ Jon Ward
Jon Ward
Tatum & Atkinson, PLLC
1175 Revolution Mill Dr., Ste. 31
Greensboro, NC 27405
(336) 600-4909
jward@tatumatkinson.com
State Bar No. 37122

CERTIFICATE OF COMPLIANCE WITH RULE 28(j)(2)

Undersigned counsel certifies that this brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure in that it is printed in Century Schoolbook 14 point font and the body of the brief, including footnotes and citations contains no more than 3,750 words as indicated by Microsoft Word.

Electronically submitted this the 28th day of August, 2026.

/s/ Andrew B. Banzhoff
Andrew B. Banzhoff
Devereux & Banzhoff, PLLC
110 Lyman Street
Asheville, NC 28801
(828) 285-9455
abanzhoff@dblawoffices.com
State Bar No. 26432

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing Brief for *Amici Curiae* upon counsel of record listed below by electronic mail, addressed as follows:

NORTH CAROLINA DEPARTMENT OF
JUSTICE

Caden William Hayes
Special Deputy Attorney General
cwhayes@ncdoj.gov

BLAU & HYNSON, PLLC
Warren D. Hynson
warren@blauhynson.law

Electronically submitted this the 28th day of August, 2026.

/s/ Andrew B. Banzhoff
Andrew B. Banzhoff
Devereux & Banzhoff, PLLC
110 Lyman Street
Asheville, NC 28801
(828) 285-9455
abanzhoff@dblawoffices.com
State Bar No. 26432