

**IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

---

**STATE OF TENNESSEE,**

Plaintiff,

v.

Docket No. CT-1890-24  
Div. I

**WANDA HALBERT,**

Defendant.

---

**DEFENDANTS' MEMORANDUM IN SUPPORT OF HER MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

---

**COMES NOW** Defendant Wanda Halbert, Shelby County Clerk (hereinafter “Defendant” or “Ms. Halbert”), by and through counsel of record, pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure, hereby submits this Memorandum in Support of her Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. Defendant respectfully requests that this Honorable Court dismiss Plaintiff’s Petition because according to the Plaintiff’s own Petition and accompanying exhibits, if each and every relevant and material allegation contained in the complaint is admitted as true, these relevant and material allegations do not establish a cause of action against Defendant. Tenn. R. Civ. P. 12.02(6); *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005) (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)). Specifically, if all of Plaintiff’s facts are taken as true, Plaintiff has not demonstrated with clear and convincing evidence under Tenn. Code Ann. § 8-47-101, *et seq.* that the incidents complained of in its Complaint amount to Defendant “knowingly or willfully neglect[ing] to perform any duty enjoined” upon her as the Shelby County Clerk.

## **FACTS AND PROCEDURAL HISTORY**

On May 6, 2024, Plaintiff, the State of Tennessee, filed a Petition to Remove the Shelby County, Tennessee County Clerk, Wanda Halbert, From Office Pursuant to Title 8, Chapter 47 of the Tennessee Code Annotated. Plaintiff's lawsuit alleges that, "[t]he allegations in this case allege that Defendant has willfully neglected to perform duties enjoined upon defendant by the laws of the State. *See* Tenn. Code Ann. § 8-47-101. They do not allege willful misconduct, intoxication by drink voluntarily taken, illegal gambling, or acts of moral turpitude." Pet'n, ¶ 12. In Plaintiff's Petition, Plaintiff pleads that, "On March 28, 2023, Shelby County Attorney Marlinee Iverson submitted a formal request to Attorney General Skrmetti and Shelby County District Attorney General Mulroy to investigate the Shelby County Clerk for neglect of duty. The request (*attached as "Exhibit A"*) places General Skrmetti and General Mulroy on notice that the Shelby County Attorney's Office had received numerous complaints from elected officials and residents alleging neglect of duty by Ms. Halbert. More specifically, the County Attorney had received concerns regarding the potential closure of a second branch location of the Shelby County Clerk's office. The Shelby County Attorney notified General Skrmetti and General Mulroy of these allegations based on a duty to investigate pursuant to Tenn. Code Ann. 8-47-103." Pet'n, ¶ 7. In Plaintiff's Petition, Plaintiff pleads that the following conduct amounts to "willful neglect" under Tenn. Code Ann. § 8-47-101, *et seq*:

(1) the Shelby County Clerk has failed "to submit accurate and timely monthly revenue reports from July 2021 to March 2024", and "Since July of 2021 there has not been one revenue report that Ms. Halbert has turned in timely and accurately" although Plaintiff admits in its Complaint that Defendant was not re-elected as Shelby County Clerk until September 1, 2022. Pet'n, ¶¶ 13, 15, 27, 30;

(2) “Ms. Halbert consistently fails to turn the monthly report into the Trustee in a timely manner,” that “Ms. Halbert’s monthly reports are consistently inaccurate with collected dollar amounts not added properly” Pet’n ¶¶ 27-28;

(3) “Ms. Halbert and her employees do not seem to understand the significance of accurate financial reporting,” “The Shelby County finance department has consistently had to report to the Shelby County Commission that some items from the Shelby County Clerk’s Office are not yet reported after the reporting deadline;” Pet’n, ¶¶ 34-35;

(4) Defendant “failed to charge or collect wheel tax fees properly” and should be personally liable for the amounts uncollected, although Plaintiff admits in its Petition that, “Ms. Halbert was not aware for a period of months that the updated wheel tax resolution had passed through the Commission and had become effective. In September of 2023 Ms. Halbert’s office finally realized that they were not collecting the proper amount of wheel tax from residents of Shelby County. Some residents were still only paying \$50 even when they were obligated to pay \$75.” Pet’n ¶¶ 37-38;

(5) “Since Ms. Halbert has been in office, it can take up to 3 months for an auto buyer to receive their tag,” “Lienholders are waiting for a title and expect the title within a reasonable amount of time... The lien cannot be secured without the Shelby County Clerk performing her duties in an appropriate and responsible manner,” “packets received by the Shelby County Clerk’s Office from auto dealers are often rejected by the Clerk. In recent years, most of the rejections are incorrectly rejected and were in fact submitted correctly. If a packet is rejected, it is also subject to the same unreasonable wait time (3 months). Resubmission of a new packet takes the same roughly 3-month period for return. Ms. Halbert’s neglect has placed automobile dealerships in Shelby County in the position to have to explain to buyers why the tag and title take so long to acquire, but

regardless of the explanation, buyers cannot always fully understand the process and will blame the dealership. This causes dealerships to lose business,” and that “The Clerk’s failures have placed a strain on automobile dealerships and citizens in Shelby County-especially smaller dealership (sic) that have limited resources.” Pet’n, ¶¶ 39, 43-48; 50-52;

(6) “Ms. Halbert maintains that she does not have the appropriate funding to fully staff her office. However, Ms. Halbert is consistently underbudget and has historically given a significant amount of her budgeted money back to the County general fund at the end of each fiscal year. Despite the turnover in her office and the claims that she cannot adequately staff her office, Ms. Halbert has not gone before the County Commission to express concern with alleged budget constraints.” Pet’n ¶¶ 39; 41;

(7) “Despite the Comptroller’s visit and formal recommendations for Ms. Halbert, Ms. Halbert did not submit the March report in a timely manner. It was submitted one day late on April 11, 2024. Recommendation number 4 in the Comptroller’s Report specifically addresses the timeliness of Ms. Halbert’s reports. nThe (sic) report states “[t]he reports should be accurate and submitted to the Trustee’s Office by the tenth of each month as required by a resolution approved by the Shelby County Commission.” Pet’n ¶ 55;

(8) “By allowing office leases to expire, displacing her employees, placing even more of a burden on other offices, and failing to notify Shelby County residents of the office closure, Ms. Halbert has knowingly and willfully neglected to fulfill her duties as the Shelby County Clerk,” and “Ms. Halbert neglected her duties by failing to timely submit budget requests to the Shelby County Budget Director,” although the State admits that, **“Ms. Halbert’s neglect reflects a lack of knowledge and consideration for how Shelby County Government, or any government for that matter, operates.”** Pet’n, ¶¶ 64, 68 (emphasis added);.

(9) “Ms. Halbert’s failure to respond to the Commission’s reasonable request” on April 22, 2024 for a corrective action plan,” by May 1, 2024 “constitutes a willful neglect of duty.” Pet’n, ¶ 69. For the purposes of Defendant’s Motion to Dismiss, Defendant Halbert incorporates by reference each and every factual allegation in Plaintiff’s Petition as if stated word for word herein.

### **LEGAL STANDARD**

“A Tenn. R. Civ. P. 12.02(6) motion admits the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from these facts.” *Utley v. Tenn. Dep’t of Corr.*, 118 S.W.3d 705, 712 (Tenn. Ct. App. 2003) (citing *Davis v. The Tennessean*, 83 S.W.3d 125, 127 (Tenn. Ct. App. 2001); *Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001)). The function of the motion “is to test the sufficiency of the complaint, not the strength of the plaintiff’s evidence.” *Willis v. Tenn. Dep’t of Corr.*, 113 S.W.3d 706, 710 (Tenn. 2003) (citing *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999); *Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn. 1997)). “Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity.” *Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001) (citing *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992)). A trial court should grant a Rule 12.02(6) motion to dismiss “only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.” *Crews v. Buckman Labs. Int’l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002) (citing *Trau-Med of America v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002)). Making such a determination is a question of law. *State ex rel. Byrge v. Yeager*, 472 S.W.3d 657, 662 (Tenn. Ct. App. 2015). Although the only pleadings allowed under Tenn. Code Ann. § 8-47-115 in an ouster proceeding are a petition and an answer, “[i]t is well-settled in Tennessee that a motion to dismiss is not a responsive pleading.” *Cordell v. Cleveland Tenn. Hosp., LLC*, 544

S.W.3d 331, 335 (Tenn. Ct. App. 2017); *Mosley v. State*, 475 S.W.3d 767, 774 (Tenn. Ct. App. 2015).

## **ARGUMENT**

### **I. PLAINTIFF HAS NOT DEMONSTRATED WITH CLEAR AND CONVINCING EVIDENCE UNDER TENN. CODE ANN. § 8-47-101, *ET SEQ.* THAT THE INCIDENTS COMPLAINED OF IN ITS PETITION AMOUNT TO DEFENDANT “KNOWINGLY OR WILLFULLY NEGLECT[ING] TO PERFORM ANY DUTY ENJOINED” UPON HER AS THE SHELBY COUNTY CLERK.**

“[T]he Ouster statute is a salutary one, but those administering it should guard against its over-encroachment.” *Vandergriff v. State ex rel. Davis*, 206 S.W.2d 395, 397 (Tenn. 1947); *State ex rel. Carney v. Crosby*, 255 S.W.3d 593, 601 (Tenn. Ct. App. 2008). “[O]uster proceedings should only be brought in cases where ‘there is a clear case of official dereliction.’” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 818 (Tenn. 1981) (citing *State ex rel. Wilson v. Bush*, 208 S.W. 607 (Tenn. 1919), and *McDonald v. Brooks*, 387 S.W.2d 803 (Tenn. 1965)). “The purpose of the ouster law is to ‘rid the public of unworthy officials’ and ‘to improve the public service, and to free the public from an unfit officer.’” *State ex rel. Byrge v. Yeager*, 472 S.W.3d 657, 663 (Tenn. Ct. App. 2015); *Comm’rs of Powell-Clinch Util. Dist. v. Util. Mgmt. Review Bd.*, 427 S.W.3d 375, 385 (Tenn. Ct. App. 2013) (quoting *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 198 (Tenn. Ct. App. 2000)). The law reflects the general assembly’s deep concerns regarding allegations of misconduct by public officials. *Looper*, 86 S.W.3d at 198. An ouster suit shoulders a heightened burden of proof, clear and convincing evidence. *Crosby*, 255 S.W.3d at 597 (quoting *Tennessee ex rel. Thompson v. Walker*, No. 01A01-9311-CR-00486, 1994 Tenn. App. LEXIS 245 at \*15 (Tenn. Ct. App. 1994)); *State ex rel. Wolfenbarger v. Moore*, No. E2008-02545-COA-R3-CV, 2010 Tenn. App. LEXIS 109 at \*12 (Tenn. Ct. App. Feb. 12, 2010).

The “clear and convincing” standard falls somewhere between the “preponderance of the evidence” in civil cases and the “beyond a reasonable doubt” standard in criminal proceedings. To

be “clear and convincing,” the evidence must “produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.” *In re Samuel D*, 536 S.W.3d 447,453 (Tenn. Ct. App. 2016) (quoting *Estate of Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997)) (internal citation omitted). “Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Id.*; *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n. 3 (Tenn. 1992). See e.g. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. Ct. App. 1993).

“As used in reference to the ouster statute, the terms ‘knowingly’ and ‘willfully’ have been defined as encompassing ‘a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder.’” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn. 1981) (citing *Jordan v. State*, 397 S.W.2d 383, 398 (Tenn. 1965); *Crosby*, 255 S.W.3d 593, 598. The *Jordan* court also noted that the terms “knowingly” and “willfully” as used in ouster proceedings are “not confined to a studied or deliberate intent to go beyond the bounds of the law.” *Jordan*, 397 S.W.2d at 399. However, it requires more than “simple negligence” to constitute willful or knowing misconduct. *Id.* (holding that “simple negligence in discharging the duties of an officer does not constitute or amount to an officer acting knowingly or willfully”); *State ex rel. Carney v. Crosby*, 255 S.W.3d 593, 598 (Tenn. Ct. App. 2008) (affirming the lower court’s ruling that the State lacked clear and convincing evidence that the mayor knowingly or willfully committed misconduct in office.). The question is, “whether the acts or actions complained of were done with such indifference or such an entire want of care as would raise a presumption of a conscious indifference to consequences or the law.” *Jordan*, 397 S.W.2d at 399. “Shreds of human imperfections gathered together to mold charges of official dereliction should be carefully scanned before a reputable officer is removed from office.

These derelictions should amount to knowing misconduct or failure on the part of the officer if his office is to be forfeited; *mere mistakes in judgment will not suffice.*” *Vandergriff*, 206 S.W.2d at 393 (emphasis added). There is a high threshold for ouster in the absence of a criminal conviction. *Id.* at 397.

*In State ex rel Milligan v. Jones*, the Tennessee Supreme Court affirmed the lower court’s ruling of a ouster judgment against the director of a school district because based on the facts alleged against the school district director, the lower court found that the school district director failed to have meetings of the board of directors since his election, had been signing the names of all of the directors to the school warrants since that time and delivering them, had failed to visit some of the schools in his district as required by law, that he had not visited one of the schools but one time and one of the schools he has never visited or even seen, had failed and neglected to take care of the school property as required by law, and that he had had taken coal from the school ground that was the property of the school district, and did not return the coal until after he was suspended from office. 224 S.W. 2d 1043, 1043 (Tenn. 1920). Under the predecessor ouster statute, “the ouster statute has no reference to the intent with which this misfeasance was committed,” but found that because the school district director “knowingly” committed these acts, knew he was supposed to do them but knowingly chose not to do so, his ouster was proper. *Id.* at 1043.

*In State ex rel. Ten Citizens of Campbell County v. Smith*, the Tennessee Supreme Court affirmed the Chancellor’s ouster of the chairman of the county board of education upon the chancellor’s finding the chairman failed to countersign thousands of warrants authorized by the board of education, as Chapter 115 of the Acts of 1925 then required him to do, but instead he provided to the secretary of the school board a rubber stamp with which to sign the chairman’s name to the warrants. 11 S.W.2d 897, 898 (Tenn. 1928). The *Smith* Court found the following:



“This action of the chairman of the county board in procuring a rubber stamp bearing a facsimile of his signature and authorizing the clerk of the board to affix this stamp to county warrants seems to us a conscious and willful neglect of an important duty enjoined by the section just above quoted. As a check upon a reckless or dishonest county superintendent in the issuance of warrants, the statute required the countersignature of the chairman of the board of education. The chairman was expected to approve and authenticate each one and thus protect the schools. ***Such a duty cannot be delegated to a mere clerk. For a trusted fiscal officer to knowingly and willfully shirk such a duty constitutes abundant ground for his removal from office.***”

*Smith*, 11 S.W.2d at 898.

Similarly, in *Vandergriff v. State ex rel. Davis*, 206 S.W.2d 395 (Tenn. 1947), two (2) ouster lawsuits were brought against the Anderson County Sheriff for failure to account for liquor seized by his office, failed to report liquor seized by him in a timely manner, and that the Anderson County Sheriff had allegedly accepted gifts and bribes. In reversing and remanding the lower court, the *Vandergriff* Court found that based on the facts, there was nothing in the record to show that the Anderson County Sheriff willfully refused to enforce the law. *Id.* at 397. The *Vandergriff* Court held that, “[w]here a sheriff has made an honest and reasonably intelligent effort to do his duty, he will not be removed from office by the courts, though his efforts may not have been wholly successful, for his right to hold and continue in office depends upon the good faith of his efforts rather than upon the degree of his success.” *Id.* at 397 (internal citation omitted). The *Vandergriff* Court reasoned:

“While the record discloses that the defendant has made mistakes, we are not persuaded that it reveals that he has knowingly or willfully misconducted himself in office. The record further discloses that for a long time there has been much law violation in Anderson County. The great influx and increase in population may be to some extent accountable for this, but behind all this, defendant is shown to be a young man of integrity and good reputation.”

*Id.* at 397.

Here, if all of Plaintiff's allegations against Defendant are taken as true, and all reasonable inferences are given to Plaintiff, Plaintiff's Petition fails to state a cause of action against Defendant Halbert because at best, its allegations against Defendant are at best simple negligence, mere mistakes in judgment, and good faith efforts to perform her duties as enjoined to her. Tenn. R. Civ. P. 12.02(6); *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005) (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)); *Vandergriff*, 206 S.W.2d at 397; *Jordan*, 397 S.W.2d at 399; *Crosby*, 255 S.W.3d 593, 598. Plaintiff's Petition is contradictory, stating that somehow Defendant should be removed for "willful neglect" under Tenn. Code Ann. § 8-47-101, but admitting that there were several instances that look an awful lot like simple negligence—where Defendant was unaware, didn't know information, didn't understand, didn't have the help required for her to facilitate her duties, or was faced with circumstances involving other moving parts of Shelby County Government that failed her. *Vandergriff*, 206 S.W.2d at 393; *Jordan*, 397 S.W.2d at 399; *Crosby*, 255 S.W.3d 593, 598; Pet'n, ¶¶ 7, 33, 53-55, 58-60, 64, 68. For instance, Plaintiff pleads that Defendant "failed to charge or collect wheel tax fees properly" because "Ms. Halbert was not aware for a period of months that the updated wheel tax resolution had passed through the Commission and had become effective. Glaringly missing is any allegation that Ms. Halbert received written notification or any notification of the change in the wheel tax. Plaintiff's position is that Defendant should have known. Unfortunately, for them that is not "willful" because Defendant's lack of knowledge about the wheel tax change does not display "a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder." *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn. 1981) (citing *Jordan v. State*, 397 S.W.2d 383, 398 (Tenn. 1965); *Crosby*, 255 S.W.3d 593, 598. However, Plaintiff pleads that "[i]n September of 2023 Ms. Halbert's office

finally realized that they were not collecting the proper amount of wheel tax from residents of Shelby County,” but Plaintiff also pleads that, “Ms. Halbert and her employees do not seem to understand the significance of accurate financial reporting,” and that “Ms. Halbert’s neglect reflects a lack of knowledge and consideration for how Shelby County Government, or any government for that matter, operates.” “When asked why there have been discrepancies in the \$200,000-\$300,000 range, Mr. Smith” (a Shelby County Clerk employee) “commented that \$200,000-\$300,000 is not significant given the total amount of the County’s annual budget.” Pet’n, ¶¶ 34-35; 64, 68. Interestingly, Plaintiff also does not allege how or why Ms. Halbert realized the change in the wheel tax. Based on these facts, the Plaintiff has failed to demonstrate willful neglect under Tenn. Code Ann. § 8-47-101 because it fails to demonstrate that Defendant possessed ‘a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder.’” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn. 1981) (citing *Jordan v. State*, 397 S.W.2d 383, 398 (Tenn. 1965); *Crosby*, 255 S.W.3d 593, 598. Plaintiff’s facts further fail to demonstrate that “the acts or actions complained of were done with such indifference or such an entire want of care as would raise a presumption of a conscious indifference to consequences or the law.” *Jordan*, 397 S.W.2d at 399.

Also, Plaintiff pleads that the Shelby County Clerk has failed “to submit accurate and timely monthly revenue reports from July 2021 to March 2024”, and “Since July of 2021 there has not been one revenue report that Ms. Halbert has turned in timely and accurately” although Plaintiff admits in its Complaint that Defendant was not re-elected as Shelby County Clerk until September 1, 2022. Pet’n, ¶¶ 13, 15, 27, 30. Although Plaintiff pleads that, “Several employees in Shelby County Government have offered assistance and support to Ms. Halbert to no avail. These individuals have tried to assist Ms. Halbert because it only makes everyone’s job easier. Ms.

Halbert rejects the assistance and has even threatened to kick other Shelby County employees out of her office,” Plaintiff detrimentally pleads that the first time that Defendant ever received help from the proper office—the Office of the Comptroller on her revenue reports, was March of 2024, this year. Pet’n ¶¶ 33, 54. Plaintiff pleads that allegedly, the Comptroller was placed on notice in 2022 when “her offices were suddenly and without notice closed to the public for a week (August 22, 2022 to August 26, 2022) while her employees were working to ‘clear backlogs,’” Pet’n, ¶ 53. Although the State alleges that, “[i]t was at this time that Comptroller Jason Mumpower, along with Shelby County Commissioners and Shelby County citizens, first mentioned removal from office,” Plaintiff also admitted that when the Comptroller finally stepped in to help with Defendant’s revenue reports, it was almost a year later in March of 2024, and that the Comptroller’s recommendations contained in Exhibit D of Plaintiff’s Petition did not include ouster. Pet’n, ¶¶ 53, 54, 55; Pet’n, Ex. D. Plaintiff further pleads that once Defendant received help from the Comptroller, the March 2024 revenue report contained “minor inaccuracies,” and “was one day late.” Pet’n, ¶¶ 53, 54, 55; Pet’n, Ex. D. Moreover, Plaintiff detrimentally pleads that less than two (2) months after Defendant received the proper help from the Comptroller and acknowledged that her revenue reports improved and were turned in only one (1) day late, that she was recommended for ouster proceedings. Pet’n ¶¶ 54, 55, Pet’n, Ex. D. Again, these facts fail to demonstrate ‘a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder.’” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn. 1981) (citing *Jordan v. State*, 397 S.W.2d 383, 398 (Tenn. 1965); *Crosby*, 255 S.W.3d 593, 598. Plaintiff’s facts further fail to demonstrate that “the acts or actions complained of were done with such indifference or such an entire want of care as

would raise a presumption of a conscious indifference to consequences or the law.” *Jordan*, 397 S.W.2d at 399.

Next, Plaintiff pleads that, “On March 28, 2023, Shelby County Attorney Marlinee Iverson submitted a formal request to Attorney General Skrmetti and Shelby County District Attorney General Mulroy to investigate the Shelby County Clerk for neglect of duty. The request (*attached as “Exhibit A”*) places General Skrmetti and General Mulroy on notice that the Shelby County Attorney’s Office had received numerous complaints from elected officials and residents alleging neglect of duty by Ms. Halbert. More specifically, the County Attorney had received concerns regarding the potential closure of a second branch location of the Shelby County Clerk’s office. The Shelby County Attorney notified General Skrmetti and General Mulroy of these allegations based on a duty to investigate pursuant to Tenn. Code Ann. 8-47-103.” Pet’n, ¶ 7. However, Plaintiff pleads that, “During Ms. Halbert’s first term in office,” the Germantown branch, “one of the seven offices” “closed due to a lease expiring,” and “In an interview on September 3, 2020, Ms. Halbert claimed that she did not know the lease was expiring and that she was caught “off guard.” Pet’n, ¶ 58. Plaintiff pleads that, “Ms. Halbert blamed the mayor’s office for failing to sign a contract although it was Ms. Halbert who was in contact with the property management company and had been informed multiple times over a period of months that the lease was expiring.” Pet’n ¶ 58.

Plaintiff further pleads that the first time Defendant was placed on notice by the Shelby County Mayor Lee Harris, the only individual that can bind the County in contract, of any other location closing was a little under three (3) years later, on March 22, 2023, with the Poplar Plaza location’s lease expiring on June 30, 2023. Pet’n ¶ 59. Plaintiff also pleads that the Shelby County Mayor essentially put the onus on Defendant to “select an alternate location of the office by close of

business on Friday, March 24, 2023,” two days after the Mayor’s letter.” Pet’n ¶ 59. Moreover, in the last paragraph of Mayor Harris’ letter, the County Mayor places in writing that, “As you may know, both the County Commission and the District Attorney’s Office have the ability to act under state law when a County Clerk is derelict in his or her duty.” Pet’n, Ex. G. According to Plaintiff’s own contradictory facts, this is the first time that Defendant would have been placed on notice that ouster proceedings were on the table. Pet’n, Ex. G. Plaintiff further pleads that the first time Ms. Halbert received written communication from the landlord, Finard Properties, was on October 11, 2023, telling her that they were terminating the lease. Pet’n, ¶ 60. This Court can take judicial notice for the purposes of Defendant’s Motion to Dismiss that it is public record that only the Shelby County Mayor can bind the county in contract, which would include leases. *See* Tenn. Code Ann. § 10-7-301 (defining matters of public record); *see also Patton v. Estate of Upchurch*, 242 S.W.3d 781, 786 (Tenn. Ct. App. 2007); *Priority Waste Serv. v. Santek Envtl., LLC*, No. E2020-01073-COA-R3-CV, 2021 Tenn. App. LEXIS 253, \*9-11 (Tenn. Ct. App. June 28, 2021) (internal citations omitted) (“Generally, ‘[i]f matters outside the pleadings are presented in conjunction with either a Rule 12.02(6) motion [to dismiss] or a Rule 12.03 motion [for judgment on the pleadings] and the trial court does not exclude those matters, the court must treat such motions as motions for summary judgment and dispose of them as provided in Rule 56.’ Exceptions to this general rule exist, however, for ‘matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned.’”).

Here, Plaintiff’s facts do not demonstrate willful neglect under Tenn. Code Ann. § 8-47-101 because they fail to demonstrate that Defendant possessed ‘a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers

of a public office holder.” *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn. 1981) (citing *Jordan v. State*, 397 S.W.2d 383, 398 (Tenn. 1965); *Crosby*, 255 S.W.3d 593, 598. Plaintiff’s facts further fail to demonstrate that Defendant committed “the acts or actions” “with such indifference or such an entire want of care as would raise a presumption of a conscious indifference to consequences or the law.” *Jordan*, 397 S.W.2d at 399. In *State ex rel Milligan v. Jones*, the school board director knew he was supposed to have meetings of the board of directors, knew he was supposed to visit schools and knew he was not to take coal from the school property, but made a conscious decision to do so anyways. *Jones*, 224 S.W. 2d at 1043. In *State ex rel. Ten Citizens of Campbell County v. Smith*, the chairman of the county board of education knew that he could not rubber stamp thousands of warrants and that the duty cannot be delegated to a mere clerk to rubber stamp because the chairman knew that his review of the warrants was a “check upon a reckless or dishonest county superintendent in the issuance of warrants” and willfully shirked off his duties to a clerk. *Smith*, 11 S.W.2d at 898. In *Vandergriff v. State ex rel. Davis*, a sheriff, acting in good faith, was accused of failing to account for liquor seized and failed to report liquor seized by him in a timely manner, but the evidence demonstrated that the sheriff in *Vandergriff* was executing his duties to the best of his ability and thus did not willfully neglect to perform any duty enjoined to him. 206 S.W.2d at 397. Similar to *Vandergriff*, based on Plaintiff’s own facts, if Plaintiff’s facts are taken as true and Plaintiff’s factual allegations are given all reasonable inferences, the facts alleged in Plaintiff’s Petition do not amount to willful neglect to perform any duty enjoined to Defendant, but “mere mistakes in judgment,” which will not suffice to prove with clear and convincing evidence that an ouster is required under Tenn. Code Ann. § 8-47-101. Tenn. R. Civ. P. 12.02(6); *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005) (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)); *Vandergriff*, 206 S.W.2d at 393;

*Crosby*, 255 S.W.3d 593, 597-98; (quoting *Tennessee ex rel Thompson v. Walker*, No. 01A01-9311-CR-00486, 1994 Tenn. App. LEXIS 245 at \*15 (Tenn. Ct. App. 1994)); *State ex rel. Wolfenbarger v. Moore*, No. E2008-02545-COA-R3-CV, 2010 Tenn. App. LEXIS 109 at \*12 (Tenn. Ct. App. Feb. 12, 2010); Pet'n, ¶¶ 7, 33, 53-55, 58-60, 64, 68. Thus, Plaintiff's Petition should be dismissed for failure to state a claim upon which relief can be granted.

### **CONCLUSION**

For the foregoing reasons, Defendant prays that this Honorable Court grant Defendant's Motion to Dismiss Plaintiff's Petition to Remove the Shelby County, Tennessee County Clerk, Wanda Halbert, From Office Pursuant to Title 8, Chapter 47 of the Tennessee Code Annotated with prejudice.

Respectfully submitted,

/s/Darrell J. O'Neal

---

Darrell J. O'Neal (BPR #20927)  
Misty L. O'Neal (BPR #37332)  
LAW OFFICE OF DARRELL J. O'NEAL  
2129 Winchester Road  
Memphis, TN 38116  
(901) 345-8009 telephone  
[domemphislaw@darrelloneal.com](mailto:domemphislaw@darrelloneal.com)  
[misty@darrelloneal.com](mailto:misty@darrelloneal.com)  
*Attorneys for Defendant Wanda Halbert*



**CERTIFICATE OF SERVICE**

I, Darrell J. O’Neal, hereby certify that a copy of the foregoing document has been sent via email and the Shelby County Circuit Court’s ECF electronic filing to the following counsel of record:

Coty Wamp, Esq.  
District Attorney General  
Kevin Loper, Esq.  
Executive Assistant District Attorney General  
11<sup>th</sup> Judicial District, Tennessee  
600 Market Street, Suite 310  
Chattanooga, TN 37402  
[Coty.wamp@hcdatn.org](mailto:Coty.wamp@hcdatn.org)  
[Kevin.loper@hcdatn.org](mailto:Kevin.loper@hcdatn.org)

On this, the 13<sup>th</sup> day of May 2024.

/s/Darrell J. O’Neal

---

Darrell J. O’Neal