

IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

**CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ARTICLE XIV
AS UNCONSTITUTIONALLY VAGUE**

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer for a ruling that Article XIV be dismissed as impermissibly vague. Respondent has a constitutional due process right to “be fully and plainly informed of the character and cause of the accusation[s]” against her. W. VA. CONST. art. 3, § 14. The right is transgressed when, as here, the charging instrument fails to put her “on fair notice of the charge against which . . . she must defend.” Syl. pt. 6, *State v. Wallace*, 205 W. Va. 155, 517 S.E.2d 20 (1999).

Although the word nowhere appears within its text, Article XIV appears to charge Respondent — together with three other justices — with “maladministration,” an impeachment ground listed, but not defined, in the State Constitution. *See* W. VA. CONST. Art. 4, § 9. The article alleges generally that the four justices “waste[d] state funds” in remodeling offices, coopting State-owned vehicles for personal use, installing “unneeded” computers in their residences, purchasing working lunches, and framing personal items. The article asserts that some of those expenditures could have been avoided had the Court timely adopted travel policies, individual tax-reporting directives, and home computer policies. Funds spent in those and other categories could have been reduced, according to the article, by more exacting oversight of State purchasing cards and property inventories, by keeping better records of State vehicles, and by curtailing individual

discretion with respect to purchases made by change order. The article charges that the alleged shortcomings in policy and administration constituted a failure by all the justices, “individually and collectively.”

Respondent, however, is not on trial together with the other three justices impeached by the House of Delegates. If Respondent is declared guilty of Article XIV at the conclusion of her individual proceeding before the Senate, she alone will be subject to removal. Assuming, strictly *arguendo*, that Article XIV spews forth a bombardment of facts that, taken together, might sufficiently capture the essential elements of “maladministration,” Respondent is yet entitled to know the specific acts or omissions the Board of Managers intends to prove, and the corresponding portions of the charge to which those acts or omissions are intended to relate. Although the filing of a bill of particulars may serve to cure an otherwise unconstitutionally vague charge, *see State v. Zain*, 207 W. Va. 54, 56, 528 S.E.2d 748, 750 (1999), Respondent’s formal request for elucidation in this case has been denied by the Presiding Officer.

It is likewise necessary for Respondent to be informed of the relevant timeframe underlying the charges and, depending on that temporal breadth, the theory of culpability. That is, does the Board of Managers seek to hold Respondent constitutionally responsible for administrative acts and omissions occurring when she was but a single voting justice of the Court, or is her potential exposure confined to the Court’s alleged acts and omissions during her tenure as Chief Justice in 2015? If the latter, then is it the Board of Managers’ position that Respondent’s title and office of Chief Justice render her vicariously liable for actions taken by majority vote, regardless of how she voted? Those questions suggest distinctively different means of preparing Respondent’s defense to Article XIV at trial, but trial is much too late for the answers to finally be revealed.

The risk of surprise and resultant prejudice is particularly palpable here. Without a more precise description of the charges and theories against her, Respondent has an inordinately short time to prepare to defend herself against a multiplicity of allegations, many of which, confusingly, were refuted on their face by the evidence before the House. For example, it is undisputed that Respondent “requested to develop written policies for P-card usage” while she was Chief Justice, though those efforts were frustrated by the Administrative Director. *See* Transcript of House Judiciary Committee Proceeding Regarding the Impeachment of West Virginia Supreme Court Justices (“Tr.”) at 1691-92, 1772-75. Similarly, Respondent as Chief Justice asked that an organizational chart be developed for the Court, *see id.* at 1764, repeatedly and forcefully requested the Administrative Director to pinpoint the source of the Court’s “spend-down” of its reappropriated funds, *see id.* 348-49, 1227-28, and questioned the spending on renovations to the Court’s leased space at City Center East, *see id.* 377-78. Respondent was exonerated of any wrongdoing with respect to the use of State vehicles, *see id.* 64, and the House expressly declined to impeach her for “unnecessary and lavish spending in the renovation and remodeling of her personal office.” *Id.* 1953.

Plainly, many of the allegations set forth in Article XIV do not apply to Respondent, and if proof of all is required to establish that she is guilty of “maladministration,” then the article should be dismissed against her on that basis alone. But if Respondent may be convicted merely on proof of *some* of the allegations, then she is entitled to know which ones will be material to the verdict, otherwise she will be constrained to expend valuable time and resources to defend against irrelevant, dubious accusations of wrongdoing. As Respondent has not been (and will not be) so informed, then Article XIV must be dismissed as to her, because she has been deprived of the opportunity to prepare an adequate defense. *See State ex rel. Day v. Silver*, 210 W. Va. 175, 180,

556 S.E.2d 820, 825 (2001) (indictment for larceny and destruction of property incurably void for vagueness, as defendant was “not told what property he is accused of stealing and destroying,” and thus did “not have sufficient information to prepare his defense”).

WHEREFORE, Respondent respectfully requests that the Presiding Officer grant this motion and rule that Article XIV be dismissed as unconstitutionally vague.

CHIEF JUSTICE MARGARET WORKMAN

By Counsel:



Benjamin L. Bailey (WVSB #200)

bbailey@baileyglasser.com

Steven R. Ruby (WVSB #10752)

sruby@baileyglasser.com

Raymond S. Franks II (WVSB #6523)

rfranks@baileyglasser.com

Holly J. Wilson (WVSB #13060)

hwilson@baileyglasser.com

BAILEY & GLASSER LLP

209 Capitol Street

Charleston, WV 25301

T: 304-345-6555

F: 304-342-1110

Counsel for Respondent

IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2018, a true and correct copy of the foregoing **CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ARTICLE XIV AS UNCONSTITUTIONALLY VAGUE** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:


Honorable John Shott
Room 418M, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Ray Hollen
Room 224E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Andrew Byrd
Room 151R, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Rodney Miller
Room 150R, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Geoff Foster
Room 214E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305



Benjamin L. Bailey (WVSB #200)
Steven R. Ruby (WVSB #10752)