

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA**

JASON KESSLER ET AL.,	:	Case No. 3:19-CV-44
	:	
Plaintiffs,	:	(Judge MOON)
	:	
v.	:	
	:	
CITY OF CHARLOTTESVILLE ET AL.,	:	<u>MOTION FOR RECUSAL</u>
	:	
Defendants.	:	
	:	
	:	

Now come Plaintiffs and move the Court to disqualify from further involvement in any “Unite the Right” related litigation law clerks Hutton Marshall and Joshua Lefebvre pursuant to 28 U.S.C. §455(a) and §455(b)(1).

A. Facts

Hutton Marshall

Mr. Marshall is a personal friend of one of the party plaintiffs in the Unite the Right related case Sines v. Kessler¹. This friendship exceeds the bounds of mere acquaintance or professional association. Specifically, Mr. Marshall is identified as a “best friend” of Ms. Elizabeth Sines on Marshall’s Facebook account.² Mr. Marshall and Ms. Sines are pictured on social media as members of the same social group for dog enthusiasts. Said group is not very large and implies a sufficient level of personal friendship outside of law school or other professional context to reasonably question the impartiality of Mr. Marshall.

¹ Elizabeth Sines, lead plaintiff in Sines et al. v Kessler et al. 3:17-cv-72 W.D. of Virginia.
² Plaintiff’s Exhibit 1

Joshua Lefebvre

Mr. Lefebvre is also a personal friend of Elizabeth Sines and appears in the same Facebook photo discussed above as Mr. Marshall. In addition, Mr. Lefebvre appears to be a fact witness to certain events relevant to “Unite the Right” related litigation. Specifically, Ms. Sines identified Mr. Lefebvre, in a law.virginia.edu news article³, as a person she spoke to immediately following her alleged involvement in and victimization at the Unite the Right event.

B. Disqualification is Required under §455(a)

28 USC §455(a) commands that “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” “What matters is not the reality of bias or prejudice, but its appearance” Liteky v. United States, 510 U.S. 540, 548. (1994). In the Fourth Circuit a “clerk's conflict of interest requires disqualification of [the] clerk not [the] judge.” U.S. v. Detemple, 162 F.3d 279, 286 at FN 2 (4th Cir. 1998). “[d]isqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial.” U.S. v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003). “[t]he proper test to be applied is whether another with knowledge of all of the circumstances might reasonably question impartiality.” Id.

Both Mr. Marshall and Mr. Lefebvre have personal involvement with Ms. Sines that exceeds the bounds of what is ordinarily permitted to members of the judicial ranks. Id. at 666. (observing that friendship with a witness did not require recusal when the friendship had

³ Plaintiff's Exhibit 2 at pgs 2 and 7

been attenuated by lack of contact for many years.) Here, the friendship is with a litigant not merely a witness and is active and ongoing, not attenuated.

C. Disqualification is Required under §455(b)(1)

Mr. Lefebvre appears likely to be a material witness in Unite the Right related litigation. Specifically, it appears he spoke to Elizabeth Sines immediately following her alleged victimization on August 12, 2017. As such Mr. Lefebvre is a material witness in the lead Unite the Right related case. Moreover, Mr. Marshall posted a picture to social media wherein he and Mr. Lefebvre are together in a non-legal setting and identified as “best friends” together with Elizabeth Sines. As such, it is likely that Mr. Marshall will be a material witness in Unite the Right related litigation as to his knowledge of the contents of his “best friends” Mr. Lefebvre and Ms. Sines’s communication regarding the factual basis of Ms. Sines’s allegations.

CONCLUSION

For the reasons stated, this Court must order the disqualification from any Unite the Right related litigation of the law clerks Hutton Marshall and Joshua Lefebvre.

Respectfully Submitted,

s/ James E. Kolenich PHV

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CERTIFICATE OF SERVICE

A true copy of the foregoing was served via the Court's CM/ECF system on March 23, 2020 as listed below:

All parties of record

No party requires or has requested service by other means

s/ James E. Kolenich PHV

James E. Kolenich (OH #77084)