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House Clerk's
Office

COMMONWEALTH OF KENTUCKY
KENTUCKY GENERAL ASSEMBLY
ACTION NO.

IN RE: Impeachments filed before the LRC's House Impeachment Committee

PETITIONERS' MOTION FOR RECUSAL OF IMPEACHMENT
COMMITTEE CHAIR

Come the Petitioners in the Goforth and Cameron impeachments and request the immediate recusal of Representative Jason Nemes, 33rd Kentucky House District Representative, who is currently serving as self-appointed "Chairperson" and spokesperson for the legislative Impeachment Committee formed by the Kentucky House of Representatives. This Motion is in accordance with the procedures of any administrative or committee or judicial proceeding and is served in accordance with Impeachment Committee Rules 11.

This is a "communication directed to the Chair" as permitted by Impeachment Committee Rule ("I.C.R.") 11, and therefore "shall become part of the record." Id. It is to be made public pursuant to I.C.R. 12(d).

Rep. Nemes should be disqualified just as any other judge or prosecutor who is biased against or has a relationship with those before him SCR 3.130(3-8) (c). In this Commonwealth, disqualification of a judge is governed by KRS 26A.020, which permits a party who does not believe he will receive a fair trial to file an objection. While this Body is not technically a Court, the same precepts of honesty and transparency must apply. This Motion, filed with the House Clerk, raises grave issues as to Nemes' bias and conflicts of interest. When such a challenge has been filed, the judge is without jurisdiction to proceed further in the matter until a final ruling on any bias, prejudice or impropriety is determined.

This House should adhere to the same fair and equitable procedures. Jason Nemes should immediately step down from the Committee while the allegations are investigated by an untainted Impeachment Committee.

The relevant facts supporting recusal are as follows:

ARTICLE I: RELATIONSHIP BETWEEN NEMES AND DEFENDANT
IN THE CAMERON PROCEEDING

Nemes is a well known friend and supporter of Attorney General Cameron. During the election in 2020, Nemes supported a Cameron for Attorney General YouTube advertisement, stating "this ad about my friend Daniel Cameron, is awesome." See: Exhibit A, appended hereto. On Nemes' facebook page he has a photograph of himself with Daniel Cameron, exhorting people to vote for Cameron. See: Exhibit B, appended. In the facebook post he claims that Cameron is "a man of impeccable integrity", and someone who will "take politics out

of the Attorney General's office and follow the law." As the Petition for Impeachment before this body shows that Cameron acted in a way that is the antithesis of this claim, it is clear that Nemes will not be able to make impartial decisions in the matters before the Impeachment Committee. For this reason, Nemes must recuse from his Chairpersonship and membership on the Impeachment Committee.

ARTICLE II: INCITEMENT OF VIOLENCE BY JASON NEMES

Jason Nemes has made false public statements calculated to foment and incite violence against medical workers, County Health Departments and their employees, and the Kentucky Public Health Commissioner, Dr. Steven Stack. See: "Vandals Leave COVID-19 Graffiti at Home of Kentucky Public Health Commissioner Steven Stack", Deb Yetter, Louisville Courier-Journal January 11, 2021.

In particular, Nemes has falsely stated in a television interview that the Governor, and those acting upon his authority, have deprived Kentucky's citizens of their legal and Constitutional rights:

"I think he has went too far [sic]. . . He was found to have violated the law a number of times, our Constitutional rights, as courts have found. I think he went too far."

See: "Kentucky House Creating Committee to Consider Impeaching Beshear" WKYT News, Jan. 11, 2021.

Although Nemes has frantically backtracked in other media interviews since making these disqualifying statements, he cannot "unring the bell." His bias and improper discussion of evidence has been broadcast into every Kentuckians living room, due solely to his own vanity and inability to conduct an impartial fact-finding mission.

This outburst by Jason Nemes constitutes a removable offense whether Nemes is considered a judge or a prosecutor in this impeachment matter. Any prosecutor or other public official responsible for the fair administration of justice is barred from openly attacking the supposed subject of an "impartial" investigation. Prosecutors are routinely censured by the Kentucky Supreme Court for exactly this conduct.

Rep. Nemes clearly has no understanding of, or respect for, the impeachment process. The House Impeachment Manual makes plain that his actions are highly inappropriate:

The removal of a public official from office through the process of impeachment is a grave matter, as it represents a repeal of the will of the people who have elected an individual to an office of public trust. Because it is a reversal of the inherent power of the people in a democratic society to choose those who govern, it is a power rarely exercised, and one which has fortunately been required in few instances in Kentucky history.

LRC Manual, Impeachment In Kentucky, Chapter 1, "The Nature of Impeachment" p. 1 (1991). Similar cautionary guidance is provided by the National Congress of State Legislators (NCSL), which states that "Impeachment is regarded as a power to be used only in extreme cases." <https://www.ncsl.org/research/about-state-legislatures/impeachment.aspx>.

Nemes has dishonored the House of Representatives by exposing essential state workers to danger simply to enhance his political standing. His actions are in defiance of the Constitutional norms and standards that allow our Commonwealth to function freely and fairly.

ARTICLE III: RELATIONSHIP BETWEEN NEMES AND PETITIONERS IN THE BESHEAR IMPEACHMENT FILING

Nemes has had a longstanding "facebook friend" status with three of the Petitioners. Nemes has privately and publicly discussed and encouraged multiple attacks on the Governor's Executive Orders and other safety measures and discussed how particular Executive Branch actions could be challenged legally and otherwise. It would be reasonable to believe that Nemes has either/or approved of the filing against Governor Andy Beshear, or suggested in public or on social media that an action should be filed.

Petitioners Clark, Wheatley and Cooperider were all facebook friends with Nemes at the time of the filing of the Petition. Once members of the public began discussing that fact, Clark and Wheatley's names were removed. Wheatley is still facebook friends with Jason Nemes' father, Mike Nemes, a State Senator who will be a member of that body addressing the report authored by the Impeachment Committee.

No other members of the Impeachment Committee have made public statements about the Governor's purported violations of law or public trust with regard to executive orders protecting the health and safety of Kentuckians, or have had a relationship with Petitioners before the Committee.

That relationship between the Petitioners and any member of the Committee is a cause for concern. To avoid the appearance of impropriety, Jason Nemes should recuse from participation.

ARTICLE IV: RELATIONSHIP BETWEEN NEMES AND REP. GOFORTH DEFENDANT IN THE GOFORTH IMPEACHMENT FILING

Both Rep. Nemes and Rep. Goforth are co-sponsors on House Bill 1, which directly attacks the Governor's actions with regard to the COVID-19 pandemic; House Bill 36, which strives to impede COVID or other necessary immunizations by state agencies. As the impeachment matter regarding Rep. Goforth is also before the Committee, and Goforth and Nemes have partnered on bills attacking the Governor's actions, this relationship is also fair reason to impute bias by Nemes towards one side of the issues in various pleadings before this Committee.

DISCUSSION OF APPLICABLE LAW

This motion is made now, even prior to the completion of the briefing schedule suggested by the Impeachment Committee, to prevent the taint of bias should Rep. Nemes inject his preformed belief as to the allegedly wrongful actions of the Governor, or his open and public misconduct into the proceedings, making the Committee's actions void or irrevocably damaged. The law provides that "a motion for recusal should be made immediately upon discovery of the facts upon which the disqualification rests." *Bailey v. Bailey*, 474 S.W.2d 389 (Ky. 1972). Failure to promptly notify the body that grounds for recusal exist creates the risk that such a demand may be considered waived. See, e.g. *Bussell v. Commonwealth*, 882 S.W.2d 111, 113 (Ky.1994).

Even if Nemes casts himself more as a "prosecutor" than a "judge" in his current role, the same principles apply. Under SCR15 3.130(3.8)(c), "Special responsibilities of a prosecutor," a prosecutor who is biased or may taint the proceedings must promptly recuse from the matter in which he is tasked with prosecutorial duties.

Ordinarily, a judge who has recused from a case loses jurisdiction in the matter. See *Wedding v. Lair*, 404 S.W.2d 451, 452-53 (Ky.1966). If Nemes refuses to voluntarily recuse, it is appropriate for Rep. Nemes to immediately step down from any meetings or actions in this matter until a decision on his recusal has been made by the House as a whole.

Recusal is found proper under Kentucky law in any case where, "the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial." *Dean v. Bondurant*, 193 S.W.3d 744 (Ky.2006). KRS 26A.015(2) requires recusal when a judge has "personal bias or prejudice concerning a party . . ." or "has knowledge of any other circumstances in which his impartiality might reasonably be questioned." See: KRS 26A.015(2)(a) and (e); also see SCR 4.300, Canon 3C(1) governing the standard for recusal of a judge for bias. Where, as here, there is a showing of facts "of a character calculated seriously to impair the judge's impartiality and sway his judgment", recusal is appropriate. *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky.2001).

The language of the federal statute governing disqualification, 28 U.S.C. § 455(a), is substantially similar to KRS 26A.015 and Canon of Judicial Ethics 3E(1), providing that, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." *Minks v. Commonwealth*, 427 S.W.3d 802, 807 (Ky. 2014)

While the record is not yet clear on whether Rep. Nemes guided the Petitioners to file an impeachment action against Governor Beshear, the petitioners were certainly friends or acquaintances of Rep. Nemes, the Petition is clearly not written by a lawperson and the petition contains reference to the same arguments and language used by Rep. Nemes to disparage the Governor's life-saving efforts. If Rep. Nemes past actions and decisions contributed to the filing of this matter, recusal is mandatory. See, e.g., *Sommers v. Commonwealth*, 843 S.W.2d 879 (Ky.1992), where a judge's prior findings led to the matter before the Court, requiring that judge to recuse.

CONCLUSION

For the foregoing reasons, Rep. Jason Nemes must immediately voluntarily recuse himself from the Impeachment Committee. If he refuses to do so, the Committee must require him to step down from his position and not participate in any meetings or discussions involving impeachment until such time as the Body can make a full review and determination of the issues raised herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via email on the following: House Clerk; Clerk of the Impeachment Committee, Speaker of the House, House Minority Leader, this the 25th day of January, 2021.

Anna Whites

Anna Whites



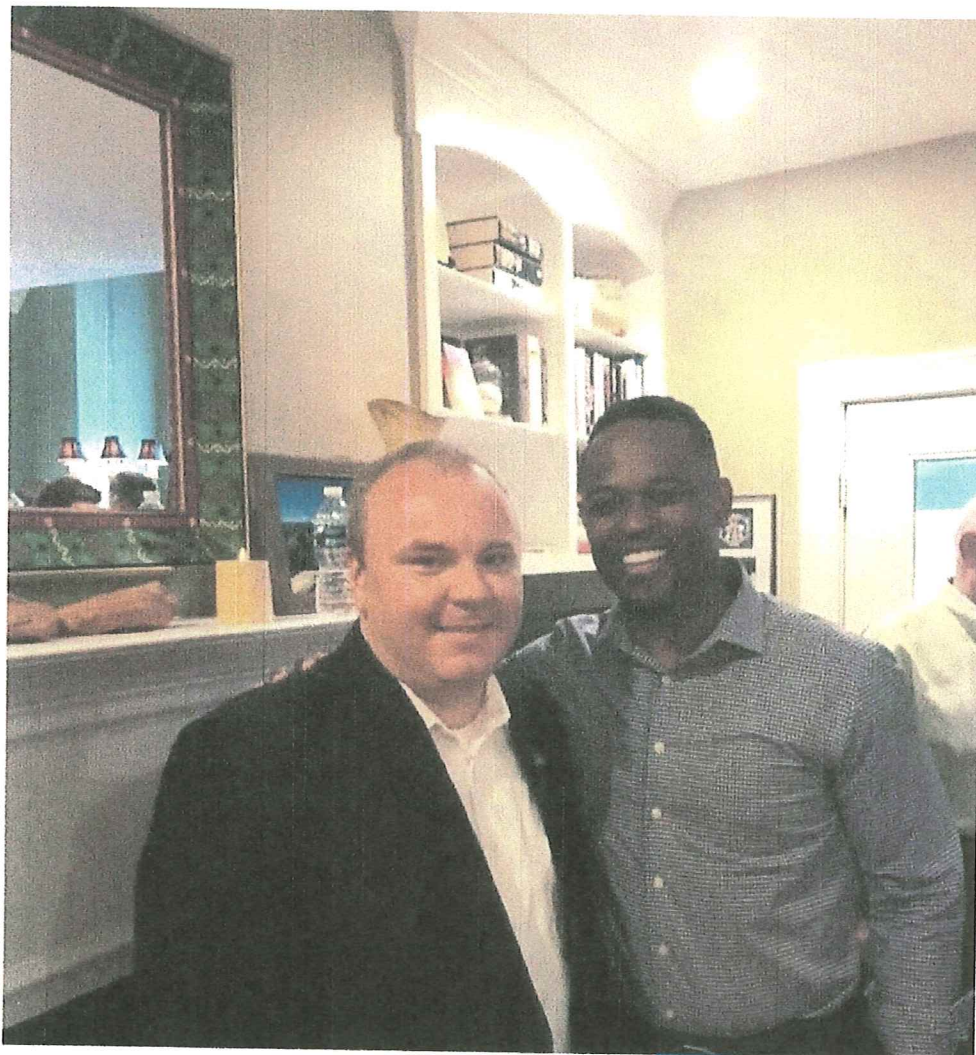
Jason Nemes is with Daniel Jay Cameron.



May 6, 2019 · 🌐

To my Republican friends who will vote in the primary two weeks from tomorrow, please join me in supporting [Daniel Jay Cameron](#) for Attorney General.

Daniel is a man of impeccable integrity who will make the best Attorney General we've had in decades. Daniel will take politics out of the Attorney General's office and follow the law rather than use the office to run for higher office. I unequivocally support Daniel Cameron to be our next Attorney General in Kentucky.





Jason Nemes

Oct 1, 2019 · 🌐



This ad about my friend, Daniel Cameron, is awesome. Cameron is the right man for the job on the merits, but it is also inspirational to see this man stand in the shadow of our greatest President and Kentuckian, who did so much for the cause of justice and liberty.



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