IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

POWHATAN COUNTY SCHOOL BOARD

Plaintiff,

v. **Civil Action No. 3:24-cv-874**

TODD SKINGER

and

KANDISE LUCAS

Defendants.

RESPONSE IN OPPOSITION TO DEFENDANT KANDISE LUCAS'S "MOTION TO RECUSE JUDGE ROBERT PAYNE, DISMISS SLAPP SUIT, AND RESCIND THE PERMANENT FEDERAL COURT BAN" (DKT. NO. 9)

Plaintiff Powhatan County School Board ("Plaintiff" or "PCSB") hereby submits this Response in Opposition to Defendant Kandise Lucas's "Motion to Recuse Judge Robert Payne, Dismiss SLAPP Suit, and Rescind the Permanent Federal Court Ban." Dkt. No. 9.[1]

PCSB responds only to parts of Lucas's "Motion." Specifically, PCSB declines to respond to Lucas's Motion to the extent it seeks to "rescind the permanent federal court ban." It is PCSB's position that whatever sanctions or prohibitions this Court has previously imposed on Lucas, those issues were handled in another matter that did not involve PCSB. That order has long since been final and that matter has been closed. If the Court nevertheless requests further briefing on this

[1] This filing appears to be identical to other documents Lucas submitted in a similar case. *See PCSB v. Lucas*, Case No. 3:24cv216, Dkt. Nos. 49, 50, 51. PCSB's response in the companion case is substantively the same (but not identical) to the response filed in this case.

topic from PCSB, PCSB respectfully asks this Court to enter an order directing such briefing, and PCSB will promptly comply with such a request.

PCSB opposes Lucas's Motion to the extent it seeks recusal of the assigned judge because Lucas's Motion fails to satisfy the legal requirements for judicial recusal. PCSB further opposes Lucas's Motion to the extent it seeks to dismiss PCSB's Complaint as a "SLAPP suit."

Introduction

Defendants Kandise Lucas ("Lucas") and Todd Skinger ("Skinger") previously filed what purports to be their "Answer to Plaintiff's Complaint and Brief in Support of Motion to Dismiss." Dkt. No. 7. PCSB responded to that filing and opposed any attempt to dismiss the case for the reasons outlined in its Motion to Strike Brief in Support of Motion to Dismiss, or Alternatively Response in Opposition to Defendants' Purported Motion to Dismiss. *See* Dkt. No. 8. Now, three weeks after filing an answer (and a brief in support of a motion to dismiss), Defendant Lucas has filed what she apparently intends to be a second Motion to Dismiss. Not only is this filing improper because it violates Rule 12(g)(2) of the Federal Rules of Civil Procedure, Defendant Lucas's Motion to Dismiss a "SLAPP suit" further fails because the state law upon which she relies simply does not apply in this case. Finally, Lucas has waived any ability to dismiss PCSB's claims on the basis of Va Code § 8.01-223.2 because she failed to raise such arguments in her first responsive pleading.

As for Lucas's Motion to Recuse the presiding judge in this case, the Motion utterly fails to address the relevant legal and factual standards that apply to a motion for recusal, and instead simply asserts baseless and irrelevant accusations about this Court and the assigned judge. The simple fact that the presiding judge has ruled against Lucas in the past is not sufficient basis upon

which to demand his recusal. And without sufficient factual information to support her inflammatory allegations, her Motion should be summarily denied.

Legal Argument

A. Lucas's Motion Seeking Recusal of the Presiding Judge Should be Denied

"Judicial recusals are governed by a framework of interlocking statutes." *McDaniel v. Green Dot Corp.*, No. 3:22cv109, 2022 WL 1159700, at *2 (W.D.N.C. April 18, 2022) (citing 28 U.S.C. § 455(a) and § 455(b)). Under § 455(a), a judge has a duty to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section 455(b) outlines specific instances which may trigger disqualification, with subsection (1) appearing to be the most relevant to Lucas's allegations here, requiring that a judge disqualify himself "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." As for allegations of bias, the bias or prejudice "must stem from an extrajudicial source, and result in an opinion on the merits [of a case] on some basis other than what the judge learned from his participation in the case." *Everett v. U.S. Army Corps of Engineers*, 872 F.2d 417, 417 n.1 (4th Cir. 1989) (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966).

When a party to a case believes that a judge should recuse himself, that party must "make[] a timely and sufficient affidavit" (28 U.S.C. § 144) that "state[s] with particularity 'the facts and the reasons for the belief that bias or prejudice exists.'" *McDaniel*, 2022 WL 1159700, at *2 (internal citations omitted). "Assertions merely of a conclusionary nature are not enough, nor are opinions and rumors." *United States v. Farkas*, 669 F. App'x 122, 123 (4th Cir. 2016). Importantly, the court's "prior adverse judicial rulings and the [party's] conclusory claims of animus and bias

do not provide a basis for recusal." *McDaniel*, 2022 WL 1159700, at *2. Simply stated, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. U.S.*, 510 U.S. 540, 541. "[O]pinions formed by the judge on the basis of facts introduced or events occurring during current or prior proceedings are not grounds for a recusal motion unless they display" a "deep-seated favoritism or antagonism as would make fair judgment impossible." *Id.*. And: "a presiding judge is not . . . required to recuse himself simply because of 'unsupported, irrational or highly tenuous speculation.'" *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003) (internal quotations and citations omitted). And yet all Lucas has provided in support of her motion to recuse the presiding judge in this case is rumor, conclusions, her opinions, and her displeasure with this Court's prior rulings. None of this is sufficient and Lucas's Motion should be denied outright. Out of the 81 pages Lucas filed in support of whatever relief she seeks from this Court, she has included absolutely no relevant information that would support the recusal of the presiding judge in this case. Lucas references a Wall Street Journal article (M. at 71)[2] concerning the presiding judge's ownership of stock in Walmart and Capital One. But this case has nothing to do with either of those corporations and this allegation is irrelevant. Lucas then somehow links these allegations with racial bias against Black litigants and accuses the judge of "engaging in what is clearly cruel and unusual punishment against Dr. Lucas." *Id.* The remainder of Lucas's Motion is similarly baseless, purportedly citing to judicial canons generally (M. at 72-73) and the Court's prior imposition of sanctions against her in a prior proceeding. *Id.* at 32-33; 73. None of this supports any request to recuse the presiding judge in this case. Any request to recuse the presiding judge in this case should be summarily denied.

B. Lucas's Motion to Dismiss What she Terms a "SLAPP Suit" Should be Denied

[2] Citations in this Response are to the ECF-assigned page numbers in the document referenced

Other portions of Lucas's Motion seek to dismiss this case against her because Lucas incorrectly concludes that this case is a "SLAPP Suit" or "Strategic Lawsuits Against Public Participation." M. at 3. Lucas cites Virginia's § 8.01-223.2 in support of this request. *Id*. at 12. While Lucas states that this provision "allows individuals who are sued for exercising their free speech rights to file a **special motion to dismiss** [emphasis in original] the lawsuit, provided that the speech was made in connection with a public issue, such as government policy, community issues, or matters of public concern." *Id*. There are so many problems with Lucas's position.[3] First of all, Va. Code § 8.01-223.2 says absolutely nothing about a "special motion to dismiss." What it does is provide "immunity from ***tort*** liability if the ***tort*** claim is based on" statements made in certain specific circumstances. Va. Code § 8.01-223.2 (emphasis added). As noted previously, Lucas has already filed a responsive pleading in this case, and her attempt to file yet another one is procedurally improper. This state law provision does not grant her permission to violate the Federal Rules of Civil Procedure. But that is not the primary problem with Lucas's reliance on this statute. This is simply not a tort case. PCSB does not seek to impose "tort liability" on Lucas for

[3] Lucas purportedly cites two cases in support of her position: *Moses v. Pomeroy*, 1999 U.S. Dist. LEXIS 5220 (E.D. Va. 1999) and *Kovacs v. Harp*, 1998 U.S. App. LEXIS 11525 (4th Cir. 1998). *See* M. at 75. Though Lucas states that these cases involved the First Amendment, the First Amendment is not at issue in this case. Moreover, undersigned counsel for PCSB has been unable – after diligent searches – to find any cases matching these citations at all. Lucas also cites (*Kerrigan v. Thomas*, 404 F. Supp. 3d 700 (E.D. Va. 2019)) (see M. at 76). But when one searches "404 F. Supp. 3d 700" in a widely available commercial legal research database, the case that is found within the referenced reporter is *Ferraro v. New York City Department of Education*, 404 F. Supp. 3d 691 (E.D.N.Y. 2019), a case that was pending in New York. Lucas claims that, in the "Kerrigan" case, the "court granted the defendant's motion to dismiss under the Virginia Anti-SLAPP statute, citing that the claims were based on public speech and therefore should be" (the quote ends abruptly). M. 76. *Ferraro* was actually a case filed by a former teacher concerning employment disability discrimination and New York statutes. It has nothing to do with Virginia. A diligent search for "Kerrigan v. Thomas" resulted in no case law similar to that referenced by Lucas. While it is possible that these cases exist and the undersigned has simply been unable to locate them, because they could not be located, PCSB is unable to respond directly to the arguments Lucas makes by reference to these cases.

"statements" she made under any of the circumstances outlined in the statute. This is a case seeking the recovery of fees pursuant to 20 U.S.C. § 1415(i)(3)(B)(i)(II)&(III) and requesting that this Court impose a pre-filing injunction to stop Defendants Lucas and Skinger from filing repetitive and baseless IDEA due process complaints. These are not tort claims. Section 8.01-223.2 of Virginia's code does not apply to this case and Lucas's attempt to use it to obtain a dismissal is procedurally and substantively deficient. Her Motion to Dismiss the case against her should be denied.

Conclusion

For the reasons outlined herein, PCSB respectfully asks this Court to deny Lucas's Motion to the extent it seeks to force the recusal of the presiding judge of this case, and to the extent it seeks to dismiss the case PCSB has brought against her. Her Motion seeking recusal is plainly deficient and based entirely on conclusions and adverse judicial decisions in another matter and is therefore baseless. Her Motion to Dismiss is not permitted by the Federal Rules because she has already filed a responsive pleading in this case, and even if it were procedurally appropriate, it fails substantively because the state law provision Lucas relies upon to support her request for dismissal does not apply to the facts of this case. For these reasons, PCSB respectfully asks this Court to deny Lucas the relief she seeks.

Respectfully submitted,

POWHATAN COUNTY SCHOOL BOARD

By Counsel

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CERTIFICATE

I hereby certify that I will transmit by U.S. Mail, postage prepaid, the foregoing to the following non-CM/ECF participants on this the 10th day of February, 2025:

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