
TABLE OF APPENDICES

Appendix A **Unpublished** Opinion of the Fourth Circuit Court of Appeals, No. 21-2046 *Board of Supervisors of Alleghany County v. Donnie T. Kern* (January 24, 2022).....Pet. App. 1

Appendix B ORDER Temporary Stay of Mandate of the Fourth Circuit Court of Appeals, No. 21-2046 *Board of Supervisors of Alleghany County v. Donnie T. Kern* (February 7, 2022).....Pet. App. 4

Appendix C ORDER Granting Appellant’s Motion to Voluntarily Dismiss Petition for Rehearing and Rehearing *En Banc* of the Fourth Circuit Court of Appeals, No. 21-2046 *Board of Supervisors of Alleghany County v. Donnie T. Kern* (May 31, 2022).....Pet. App. 5

Appendix D ORDER of the District Court for the Western District of Virginia, Roanoke Division, No. 7:21-cv-00471 *Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern* (September 13, 2021).....Pet. App. 6

Appendix E U.S. Constitution Amendment I	
.....	Pet. App. 9
Appendix F U.S. Constitution Amendment V	
.....	Pet. App. 10
Appendix G U.S. Constitution Amendment VIII	
.....	Pet. App. 11
Appendix H U.S. Constitution Amendment XIV §1	
.....	Pet. App. 12
Appendix I Civil Rights Act of 1866	
Section 1.....	Pet. App. 13
Section 2.....	Pet. App. 13
Section 3.....	Pet. App. 14
Appendix J Civil Rights Act of 1964	
Section 201(a).....	Pet. App. 17
Section 202.....	Pet. App. 18
Section 203.....	Pet. App. 18
Section 706(f).....	Pet. App. 18
Section 706(g).....	Pet. App. 19
Section 901.....	Pet. App. 20
Appendix K Rehabilitation Act of 1973	
Section 504.....	Pet. App. 21
Section 505.....	Pet. App. 23

Appendix L Americans with Disabilities Act of 1990	
Section 201.....	Pet. App. 25
Section 202.....	Pet. App. 25
Section 203.....	Pet. App. 26
Appendix M 42 U.S.C. §1983	
.....	Pet. App. 27
Appendix N 42 U.S.C. §1985	
.....	Pet. App. 28
Appendix O 28 U.S.C. §1443	
.....	Pet. App. 31
Appendix P 28 U.S.C. §1446	
.....	Pet. App. 32
Appendix Q 28 U.S.C. §1447	
.....	Pet. App. 37
Appendix R Virginia Code §24.2-233	
.....	Pet. App. 39
Appendix S Virginia Code §24.2-234	
.....	Pet. App. 41
Appendix T Virginia Code §49-1	
.....	Pet. App. 42
Appendix U Virginia Code §1-240.1	
.....	Pet. App. 43
Appendix V Federal Rules of Civil Procedure	
Rule 52(a)(6).....	Pet. App. 44

Appendix W Judiciary Act of September 24 1789

Section 19..... Pet. App. 46

Pet.App.1

APPENDIX A

FILED: January 24,2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2046
(7:21-cv-00471-TTC)

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY

Plaintiff - Appellee

v.

DONNIE T. KERN

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

Pet.App.2
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2046

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY,

Plaintiff - Appellee,

v.

DONNIE T. KERN,

Defendant - Appellant.

Appeal from the United States District Court for the
Western District of Virginia, at Roanoke. Thomas T.
Cullen, District Judge. (7:21-cv-00471-TTC)

Submitted: January 20, 2022

Decided: January 24, 2022

Before WILKINSON, DIAZ, and THACKER, Circuit
Judges.

Dismissed by unpublished per curiam opinion.

Donnie T. Kern, Appellant Pro Se. Travis Stuart
Andrews, Jim H. Guynn, Jr., GUYNN WADDELL
CARROLL & LOCKABY, P.C., Salem, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Donnie T. Kem seeks to appeal the district court's order remanding the case to the state court from which it was removed. The district court remanded the case because it lacked subject matter jurisdiction. Generally, an order remanding a case to the state court from which it was removed is not reviewable on appeal. 28 U.S.C. § 1447(d); *see* 28 U.S.C. § 1442 (exception for cases involving “[federal officers or agencies sued or prosecuted]”); 28 U.S.C. § 1443 (exception for cases involving “[civil rights cases]”). The Supreme Court has instructed that “§ 1447(d) must be read *in pari materia* with [28 U.S.C.] § 1447(c), so that only remands based on grounds specified in § 1447(c) are immune from review under § 1447(d).” *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124,127 (1995); *see Doe v. Blair*, 819 F.3d 64,66-67 (4th Cir. 2016) (“[A] district court may remand a case *sua sponte* for lack of subject matter jurisdiction at any time, and such an order is not reviewable.”) (citations omitted)).

The district court remanded the case because it lacked subject matter jurisdiction. We, therefore, are without jurisdiction to review the remand order. *See Doe*, 819 F.3d at 66. Accordingly, we dismiss the appeal for lack of jurisdiction. We deny Kern's motion to accelerate case processing, to schedule oral argument, and for injunctive or other relief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Pet.App.4

APPENDIX B

FILED: February 7,2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2046
(7:21-cv-00471-TTC)

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY

Plaintiff - Appellee

v.

DONNIE T. KERN

Defendant – Appellant

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing *en banc* stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

Pet.App.5

APPENDIX C

FILED: May 31, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2046
(7:21-cv-00471-TTC)

BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY

Plaintiff - Appellee

v.

DONNIE T. KERN

Defendant – Appellant

ORDER

Upon consideration of the motion to voluntarily
dismiss the petition for rehearing and rehearing en
banc the, the court grants the motion.

For the Court--By Direction

/s/Patricia S. Connor, Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

BOARD OF
SUPERVISORS OF
ALLEGHANY COUNTY,

Plaintiff,

Civil Action No. 7:21-cv-00471

v.

ORDER

DONNIE T.A.M. KERN,

Defendant.

By: Hon. Thomas T. Cullen
United States District Judge

Defendant Donnie T.A.M. Kern filed a notice of removal in this case on August 24, 2021, which this court docketed under case number, 7:21-cv-00448. On September 7, 2021, finding no basis for federal subject-matter jurisdiction, this court remanded the case to the Circuit Court of Alleghany County. (Case No. 7:21-cv-00448, ECF No. 6.) This matter is now before the court on Kern's amended notice of removal. (ECF No. 1.)

Plaintiff Board of Supervisors of Alleghany County ("the Board") brought this lawsuit in the Circuit Court of Alleghany County under Virginia Code § 24.2-234, seeking to remove Kern as a member of the Alleghany County School Board.

Pet.App.7

Kern's amended notice of removal asserts the same grounds for federal subject-matter jurisdiction as his prior notice of removal. Kern alleges that the Board's petition for his removal violated "Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, U.S. Constitution Amendment I, U.S. Constitution Amendment VIII, Constitution Amendment XIV, 42 U.S.C. § 1983 [and] § 1985." (ECF No. 1, at 3.)

In support of his assertion that this court has jurisdiction, Kern references a case removed to this court in 2007, *Jackson v. Alleghany County*, No. 7:07cv00417, 2009 WL 2355268 (W.D. Va. July 30, 2009). In that case, Plaintiff Jeanne Jackson filed a lawsuit against the Alleghany County Board of Supervisors in circuit court alleging the Board violated her constitutional rights when it terminated her from her position in the Office of the Alleghany County Administrator. *Id.* at *1. The Board removed the case to this court where it eventually prevailed on summary judgment. *Id.*

Notably, in that case, Jackson was the *plaintiff* filing her own lawsuit against the Board alleging violations of federal law. The disputed federal questions in that case appeared on "the face of the plaintiff's properly pleaded complaint." *See Verizon Md., Inc. v. Global NAPS, Inc.*, 377 F.3d 355, 363 (4th Cir. 2004). Based on these federal claims on the face of her complaint, Jackson could have originally filed suit in federal court. *See Yarnevich v. Brink's, Inc.*, 102 F.3d 753, 754 (4th Cir. 1996) (citing 28 U.S.C. § 1441) ("A defendant may remove any action from a state court to a federal court if the action

Pet.App.8

could have originally been brought in federal court.”)

In contrast, Kern is the *defendant* in the present case. The Board filed this lawsuit against him in circuit court based solely on a state-law statute, Virginia Code § 24.2-234. No federal questions are presented in the complaint. As discussed in the court’s prior order, Kern and the Board are both citizens of Virginia, so diversity jurisdiction is not present. *See* 28 U.S.C. § 1332(a)(1). In sum, no basis for federal subject-matter jurisdiction appears on the face of the Board’s properly pleaded complaint, and the Board could not have originally brought that action in federal court. Kern cannot create federal question jurisdiction with his notice of removal simply by raising a federal counterclaim. *See Holmes Grp., Inc. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 831 (2002) (“[A] counterclaim—which appears as part of the defendant’s answer, not as part of the plaintiff’s complaint—cannot serve as the basis for [federal question] jurisdiction.”)

“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). For these reasons, the court finds that it lacks subject matter jurisdiction, and must remand the case once again. It is hereby ORDERED that this matter is REMANDED to the Circuit Court of Alleghany County for all future proceedings. The Clerk is directed to forward a copy of this Order to all counsel of record.

ENTERED this 13th day of September, 2021.

/s/ Thomas T. Cullen

APPENDIX E

U.S. Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

COURTESY:

<https://constitution.congress.gov/constitution/amendment-1/>

APPENDIX F

U.S. Constitution Amendment V

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

COURTESY:

<https://constitution.congress.gov/constitution/amendment-5/>

APPENDIX G

U.S. Constitution Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

COURTESY:

<https://constitution.congress.gov/constitution/amendment-8/>

APPENDIX H

U.S. Constitution Amendment XIV Section 1

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

COURTESY:

<https://constitution.congress.gov/constitution/amendment-14/>

APPENDIX I

Civil Rights Act of 1866

Section 1 to Section 3

CHAP. XXXI.—An Act to protect all Persons in the United States in their

Civil Rights, and furnish the Means of their Vindication. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Sec. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or

Pet.App.14

penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Sec. 3. And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "Act

Pet.App.15

relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.

SCHUYLER COLFAX, Speaker of the House of Representatives

LA FAYETTE S. FOSTER, President of the Senate, pro tempore.

In the Senate of the United States

April 6, 1866.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," with his objections thereto, the Senate proceeded, in pursuance of the Constitution, to

Pet.App.16

reconsider the same; and, Resolved, That the said bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest:

J.W. Forney, Secretary of the Senate.

In the House of Representatives U.S.

April 9, 1866.

The House of Representatives having proceeded, in pursuance of the Constitution, to reconsider the bill entitled, "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," returned to the Senate by the President of the United States, with his objections, and sent by the Senate to the House of Representatives, with the message of the President returning the bill: Resolved, That the bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

Edward McPherson, Clerk,

by Clinton Lloyd, Chief Clerk.

COURTESY:

<https://loveman.sdsu.edu/docs/1866FirstCivilRightsAct.pdf>

APPENDIX J

Civil Rights Act of 1964

Title II Section 201 to Section 203

Title VII Section 706 (f) and (g),

Title IX Section 901

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

**TITLE II--INJUNCTIVE RELIEF AGAINST
DISCRIMINATION IN PLACES OF PUBLIC
ACCOMMODATION**

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Pet.App.18

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

TITLE VII--EQUAL EMPLOYMENT
OPPORTUNITY- PREVENTION OF UNLAWFUL
EMPLOYMENT PRACTICES

SEC 706

f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district,

Pet.App.19

such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

**TITLE IX--INTERVENTION AND PROCEDURE
AFTER REMOVAL IN CIVIL RIGHTS CASES**

Pet.App.20

SEC. 901. Title 28 of the United States Code, section 1447(d), is amended to read as follows:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

COURTESY: <https://www.archives.gov/milestone-documents/civil-rights-act>

APPENDIX K

Rehabilitation Act of 1973

Section 504 and Section 505

Nondiscrimination Under Federal Grants and Programs

SEC. 504. (a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

Pet.App.22

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education;
or

(B) a local educational agency (as defined in section 8101 of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this sub section shall be construed with reference to the regulations existing on the date of the enactment of this subsection.

(d) The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

As Amended Through P.L. 114-95, Enacted December 10, 2015 [29 U.S.C. 794a]

Remedies and Attorneys' Fees

SEC. 505. 14 (a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 US.C. 2000e–16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e–5 (f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 501 of this Act, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a

Pet.App.24

court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act.

(b) In any action or proceeding to enforce or charge a violation of a provision of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. [29 U.S.C. 794a]

COURTESY:

<https://www2.ed.gov/policy/speced/leg/rehab/rehabilitation-act-of-1973-amended-by-wioa.pdf>

APPENDIX L

Americans with Disabilities Act of 1990

Section 201, Section 202, Section 203

SUBTITLE II—PUBLIC SERVICES

**Subtitle A—Prohibition Against Discrimination and
Other Generally Applicable Provisions**

SEC. 201. DEFINITION.

As used in this title:

(1) **PUBLIC ENTITY.**—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) **QUALIFIED INDIVIDUAL WITH A DISABILITY.**—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202. DISCRIMINATION. 42 USC 12132.

Pet.App.26

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT. 42 USC 12133.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

COURTESY: <https://www.congress.gov/bill/101st-congress/senate-bill/933/text>

APPENDIX M

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

COURTESY:

<https://www.law.cornell.edu/uscode/text/42/1983>

APPENDIX N

42 U.S.C. §1985

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of

impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the

Pet.App.30

recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

COURTESY:

<https://www.law.cornell.edu/uscode/text/42/1985>

APPENDIX O

28 U.S.C. §1443

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law preventing officer from performing duties

COURTESY:

<https://www.law.cornell.edu/uscode/text/28/1443>

APPENDIX P

28 U.S.C. §1446

(a) Generally.—

A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally.—

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)

(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading

or summons described in paragraph (1) to file the notice of removal.

(C)If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3)Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c)Requirements; Removal Based on Diversity of Citizenship.—

(1)A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2)If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A)the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i)nonmonetary relief; or

Pet.App.34

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)

(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to Adverse Parties and State Court.—

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 Proceeding.—

With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g) [1] Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

(June 25, 1948, ch. 646, 62 Stat. 939; May 24, 1949, ch. 139, § 83, 63 Stat. 101; Pub. L. 89–215, Sept. 29, 1965, 79 Stat. 887; Pub. L. 95–78, § 3, July 30, 1977, 91 Stat. 321; Pub. L. 100–702, title X, § 1016(b), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 102–198, § 10(a), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 103–465, title III, § 321(b)(2), Dec. 8, 1994, 108 Stat. 4946; Pub. L. 104–317, title VI, § 603, Oct. 19, 1996, 110 Stat. 3857; Pub. L. 112–51, § 2(c), Nov. 9, 2011, 125 Stat. 545; Pub. L. 112–63, title I, §§ 103(b), 104, Dec. 7, 2011, 125 Stat. 760, 762.)

Pet.App.36

COURTESY:

<https://www.law.cornell.edu/uscode/text/28/1446>

APPENDIX Q

28 U.S.C. §1447

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

Pet.App.38

(e)If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

(June 25, 1948, ch. 646, 62 Stat. 939; May 24, 1949, ch. 139, § 84, 63 Stat. 102; Pub. L. 88-352, title IX, § 901, July 2, 1964, 78 Stat. 266; Pub. L. 100-702, title X, § 1016(c), Nov. 19, 1988, 102 Stat. 4670; Pub. L. 102-198, § 10(b), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 104-219, § 1, Oct. 1, 1996, 110 Stat. 3022; Pub. L. 112-51, § 2(d), Nov. 9, 2011, 125 Stat. 546.

COURTESY:

<https://www.law.cornell.edu/uscode/text/28/1447>

APPENDIX R

Virginia Code §24.2-233

§24.2-233. (Effective until January 1, 2024) Removal of elected and certain appointed officers by courts.

Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office;
2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:
 - a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance or marijuana;
 - b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia; or
 - c. Possession of any controlled substance or marijuana and such conviction under subdivision a, b, or c has a material adverse effect upon the conduct of such office;
3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when

Pet.App.40

the conviction has a material adverse effect upon the conduct of such office; or

4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct of such office.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds.

Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be subsequently subject to the provisions of this section for the same criminal offense.

1975, cc. 515, 595, § 24.1-79.5; 1989, c. 470; 1993, c. 641; 2002, cc. 588, 623; 2011, cc. 384, 410; 2014, cc. 566, 674, 719.

COURTESY:

<https://law.lis.virginia.gov/vacode/title24.2/chapter2/section24.2-233/>

APPENDIX S

Virginia Code §24.2-234

§24.2-234. Removal of officer appointed for a term certain.

Any officer appointed to an office for a term established by law may be removed from office, under the provisions of § 24.2-233, upon a petition filed with the circuit court in whose jurisdiction the officer resides signed by the person or a majority of the members of the authority who appointed him, if the appointing person or authority is not given the unqualified power of removal.

The circuit court also shall proceed pursuant to § 24.2-235 for the removal of a member of a local electoral board or general registrar upon a petition signed by a majority of the members of the State Board of Elections as provided in § 24.2-103.

1975, cc. 515, 595, § 24.1-79.6; 1993, c. 641; 2004, cc. 27, 391.24.2-234.

COURTESY:

<https://law.lis.virginia.gov/vacode/title24.2/chapter2/section24.2-234/#:~:text=Any%20officer%20appointed%20to%20an,appointed%20him%2C%20if%20the%20appointing>

APPENDIX T

Virginia Code §49-1

§ 49-1. Form of general oath required of officers.

Every person before entering upon the discharge of any function as an officer of this Commonwealth shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as _____ according to the best of my ability, (so help me God)."

Any person reappointed to any office filled by gubernatorial appointment for a subsequent term to begin immediately upon expiration of an existing term shall not be required to renew the oath set out in this section; however, the original oath taken shall continue in effect with respect to the subsequent term.

Const., § 34; Code 1919, § 269; 1936, p. 49; 1971, Ex. Sess., c. 16; 1980, c. 320; 1988, c. 255.

COURTESY:

<https://law.lis.virginia.gov/vacode/title49/chapter1/section49-1/>

APPENDIX U

Virginia Code §1-240.1

§ 1-240.1. Rights of parents.

A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child.

2013, cc. 668, 678.

COURTESY:

<https://law.lis.virginia.gov/vacode/title1/chapter2.1/section1-240.1/>

APPENDIX V

Federal Rules of Civil Procedure 52

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58

(2) For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) Effect of a Master's Findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) Setting Aside the Findings. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing

Pet.App.45

court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

COURTESY:

https://www.law.cornell.edu/rules/frcp/rule_52

APPENDIX W

Judiciary Act; September 24 1789, 1 Stat. 73

Section 19

And be it further enacted, That it shall be the duty of circuit courts, in causes in equity and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the court.

COURTESY:

https://avalon.law.yale.edu/18th_century/judiciary_act.asp