

App. No:

In The Supreme Court of the United States

***DONNIE T.A.M. KERN,
PETITIONER***

v.

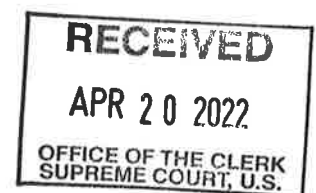
***ALLEGHANY COUNTY BOARD OF SUPERVISORS,
RESPONDENT***

**[EMERGENCY]-APPLICATION FOR AN EXTENSION OF TIME TO
FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT &
OTHER**

**Case Number 21-2046
Honorable J. Harvie Wilkinson III
Honorable Albert Diaz
Honorable Stephanie Dawn Thacker**

**Donnie T.A.M. Kern, MSA, EA
School Board Member, Clifton Forge West District
Petitioner, Pro Se
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April 18 2022



CORPORATE DISCLOSURE STATEMENT

The Petitioner is not a publicly held corporation nor is the Petitioner owned by a publicly held corporation.

PARTIES TO THE PROCEEDING

I. Petitioner is Donnie T.A.M. Kern, MSA, EA via Pro Se is the current appointed member of the Alleghany County School Board representing the Clifton Forge West District. The Petitioner was an Intern for the Honorable U.S. Congressman Rick Boucher; a humble Congressman who always rallied staff to “do whatever it takes to help” constituents across the 9th Congressional District of Virginia. The Petitioner during his junior year of college ran for the Virginia General Assembly advocating for Special Education services for students with disabilities. The Petitioner was a candidate for Alleghany County Treasurer at the age of 29 laying a foundation of business efficiency improvements in the Treasurer’s office. The Petitioner is a graduate of Radford University, and Liberty University and was inducted into three honor societies, the National Deans List, Who’s Who Among Students in American Universities and Colleges and was nominated by Radford University in 2005 for the Rhodes Scholar program. The Petitioner holds a Master of Science degree in Accounting with highest distinction, an Enrolled Agent credential from the United States Department of the Treasury after passing three comprehensive exams in a single attempt. The Petitioner was commissioned by Virginia Governor Ralph Northam as a public Notary.

The Petitioner began studying Accounting at the age of 16 at a career and technical center in which one of his most inspiring teachers asserted that he should be an Accountant. The Petitioner, at the time; a stubborn young man chose to dedicate over a decade of career service to the non-profit sector serving multiple non-profit organizations like the Young Men's Christian Association, Boy Scouts of America, and the Virginia Community College System living a meager lifestyle while raising a family and at times dependent on social assistance. The Petitioner grew up with a single father who inherited a 100% service-connected disability due to his sacrifice to the Country. Henceforth the Petitioner was raised by multiple families in the West District village located in the Town of Clifton Forge; thus having been nurtured and cared for by an African American family, among other things the Petitioner grew passionate about social injustice and civil rights advocacy. The Petitioner later in his adult years was diagnosed with Attention Deficit Disorder (ADD). The Petitioner having never been assessed during his childhood for educational accommodations and having at one point in college becoming dependent on over-the-counter stimulants to accommodate his learning gained first-hand awareness of the importance that special education services have on children. The Petitioner thrust himself into the political realm to instill societal change at the early age of twenty-two.

On July 1 2018 the Petitioner's appointed term on the Alleghany County School Board began and is due to end June 30 2022. The Petitioner is part of the Accounting profession where membership requires each practitioner to do no harm

to the profession. Among other things the Respondent in its perjured, misleading and dishonest allegations against the Petitioner has thrust the Petitioner into a dumpster fire requiring action in order to protect the profession. “We’re never afraid of backing down. We take on all on-comers. You have to stand for something, and you have to be able to fight for what you stand for” Harry Markopolos

II. Respondent is the Alleghany County Board of Supervisors-members at the time of filing the Petition under Virginia Code §24.2-234 on December 2 2020 was George M. Garten, Stephen A. Bennett, Cletus W. Nicely, M. Joan Vannorsdall, James M. Griffith, Shannon P. Cox, Richard Shull.

HONORABLE CHIEF JUSTICE JOHN G. ROBERTS

To the wise and benevolent Honorable Chief Justice John G. Roberts as
Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Petitioner, Donnie T.A.M. Kern, Pro Se, and current school board member representing the Clifton Forge West District reverently request that the time to file a Petition for a Writ of Certiorari be extended no later than forty-five days from April 24 2022 to and including June 8 2022. The United States Court of Appeals for the Fourth Circuit issued an ORDER dismissing the appeal based on lack of jurisdiction on January 24 2022, App. A, *infra*. The Petitioner filed a petition for Rehearing and Rehearing *En Banc* on February 7 2022, App. B, *infra*. the United States Court of Appeals for the Fourth Circuit ORDERED a mandatory stay pending Petition for Panel Rehearing and Rehearing *En Banc* on February 7 2022, App. C, *infra*. Absent an extension, the Petition for Writ of Certiorari therefore

would be due on April 24 2022 per Sup. Ct. R. 13.1 or ninety days after a judgement regarding the petition for Rehearing and Rehearing *En Banc* per Sup. Ct. R. 13.2.

Supreme Court Rule 13.5.2 states: the application must be filed with the clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. This application is being filed on April 18 2022 which is not ten days before the date the petition is due because of extraordinary circumstances.

EXTRAORDINARY CIRCUMSTANCES

The extraordinary circumstances for not meeting the ten-day deadline to file the application include but not limited to:

I. The Petitioner is Pro Se, and was under the belief the Petition for Writ of Certiorari could not be written until judgement from the petition for Rehearing and Rehearing *En Banc* was issued by the United States Court of Appeals for the Fourth Circuit. The Petitioner was recently corrected and at the time of correction is now unable to comply with Supreme Court Rule 13.5.2.

II. The Petitioner skills and expertise is in comprehension and constructing arguments regarding the law. The Petitioner is not a member of the Bar, nor does the Petitioner have experience in the application of the Rules of the Supreme Court therefore should not be expected to have the wherewithal to adhere to each rule with precision accuracy. The Petitioner seeks mercy, leniency and understanding regarding the Petitioner's shortcomings. The Petitioner commits to doing better in this regard.

III. The Petitioner is an accountant for a Fortune 500 healthcare company, the department is understaffed. The Petitioner also owns an accounting and tax business and has been unable to provide adequate attention to the finer details of the Supreme Court Rules due to running a business and working significant overtime for an employer.

IV. The Petitioner is a devoted husband to a beautiful wife and father of two very special children both having the same initials CBK. CBK#1 and CBK#2 are both homeschooled. CBK#1 is a member of Troop 2 Boy Scouts of America one of the oldest Boy Scouts Troops in the United States. The Petitioner is the Committee Chair of Troop 2 and had worked with CBK#1 having dedicated extra hours to help Eagle Scouts complete projects for the community, and to get members registered to attend Summer Camp. CBK#2 attends gymnastics, dance, piano lessons. Time management while trying to raise a family with two very active children can become extraordinary on its own merit.

V. It would be in the best interest of justice. If the Writ of Certiorari is filed on April 24 2022 as required, it will more likely than not get rejected by the Clerk of Court. If the Writ of Certiorari is rejected by the Clerk of Court the Petitioner will subsequently receive sixty days for the Petitioner to correct and re-submit see Sup. Ct. R. 14.5. The Petitioner believes requesting the extension demonstrates greater respect for the Court, the Rules of the Court, and adherence to justice.

VI. The case at hand is extraordinary on its own merit as it is specific to the Petitioner's denial of due process, and equal protection regarding a procedural

precedence which was affirmed by the United States Supreme Court in *Georgia v. Rachel* in 1966 requiring that the Petitioner receive an evidence “hearing” at the District Court (*Georgia v. Rachel* 384 U.S. 780(1966)). The evidence “hearing” is to prove allegations that the Respondent violated the Petitioner’s equal rights under Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1964.

The Honorable Thomas T. Cullens a Judge in the District Court for the Western District of Virginia did not hold an evidence “hearing” as required by the United States Supreme Court despite having knowledge via the Notice of Removal of the extraordinary references by the Petitioner to the Civil Rights Act of 1964 fourteen times, Section 504 of the Rehabilitation Act of 1973 eighteen times, 28 U.S.C. §1443 eleven times, 42 U.S.C. §1983 fifteen times, 42 U.S.C. §1985 twenty three times, the word “retaliation” eight times, and the phrase “civil rights” twenty times (Case Number 7:21-cv-00471-TTC).

A three-judge panel represented by the Honorable J. Harvie Wilkinson III, Albert Diaz, Stephanie Dawn Thacker for the Appellate Court for the Fourth Circuit did not hold an evidence hearing nor did it remand back to the District Court for an evidence “hearing” despite the Petitioner referencing in legal briefs the Civil Rights Act of 1964 nineteen times, Section 504 of the Rehabilitation Act of 1973 twenty three times, Americans with Disabilities Act fifteen times, 28 U.S.C. §1443 eighteen times, and the Civil Rights Act of 1866 twenty one times.

Currently the Petitioner has been denied this evidence “hearing” by the District Court and now by the Appellate Court.

The United States Supreme Court in affirming this precious procedure of due process and Constitutional equal protection of the laws would require the people's Court to grant the writ of certiorari as a jurisdictional "matter of right" as it is the Court of last resort, the American people and this Court took an Oath to adhere to the United States Constitution that the Petitioner would have an evidence "hearing" or risk committing treason to the United States Constitution since this precious evidence "hearing" has yet to be provided to the Petitioner by any other Federal Court (*Cohens v. Virginia*, 19 U.S. 6 Wheat. 264 404 (1821))

BACKGROUND

The Petitioner was appointed by the Respondent to the Alleghany County School Board for the Alleghany County Public School division with a term beginning on July 1 2018 ending June 30 2022. Richard Shull a board member of the Alleghany County Board of Supervisors explained to the Petitioner prior to appointment that the Petitioner was going to be appointed to the School Board because of the Petitioner's financial expertise in accounting and in recalling Richard Shull preceded to tell the Petitioner "we can't tell you how to vote, but we want you to watch the money".

July 2018 during the first school board meeting the Petitioner noticed a material accounting error in the FY2017-2018 year-end financial statements. The Petitioner had questioned the approximate \$500,000 in non-expensed funds related to salaries. For doing so, the Petitioner was immediately belittled and his questions were never answered. Due to the perplexing harassment received the Petitioner

chose not to bring up the approximate \$40,000 material accounting error publicly, but did so privately shortly after in a private meeting with the Superintendent Eugene Kotulka. The Petitioner asked the Superintendent why the \$40,000 vehicle expense was taken out of operating funds instead of the approximate \$1,000,000 capital fund. The Superintendent later acknowledged the accounting for the vehicle was indeed an accounting mistake. The \$40,000 vehicle expense was material because the funds could have provided approximately two teacher aid positions for students with special education needs but was misappropriated to purchase a new vehicle. The Petitioner throughout his term experienced systemic budgeting and accounting irregularities which a forensic accountant with the Virginia State Police labeled as a “budget problem”. In further and future discovery by Petitioner it is estimated that millions have been misappropriated or misused by the Respondent and the Respondent’s controlled Alleghany County School Board.

The Petitioner from July 2018 to January 2019 uncovered massive systemic discrimination against children with disabilities and an African American with the assistance of employees, a famed child advocate, and parents involved in the Alleghany County Public School division. Including but not limited to:

November 2018 the Petitioner received an email from an employee of the School Division requesting advocacy for an African American student, App. D, *infra* and subsequently Amy Trail: a famed child advocate described the conditions of the African American as that of having been placed in a “closet”. The Petitioner emailed the school board requesting an investigation but was denied, therefore later

contacted Child Protected Services. Child Protected Services investigated. The Petitioner is under the belief the conditions of the African American student began to improve due to the Petitioner's redress.

In a separate incident a grandmother and custodian of a child (biological mother died of cancer) contacted the Petitioner regarding their experience with the school division, App. E, *infra*. Petitioner recalls the child may have been diagnosed with cerebral palsy (CP). In communications with the grandmother it was relayed that the child was discriminated against by the school division so heinously that a group of doctors raised funds to move the family out of the school district so the child could regain a minimal quality of life. In these communications the grandmother asked the Petitioner "so who stands up for this kid?", the Petitioner replied "I will stand up for the kid". The Petitioner worked closely with Amy Trail who was compiling information to file a systemic complaint with Virginia Department of Education. It was later revealed that Amy Trail had enough information to file the systemic complaint, and the school division knew she had it. However, Amy Trail at a later time insisted on helping the school division provide special education training, a resource the school division did not have, App. F, *infra*. It is understood that Amy Trail recieved monetary remuneration and based on the context; this could be considered criminal extortion.

The Petitioner having knowledge of the misappropriation of Federal funding which was designated to provide special education services to disabled children, and the intentional discriminatory treatment towards students with disabilities

prompted the Petitioner to file complaints with state officials and the Office of Civil Rights. The Petitioner having redressed the government a right under U.S. Cons. Amend. I the Respondent responded with retaliatory threats, intimidation, and on December 2 2020 filed a petition under Virginia Code §24.2-234 accusing the Petitioner of violating §24.2-233(1) which states:

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;

Whereas §24.2-233(1) is the patriarch of injustice as it has sowed irreprehensible seeds of domestic terrorism causing great calamity as the law is considered quasi criminal, void for vagueness, patently unconstitutional, overbreadth, and is the villain to the Oath of Office under Virginia Code §49.1. Virginia Code §24.2-233(1) having been used by the Respondent as a weapon of mass destruction seeking to punish the Petitioner for trying to secure the civil rights of disabled children and an African American thus provoked the Petitioner to take action.

The Petitioner attempted to remove the case into federal jurisdiction under equal rights including but not limited to Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1964. These Congressional provisions invoked by the Petitioner enable the Petitioner to remove state prosecution by premising removal under 28 U.S.C. §1443(1) as the United States Supreme Court in the *Dred*

Scott case (*Scott v. Sandford*, 60 U.S. 19 How. 393 393 (1856)) affirmed that inferior races existed, and that those inferior races were identified as a race that is granted rights and privileges furnished by the sovereign (i.e. the *Dred Scott* doctrine). The disabled and African citizen group by virtue of the *Dred Scott* doctrine are citizen groups that have been granted civil rights by the sovereign, and therefore are considered an eligible race for removal as affirmed by the United States Supreme Court in *Georgia v. Rachel*;

§ 1443 "applies only to rights that are granted in terms of equality, and not to the whole gamut of constitutional rights. . . . When the removal statute speaks of 'any law providing for equal rights,' it refers to those laws that are couched in terms of equality, such as the historic and the recent equal rights statutes, as distinguished from laws, of which the due process clause and 42 U.S.C. § 1983 are sufficient examples, that confer equal rights in the sense, vital to our way of life, of bestowing them upon all. (*Georgia v. Rachel*, 384 U.S. 780 (1966))

An example of a law that provides for such "equal rights" comes from the Civil Rights Act of 1964, Title II Section 203 which states:

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.

The Petitioner having attempted to secure the rights of the African American student and in-exchange replaced retaliation and punishment by the Respondent with “equal rights” henceforth the Petitioner became eligible under the *Dred Scott* doctrine to remove the case into federal jurisdiction as the Civil Rights Act of 1964 Title II Section 202 states:

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.

The African American student was segregated based on the order of an agency of the Respondent, and was discriminated against.

The Petitioner in an attempt to secure the rights of the disabled and an African American whereas through the actions of the Respondent the Petitioner has been retaliated against, intimidated, threatened, coerced, and now is being punished by the Respondent absent a federal forum to bring these disastrous and inexcusable actions to a halt. These facts cannot be disputed, but the District and Appellate Court equipped blinders therefore cloaking the Petitioner in a cloak of invisibility ignoring the Supreme Court’s valiant effort to bring about equality

across American society through the Court's precedence in providing an evidence "hearing".

The Petitioner seeks the wise and benevolent Honorable Chief Justice John G. Roberts grace by granting the Petitioner the extension of time to file the Petition for Writ of Certiorari and **OTHER**.

OTHER

I. Permission requesting Electronic Filing Access as the Petitioner has an active Pacer account and was able to use this access during the appellate process with the United States Court of Appeals for the Fourth Circuit. The Petitioner electronically files tax returns and has extensive experience in filing documents electronically under federal laws.

II. The Supreme Court **ORDERED** on April 15 2020 guidance regarding Modified Paper Filing Requirements. This **ORDER** has been revoked. The Petitioner request permission to have available for use the April 15 2020 guidance which allows for a Petitioner in petitioning for Writ of Certiorari to file a single paper copy of the document on 8 1/2 x 11 inch paper and be able to choose between the format under Rule 33.2 (with page limits of Rule 33.2) or Rule 33.1 but printed on 8 1/2 x 11 inch paper (with word limits of Rule 33.1) and if granted electronic filing the ability to file electronically documents identified as eligible for e-filing in the Court's **ORDER** on April 15 2020.

III. Or any other accommodations the gracefully enamored Justice may think of that could benefit the Petitioner in his quest for “equal justice under the law” in streamlining this process in Petitioning the Court for Writ of Certiorari.

REASONS FOR GRANTING AN EXTENSION OF TIME & OTHER

In restating the **EXTRAORDINARY CIRCUMSTANCES**, the Petitioner additionally opines:

I. The Petitioner is being treated for Attention Deficit Disorder (ADD) and request accommodations under Section 504 of the Rehabilitation Act of 1973, under the Other Health Impairment classification to gain access to the federal judicial system and the additional time, lenient filing requirements, and electronic filing will assist the Petitioner in the completing and timely filing of the Petition for Writ of Certiorari increasing the Petitioner’s access to justice and “equal justice for all” the corner stone of the Supreme Court as the Petitioner’s ADD creates challenges in task completion, and delayed reading and writing comprehension.

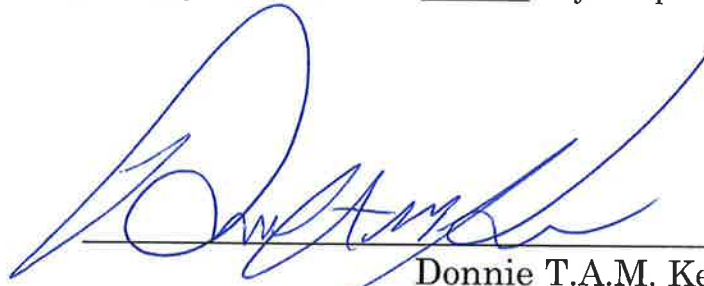
II. It would ensure more effective filing of the Petition without the potential of rejection by the Clerk of Court therefore it would be in the best interest of justice.

III. Despite the current stance of the U.S. Court of Appeals Fourth Circuit which did provide a temporary mandatory stay, therefore may be a blessing in disguise, however the Chief Justice’s grace would serve as a reduction of the prejudice already placed upon the Petitioner by federal, state, and local government agencies in this matter.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended and the **OTHER** granted in the best interest of justice and for the approximate 10 million professionals that are at risk of retaliation for helping to secure the civil rights of America's most vulnerable 9.4 million students who are dependent upon them in doing so (Occupational Outlook Handbook & Civil Rights Data Research respectively).

Respectfully submitted this 18 day of April 2022 via USPS

A handwritten signature in blue ink, appearing to read 'Donnie T.A.M. Kern', is written over a horizontal line.

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