

App. No:

In The Supreme Court of the United States

DONNIE T.A.M. KERN
PETITIONER,

v.

BOARD OF SUPERVISORS, ALLEGHANY COUNTY.

[EXTRAORDINARY EMERGENCY]:
APPLICATION FOR WRIT OF INJUNCTION

Case Number 21-2046
U.S. Appeals Court for the Fourth Circuit

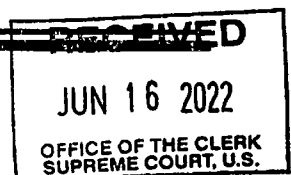
**To the Honorable John G. Roberts, Jr., Chief Justice of the
United States and Circuit Justice for the Fourth Circuit**

Donnie T.A.M. Kern, MSA, EA
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June 13 2022



QUESTION PRESENTED

This quasi-criminal case involves diabolical retaliation and vindictiveness by the presiding Judge of the Alleghany County Circuit Court, the Commonwealth Attorney, a Special Prosecutor and several elected members of a government entity all in concert to rewrite the terms of Virginia Code §24.2-236 usurping the authority delegated to the Virginia General Assembly. This quasi-criminal case is a deliberate attempt to violate the precious equal protections and unalienable constitutional rights provided to the Petitioner under 42 U.S.C. §1983, 42 U.S.C. §1985, the Rehabilitation Act of 1973, the Civil Rights Act of 1964, the Americans with Disabilities Act 1990, U.S. Const. Amend. I, U.S. Const. Amend. V, U.S. Const. Amend. VIII, and U.S. Const. Amend. XIV

The villainous retaliation and vindictive actions by these individuals undermine the supremacy clause of the United States Constitution, repugnantly mock equal protections afforded to our society's most vulnerable children having been granted unalienable rights and privileges by the American people henceforth repositions the never-ending progress to "form a more perfect union" in harm's way.

Whether an emergency injunction to enjoin an ORDER issued by Honorable Judge Ed Stein in the DECISION BELOW of the Alleghany County Circuit Court granting the Petitioner RELIEF no later June 20 4:00PM to prevent irreparable harm is warranted.

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, 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. On July 1 2018 the Petitioner's appointed term on the Alleghany County School Board began and is due to end **June 30 2022 (emphasis added)**.

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.

RELATED PROCEEDINGS BELOW

Alleghany County Circuit Court (Virginia):

Commonwealth of Virginia v. Donnie T.A.M. Kern, CL20-827 (December 2 2020)

Commonwealth of Virginia v. Donnie T.A.M. Kern, CL20-827 (September 28 2021-ORDERED Suspended-VA Code §24.2-236 (**NOT REMOVED**))

United States District Court (Western District, Virginia):

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, 7:21-cv-00448-TTC (August 24 2021) (Notice of Removal)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, 7:21-cv-00471-TTC (September 10 2021) (Notice of Removal)

United States Court of Appeals (4th Cir):

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046 (September 22 2022) (Notice of Appeal)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046 (December 27 2021) (Notice of Constitutionality et al.)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046 (January 24 2022) (ORDERED-Dismissed-No Jurisdiction to Review)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046 (February 7 2022) (Rehearing & Rehearing *En Banc*)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046 (February 7 2022) (ORDERED-Mandated Stay Pending Ruling)

Alleghany County Board of Supervisors v. Donnie T.A.M. Kern, No. 21-2046

(May 31 2022) (GRANTED-Petitioner's Voluntary Dismissal of Petition for Rehearing and Rehearing *En Banc* in-order-to file Application of Emergency Writ of Injunction with the Chief Justice, and Fourth Circuit Justice, Honorable John G. Roberts Jr.,)

United States Supreme Court (Justice to the Fourth Circuit):

Donnie T.A.M. Kern v. Board of Supervisors, Alleghany County App No.

21A634 (April 18 2022) (GRANTED-April 22 2021-Application Extension Time to File writ of certiorari)

United States Supreme Court:

Donnie T.A.M. Kern v. Board of Supervisors, Alleghany County No. 21-1537

(DOCKETED-Petition for Writ of Certiorari June 8 2022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES	vii
HONORABLE CHIEF JUSTICE JOHN G. ROBERTS, Jr.	1
INTRODUCTION	2
JURISDICTION	5
ORDER & DECISION BELOW	6
CONSTITUTIONAL & STATUTORY PROVISIONS	8
FACTUAL AND PROCEDURAL BACKGROUND	8
The Continuance	8
(I). Reason for Continuance	8
(II). Continuance Allegation Evidence & Perjury	8
(III). Continuance Ethical Responsibilities	9
August 12 2021 Court Hearing	10
US Fourth Circuit of Appeals	11
District Complaint Western District of VA	11
September 28 2021 Suspension	11
ARGUMENT	11
Decision Below was Retaliatory	11
(I). Patrick Jensen Retaliated	12
(II). Jim Guynn Retaliated	12
(III). Judge Stein Retaliated	12
Decision Below was Vindictiveness	16
(I). Prosecution Vindictiveness	16
(a). Suspension due to Respondent Motives	18
(II). Judicial Vindictiveness	20
Patrick Jensen: Perjury is “Baseless”	24
(I). “The Panties”-Textbook Perjury	24
Decision Below is Wrong	25
(I). Virginia Code §24.2-236- Prohibits subsequent event-Plan Language	25
(II). Virginia Code §24.2-236- Prohibits subsequent event-Context	26

(III). Virginia Code §24.2-236- Prohibits Motion	26
(IV). Virginia Code §24.2-236- Prohibits event under-§24.2-236	27
(V). "Posture" of the Petitioner	27
(a). Virginia Code §2.2-3900- Human Rights Act Supersedes	28
(b). Virginia Code §40.1-27.3	28
(c). Virginia Code §2.2-3010.1 Whistle Blower...Supersedes	28
CRUEL AND UNUSUAL PUNISHMENT	30
(I). Not Bound by Physical Pain	30
(II). Absent a Violation of Law	31
(III). Method of Inflicting Punishment	32
(IV). Excessive, Forfeiture, and Disproportionate.	29
IRREPARABLE HARM	37
GRANT WRIT OF CERTIORI	38
STATISFACTION OF INJUNCTIVE RELIEF	39
CONCLUSION	40
RELIEF	40
TABLE OF APPENDICES	
APPENDIX A.....	1
APPENDIX B.....	4
APPENDIX C.....	8
APPENDIX D.....	9
APPENDIX E.....	10
APPENDIX F.....	12
APPENDIX G.....	14
APPENDIX H.....	47
APPENDIX I.....	69
APPENDIX J.....	71
APPENDIX K.....	76
APPENDIX L.....	80
APPENDIX M.....	81

APPENDIX N.....	82
APPENDIX O.....	83
APPENDIX P.....	84
APPENDIX Q.....	84
APPENDIX R.....	87
APPENDIX S.....	88
APPENDIX T.....	89
APPENDIX U.....	90
APPENDIX V.....	90
APPENDIX W.....	90
APPENDIX X.....	91
APPENDIX Y.....	91
APPENDIX Z.....	92
APPENDIX AA.....	93
APPENDIX BB.....	95
APPENDIX CC.....	98
APPENDIX DD.....	99
APPENDIX EE.....	100
APPENDIX FF.....	102
APPENDIX GG.....	104
APPENDIX HH.....	105
APPENDIX RELIEF.....	115

TABLE OF AUTHORITIES

CASES	PAGE
<i>Am. Trucking Ass'ns, Inc. v. Gray</i> , 483 U.S. 1306, 1308 (1987)	39
<i>Azar v. Allina Health Servs.</i> , 587 U.S. ____ 139 S. Ct. 184, 1815 (2018)	30
<i>Boag v. MacDougall</i> , 454 U.S. 364 (1982)	38, 39
<i>Bart v. Telford</i> , 677 F.2d 622 (7th Cir. 1982)	14
<i>Blackledge v. Perry</i> , 417 U.S. 21 (1974)	15, 18, 20, 21, 24
<i>Block v. Ribar</i> , 156 F.3d 675 (6th Cir. 1998)	14
<i>BP, P.L.C., et al., v. Mayor and City Council of Baltimore</i> , 141 S. Ct. 1532, 1538 (2021)	38
<i>Cohens v. Virginia</i> , 19 U.S.6 Wheat. 19 U.S.6 Wheat. 264 404 (1821)	39
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	32
<i>Georgia v. Rachel</i> , 384 U.S. 780 (1966)	32
<i>Haines v. Kerner</i> , 404 U.S. 519 (1972)	38
<i>Hartman v. Moore</i> , 547 U.S. 250 (2006)	17, 18
<i>Huffman v. Pursue, Ltd.</i> , 420 U.S. 592 (1975)	39
<i>Jackson v. Birmingham Board of Education</i> , 544 U.S. 167 (2005)	28
<i>King v. Burwell</i> , 576 U.S. II (2015)	25
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996)	41
<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969)	20, 23, 24, 41
<i>Powell v. Texas</i> , 392 U.S. 514 (1968)	31

<i>Precision Instrument Mfg. Co. v. Auto Main. Mach Co</i> 324 U.S. 806, 814 (1945)	25
<i>Sullivan v. Little Hunting Park, Inc.</i> 396 U.S. 229 (1969)	41
<i>Teva Pharma. USA, Inc. v. Sandoz, Inc.</i> , 574 U.S. 318 (2015)	39
<i>Thermtron Products, Inc. v. Hermansdorfer</i> , 423 U. S. 336 (1976)	38
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958)	30, 31
<i>Turner Broad. Sys., Inc. v. FCC</i> , 507 U.S. 1301, 1301 (1993)	39
<i>United States v. Bajakajian</i> , 524 U.S. 321 (1998)	32
<i>United States v. Goodwin</i> , 57 U.S. 368 (1982)	15
<i>United States v. Ruesga-Martinez</i> , 534 F.2d 1367 (9th Cir. 1976)	18, 20
<i>United States v. United States Gypsum Co.</i> , 333 U.S. 364, 395 (1948)	36
<i>Vargas . Peltz</i> , 901 F. Supp. 1572 (S.D. Fla. 1995)	24
<i>Young v. United States ex rel. Vuitton et Fils S.A.,</i> 481 U.S. 787, 807-13 (1987)	12
<i>Weems v. United States</i> , 217 U.S. 349 (1910)	30

OTHER AUTHORITIES

U.S. Constitution Amendment I	2, 12, 14
U.S. Constitution Amendment V	12, 37
U.S. Constitution Amendment VIII	11, 27, 29, 30, 32, 33, 34
U.S. Constitution Amendment XIV	8, 12, 34, 37
Virginia Code §2.2-3010.1	8, 27, 28
Virginia Code §2.2-3900	8, 27, 28

Virginia Code §22.1-44	34, 36
Virginia Code §22.1-71	34
Virginia Code §24.2-233(1)	4, 8, 15
Virginia Code §24.2-234	4, 8, 13, 15, 25, 26, 27
Virginia Code §24.2-236	6, 8, 25, 25, 26, 27, 28, 29, 30 Cont. 35, 36
Virginia Code §40.1-27.3	8, 27, 28
Virginia Code §40.1-33-1	8
American Psychological Association, June 2009 Vol 40, No 6 at https://www.apa.org/monitor/2009/06/revenge	16

HONORABLE CHIEF JUSTICE JOHN G. ROBERTS Jr.

To the wise, benevolent, and merciful Honorable Chief Justice John G. Roberts Jr., 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 of Alleghany County Public Schools, in Alleghany County Virginia representing the Clifton Forge West District reverently request your consideration. On April 22 2022 you demonstrated your mercy by granting the Petitioner an extraordinary extension of time to file a petition for writ of certiorari which was docketed on June 8 2022. The Petitioner humbly offers gracious thanks to the Chief Justice for showing mercy and understanding, however more is needed now more than ever.

The Clerk for the Supreme Court, Mr. Scott Harris received an Application for Writ of Injunction on May 18 2022 filed by the Petitioner, and responded back to the Petitioner:

It Appears the Fourth Circuit has yet to rule on your petition for reconsideration and reconsideration *en banc*. Thus, the Fourth Circuit stay entered February 7, 2022 remains in effect. Therefor your application to stay the Fourth Circuit mandate is legally premature.

On May 30 2022 the Petitioner filed a motion with the Fourth Circuit seeking permission to file an application for writ of injunction with the Chief Justice and Circuit Justice of the Fourth Circuit. On May 31 2022 the Fourth Circuit granted the Petitioner's motion to voluntarily dismiss the petition for rehearing and rehearing *en banc*. The Petitioner is now placed at the mercy of the Court and the Chief Justice and Circuit Justice of the Fourth Circuit

The Petitioner seeks to balance the scales of justice in-order-to reestablish the status quo. The Respondent publicly requested the Petitioner's resignation on March 4 2019 and on December 2 2020 the Respondent filed in the commission of perjury a petition under Virginia Code §24.234 maliciously alleging numerous accusations against the Petitioner causing

irreparable harm that still continues. From December 2 2020 to September 28 2021 which was approximately nine months and twenty-six days, or three-hundred (300) days the Petitioner was actively participating as a member of the Alleghany County School Board with complacency, respect, impartiality, and no ill will. The Petitioner was suspended on September 28 2021 by the presiding judge, Honorable Ed Stein pursuant Virginia Code §24.236 issuing the decision below.

The petition for writ of certiorari is now at this Court's doorsteps and could sprawl out for another year before a resolution is determined: and that is ok; the children that it is intended to benefit will be worth the wait. However, the irreparable harm the Petitioner has succumbed to is not ok. It is prayed that the ORDER in citing the decision below by Honorable Judge Ed Stein be reversed granting **RELIEF** and stay proceedings while the Petition for Writ of Certiorari progresses to cease a small fraction of the current irreparable harm.

INTRODUCTION

The Petitioner was appointed to the Alleghany County School Board by the Respondent the controlling entity of the school board. Petitioner having sworn the Oath of Office began a term on July 1 2018 and to end on June 30 2022. Petitioner discovered systemic discrimination against the disabled, an African American, and the Petitioner's own child by the school board thus in exercising U.S. Const. Amend. I sought external assistance. Petitioner in attempting to secure the rights and privileges of the disabled, an African American, and the Petitioner's own child was granted protections provided by but not limited to: U.S. Const. Amend. I, the Rehabilitation Act 1973, the Civil Rights Act of 1964, 42 U.S.C. §1983, 42 U.S.C. §1985, the Americans with Disabilities Act of 1990.

In response to the Petitioner's governmental redress the Respondent in concert with the school board staged a *coup d'état* of the Petitioner's office on February 25 2019. Respondent

showed up in-force to intimidate and to issue public threats. March 4 2019 the Respondent passed a public resolution seeking the Petitioner's resignation. Respondent publicly stated:

[I] will be honest with you there is not a judge anywhere in this state that won't remove him from the board...(emphasis added).¹

On March 19 2019 during a joint-budget meeting with the school board the Respondent approved the use of \$60,000 by the school board to have legal counsel *id est*. Reed Smith LLP (a global law firm with over 1,500 attorneys) deal with the Petitioner.² On May 18 2019 Petitioner attended a school board meeting and was confronted once again with intimidation by the Respondent.

The Petitioner was the patriarch in commencing discussions by and between the City of Covington, Covington school board, Alleghany County, and Alleghany County school board to create a joint school system.³ A pivotal vote was going to decide the fate of this new joint-venture on September 9 2020. Petitioner as a parent, school board member, citizen, and business owner in an effort to protect the community's most vulnerable children from discrimination was compelled to issue a public service announcement on September 5 2020 discouraging the approval of the new school board absence elected members among other things.⁴ Respondent in retaliation provided a public Memorandum of Understanding (MOU) on September 9 2020 that it would conduct an investigation into the service announcement.⁵

On October 27 2020 the Respondent held an "interrogation" as described by former United States District Attorney John Fishwick: the Petitioner's counsel from approximately August

¹ March 4 2019, Board of Supervisors, Courtesy Alleghany Journal:
<https://www.youtube.com/watch?v=R-JUXcJfNS0>

² March 19 2019, Board of Supervisors, Courtesy Alleghany Journal:
<https://www.youtube.com/watch?v=loPVEvhK2QM>

³ May 5 2018, Board of Supervisors, Courtesy Alleghany Journal:
<https://www.youtube.com/watch?v=xBtmGtP78h0>

⁴ App. H *infra*. p. 56-58

⁵ September 9 2020, Board of Supervisors, Courtesy Alleghany Journal:
https://www.youtube.com/watch?v=_B-mjZqT5sU

2019 to August 2021. During the October 27 2020 “interrogation” from approximately 9:00AM to 3:30PM the Petitioner despite sleep deprivation participated gracefully and even handed the Respondent’s counsel approximately 500 pages of documents supporting the accuracy of the public service announcement. The by-product of the “interrogation” was an approximate 230-page transcript showcasing the brutality of the Respondent via Jim Guynn: Counsel. Excerpts from the transcript:

Petitioner Threatened #1: Respondent- “[Y]ou’re going to keep acting like that, then we are going to break”, Petitioner- “I’m not acting like anything”, Respondent- “Your not answering my questions”, Petitioner- “I don’t understand some of your questions”.⁶ Respondent- “[N]ot sure I do, either...”.⁷

Petitioner Belittled: Respondent- “Mr. Kern, I am not—can you not hear me? I mean I will speak up if I need to”⁸, “You need to listen to me. Okay? You need to listen to me”, “Can you not read it today—”.⁹

Petitioner Threatened #2: Respondent- “I can subpoena your rear end and bring you back tomorrow”.¹⁰

On November 24 2020 the Petitioner is contacted by counsel. Petitioner is told that the Respondent wants the Petitioner to resign or a petition seeking removal will be filed. December 2 2020 the Respondent files a petition¹¹ under Virginia Code §24.2-234 in the Alleghany County Circuit court alleging the Petitioner violated Virginia Code §24.2-233(1) which is patently unconstitutional, void for vagueness and overbreadth as the case is quasi-criminal.

It was revealed to the Petitioner that a key witness skipped out on a deposition and would not be testifying at trial, coupled with catastrophic evidence¹² proving the Petitioner’s

⁶ App. G *infra* p.21

⁷ *Id.* at p. 22

⁸ *Id.* at p. 23

⁹ *Id.* at p. 26

¹⁰ *Id.* at p. 22

¹¹ App. J *infra.*, p. 73

¹² App. G *infra.*, p. 17

innocence would not be submitted into evidence. In fear of the Petitioner's safety and the safety of the Petitioner's family decided to suspend counsel and file an approximate fifty-page (50) Motion to Continue (hereinafter Continuance).¹³ The Continuance contained factual evidence of innocence and perjured statements by the Respondent.

On August 10 2021 the Commonwealth Attorney Marry Pettitt via Patrick Jensen, Special Prosecutor and Counsel of the Respondent Jim Guynn, and Honorable Judge Ed Stein (hereinafter Judge Stein) was equipped with enough evidence to drop the petition. On August 12 2021 a court hearing via phone took place and was attended by Patrick Jensen, Jim Guynn, Judge Stein, John Fishwick, Daniel Martin, and the Petitioner.¹⁴ The Petitioner was harassed and threatened by Patrick Jensen, Jim Guynn, and Judge Stein with suspension for filing the Continuance.

On August 24 2021 the Petitioner timely filed with the district court of Western Virginia an approx. 125-page Notice of Removal premising 28 U.S.C. §1443 (7:21-cv-00448-TTC) effecting removal on August 25 8:30AM. On August 25 9:00AM Judge Stein recklessly exceeded his authority violating federal statute in conducting a Kangaroo court in-concert with Patrick Jensen, Jim Guynn, and the Respondent broadcasting public threats, extrajudicial statements and caustically causing continued public opprobrium towards the Petitioner.¹⁵

On September 10 2021 the Petitioner timely filed approximately a 145-page Notice of Removal premising 28 U.S.C. §1443 (7:21-cv-00471-TTC) effected removal approximately

¹³ App. H *infra.*, p. 14

¹⁴ August 12 2021, Court Hearing via Phone, *Commonwealth of Virginia v. Donnie T.A.M. Kern*, CL20000827 retrieved from: <https://www.donnietamkern.com/projects-3-1>, Courtesy Quill Accounting and Tax LLC.

¹⁵ August 25 2021 9:00AM-Board of Supervisors, Courtesy Alleghany Journal: <https://www.youtube.com/watch?v=dMhEyYyqOkI&t=13s>

4:30PM. The district court remanded due to lack of federal matter subject matter jurisdiction. September 22 2021 the Petitioner filed a Notice of Appeal and was docketed on September 24 2021 with the Fourth Circuit Appellate court. September 28 2022 the Petitioner was suspended from office under Virginia Code §24.2-236, a separate punishment.

JURISDICTION

The Fourth Circuit issued an ORDER dismissing the appeal based on lack of jurisdiction on January 24 2022.¹⁶ The Petitioner filed a petition for Rehearing and Rehearing *En Banc* on February 7 2022.¹⁷ The Fourth Circuit ORDERED a mandatory stay pending Petition for Panel Rehearing and Rehearing *En Banc* on February 7 2022.¹⁸ April 22 2022 the merciful Chief Justice John G Roberts granted an extension of time to file the Petition for Writ of Certiorari and was docketed on June 8 2022.¹⁹ The Fourth Circuit on May 31 2022 GRANTED the Petitioner's motion to voluntarily dismiss the Petition for Rehearing and Rehearing *En Banc* in-order-to file this application for writ of injunction with the Chief Justice and Circuit Justice John G. Roberts Jr., App. C *infra.*, p. 8. This Court has jurisdiction under 28 U.S.C. §2541(1) and 28 U.S.C. §1651.

ORDER & DECISION BELOW

ORDER²⁰

DECISION

"[T]he court doesn't subscribe any bad motive to either party in this case. That is, I do not think it is necessary for a resolution of the motion that is before me to determine whether Mr. Kern has some ulterior motive when he filed the motion to continue or as he has said he had a fallen out with his attorney and his attorney is not representing his interest at that point and wanted to get a new attorney, certainly his right to do. Flip side of that is I do not subscribe any ill motive to the Commonwealth filing this motion to suspend. Bottom line

¹⁶ App. A *infra.* p. 1

¹⁷ App. C *infra.* p. 8

¹⁸ App. B *infra.* p. 5

¹⁹ App. D *infra.* p. 9

²⁰ App. E *infra.* p. 10

is the Commonwealth, when the original removal petition was filed had the right to ask to suspend at that time they did not do so. The statute also says this motion shall be, the removal petition shall be given priority on the docket and shall be heard in a timely manner. The fact is however it happened a week or two before trial the trial got put off. And now having since changed the posture of the case. You had the case where the Commonwealth was going to wait thinking they were going to have the case was going to be heard in August and was going to be resolved one way or the other. Now suddenly we are in a position where it wasn't resolved in August and there is no indication when we will be prepared to resolve this case. Mr. Kern is not apparently, been able to, did not hire new counsel to date, been no representation to the court that he has, once he gets new counsel assuming Mr. Kern is still planning on doing that, then we still have to complete the discovery which has not been done and we re-schedule a trial and looking at all of that whether intentional or not, I think the Commonwealth's position was Mr. Kern result was in a position to essentially run out the clock at this point, to, to get to the end of his term or very close to his term without the Commonwealth having the opportunity of this removal petition being heard. Now the Commonwealth is right when you read this statute about the suspension it doesn't say anything, it doesn't say for good cause, it doesn't set any standard for the court to determine when removal is appropriate or not. But I think there is a number of things to look at that when you look, again whether the suspension motion has been filed originally or the fact it is filed later which is you know number one what posture is the case is in so I think if you have a removal, a suspension that is very early in the case when nothing has been done and when no motions filed the court may look at it one way, at the time when this motion is before the court now we are past the stage where there is any attack on the petition itself (...mumbling....) we are past the stage when the legal sufficiency involved in what we call a demur we are past that stage, all the preliminary challenges that could have been brought to this petition we are past those, and the other thing of it the court needs to look at is this is a case where Mr. Kern is an appointed official as opposed to an elected one, we have a petition brought by the Board of Supervisors the same people that appointed Mr. Kern which is a different posture than when we have an elected official and then have whatever percentage of the vote is necessary to sign a petition to remove somebody who is elected we are not trying to overturn an election with this suspension; given all that having reviewed the petition itself, the allegations they are in, having knowing now that the case is not reset for trial and quite frankly do not know when the case can be set for trial I think at this point the Commonwealth's motion is well taken and the court is going to grant it and suspend Mr. Kern pending resolution of the matter Mr. Jensen I will ask you to prepare the appropriate ORDER and submit it to the court for entry to note Mr. Kern's objections for all reasons that he has stated here today.²¹

²¹ September 28 2022, Court Hearing, via hybrid-remote, *Commonwealth of Virginia v. Donnie T.A.M. Kern*, CL20000827, Courtesy Alleghany Journal:
<https://www.youtube.com/watch?v=auOzoepLRm8&t=249s>

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Virginia Code §24.2-234-Appendix N *infra.*, p. 82

Virginia Code §24.2-233(1)-Appendix O *infra.*, p. 83

Virginia Code §24.2-236-Appendix P *infra.*, p. 84

Virginia Code §2.2-3900-Appendix Q *infra.*, p. 84

Virginia Code §2.2-3010.1-Appendix R *infra.*, p. 87

Virginia Code §40.1-27.3-Appendix S *infra.*, p. 88

Virginia Code §40.1-33-1-Appendix T *infra.*, p. 89

Constitutional Amendment I-Appendix U *infra.*, p. 90

Constitutional Amendment V-Appendix V *infra.*, p. 90

Constitutional Amendment VIII-Appendix W *infra.*, p. 90

Constitutional Amendment XIV-Appendix X *infra.*, p. 91

FACTUAL AND PROCEDURAL BACKGROUND

The Continuance

The Continuance filed on August 10 2021 detailed with specificity the facts and evidence of the dire need for a continuance. Petitioner opined in the Continuance including but **not limited to** (emphasis added):

(I). Reason for Continuance;

(a). “The defendant who was represented by counsel as of August 9 2021 suspends representation and comes forth *pro se* with a motion for continuance in the trial by jury scheduled August 25, 26, and 27 of 2021 under Va.R. Sup. Ct. 8:14 due to conflicts arising out of representation, abuse of process and malicious discovery attempts initiated by the Commonwealth in carrying out the petition filed by the Alleghany County Board of Supervisors on December 2 2020”.²²;

(b). “(a). The Defendant on July 16 2021 inquired once again with counsel to proceed with having charges of perjury brought against the Alleghany County Board of Supervisors, and Special Prosecutor Jim Guynn so that the defendant

²² App. G *infra.*, at p. 14

would be able to show cause why he should not be removed under §24.2-235. Counsel suggested that the defendant do it and declined”.²³;

(c). “(b). The Defendant on July 16 2021 requested of counsel to file a motion of Equitable Estoppel/Unclean Hands doctrine for the Court to deny members of the Alleghany County Board of Supervisors the equity being sought which is to remove the defendant from his position on the Alleghany County School Board. Counsel suggested that the defendant do it and declined”.²⁴;

(d). “(c). Defendant requires time to acquire legal counsel to provide a defense and show cause under §24.2-235 which the defendant has already expensed over \$30,000 since December 2020 in an attempt to do just that”.²⁵

(II). Continuance Allegation Evidence & Perjury;

(a). Respondent alleged that the Petitioner “made no effort to determine the truth or falsity of the statement prior to publishing it”.²⁶ The Petitioner provided excerpts from the October 27 2020 transcript of the hearing:

Respondent- “You took Amy Trail’s word for it without checking with anybody else. Right?” **Petitioner-** “No, no”.²⁷ **Petitioner-** “I eventually reported it to the School Board. Then I reported it to Child Protective Services because I felt no progress was being made by the School Board. I felt they were more concerned about the employee who led me on to the situation. I believe this was a civil rights violation. I believe it could have an adverse, long-term detrimental impact on the student”.²⁸

(b). The Respondent alleged the Petitioner “[R]efused to participate in the investigation even though it was mandated by school board policy”.²⁹ The Petitioner provided letters of communication with the assistance of counsel agreeing to consider cooperating with the investigation.³⁰ There was no refusal.

²³ *Id.* at p. 16

²⁴ *Id.* at p. 16

²⁵ *Id.* at p. 45

²⁶ *Id.* at p. 28

²⁷ *Id.* at p. 28

²⁸ *Id.* at p. 29

²⁹ *Id.* at p. 36

³⁰ *Id.* at p. 37

(c). The Petitioner was also accused of making “[F]alse and baseless complaints”.³¹ Explicit detail on the discovery of the misappropriation of \$1,619,785 through the school division’s budget was provided. From 2015-2016 to 2018-2019 \$1,619,785 was appropriated to #6000-Facilities fund. This \$1.6 million was never expensed. The school board transferred the \$1.6 million to the Respondent under the guise of #7100-Debt Service Expense.³² Misappropriation takes place when the beneficiary of appropriated funds change. These operating funds were appropriated to benefit the education of students but were squandered to benefit the Respondent.

(III). Continuance Ethical Responsibilities

The Petitioner in prudence reminded the Commonwealth Attorney and Judge Stein of the Model Rules of Professional Conduct by the American Bar Association (2019 edition) and Virginia Cannons of Judicial Conduct.³³

August 12 2021 Court Hearing

Patrick Jensen, Jim Guynn, and Judge Stein all-in-concert acted with vindictiveness and retaliation against the Petitioner on August 12 2021 as demonstrated in the recorded hearing (14:30 to 26:10).³⁴

Commonwealth Attorney via Patrick Jensen opined:

“[I] guess the position of the Commonwealth is, when we file that motion, we probably won’t object to a continuance if the court hears that motion to suspend Mr. Kern and **he is in fact suspended from office**”(emphasis added).³⁵

Special Prosecutor & Counsel for Respondent Jim Guynn opined:

³¹ *Id.* at p. 40

³² *Id.* at p. 40-41

³³ *Id.* at p. 43

³⁴ August 12 2021 Court Hearing via Phone-*Commonwealth of Virginia v. Donnie T.A.M. Kern*, CL20000827 retrieved from: <https://www.donnietamkern.com/projects-3-1>, Courtesy Quill Accounting and Tax LLC.

³⁵ *Id.* at 19:24

“[Y]ou do not get to seek a continuance two weeks before trial and keep your position until a jury tells you to go back or not” (emphasis added).³⁶

Judge Stein:

“[I] am going to continue your trial and I will hear the Commonwealth’s motion they say they are going to file...on the 25th of August 9:00AM...if you’re going to have counsel by then that is fine, if you don’t have counsel, we will probably do it anyway”(emphasis added).³⁷

U.S. Fourth Circuit Court of Appeals

On September 22 2021 the Petitioner filed an appeal with the Fourth Circuit.

District Complaint Western District of VA

On September 27 2021 the Petitioner filed a temporary restraining order and civil rights complaint against all seven current members of the Respondent, Patrick Jensen, Jim Guynn, and Judge Stein. On September 27 2022 an email was sent to the parties along with a notice of the complaint.³⁸

September 28 2021 Suspension

On September 28 2021 the Petitioner was suspended.³⁹ Judge Stein in restating the **DECISION BELOW.**⁴⁰

ARGUMENT

The decision below should be reversed as it was done in retaliation and was vindictive. The decision below was wrong and was clearly erroneous. The decision below was the bi-product of a Petition filed in the commission of perjury by the Respondent in December 2020 invokes the “unclean hands doctrine”. The decision below violated the Petitioner civil rights under U.S. Const. Amend VIII. The Court has overturned convictions when a Special

³⁶ *Id.* at 20:30

³⁷ *Id.* at 23:50

³⁸ App. K *infra.*, p. 76

³⁹ *supra* note 20

⁴⁰ *supra* note 21

Prosecutor has been appointed and while equally holding interest in the outcome of a case as is demonstrated in this case (*Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787,807-13(1987) requires reversal of the suspension; a predatory punishment.

Decision Below was Retaliatory

Retaliation defined by the Legal Information Institute, Cornell Law School as “any act of harm in response to an actual or perceived harm”.⁴¹ Retaliation was defined by the Court in *Jackson v. Birmingham Bd. of Ed.* 544 U.S. 167, IIA (2005) held:

“Retaliation is, by definition, an intentional act. It is a form of ‘discrimination’ because the complainant is being subjected to differential treatment”.

The Court clearly explained that retaliation occurs when an individual opposes discrimination against minorities and is punished for doing so.⁴² The Court opined:

Without protection from retaliation, individuals who witness discrimination would likely not report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied.⁴³

The United States Department of Justice Assistant Attorney General Kristen Clarke stated in a matter involving retaliation by the Florida State court:

“This settlement sends a message that those who speak up for fundamental civil rights — like the right of meaningful access to our judicial system — must be able to do so without fear of reprisal”.⁴⁴

The Petitioner in exercising U.S. Const. Amend. I. of speech and redress⁴⁵ on August 10 2021 by filing the Continuance in an effort to protect the Petitioner’s U.S. Const. Amend. V.

⁴¹ See Law Institute, Cornell University: <https://www.law.cornell.edu/wex/retaliation>, retrieved May 05 2022

⁴² *Jackson v. Birmingham Bd. of Ed.* 544 U.S. 167, IIA, IIC (2005)

⁴³ *Id.* at IIC

⁴⁴ Justice Department Obtains Settlement in the Title VI Retaliation Matter with Florida State Courts (September 14 2021) <https://www.justice.gov/opa/pr/justice-department-obtains-settlement-title-vi-retaliation-matter-florida-state-courts-system>

⁴⁵ App. I *infra.*, p. 90

right of due process⁴⁶ incorporated by U.S. Const. Amend. XIV. providing equal protection⁴⁷ was retaliated against by Patrick Jensen, Jim Guynn, and Judge Stein, and the Respondent via having filed the petition under Virginia Code §24.2-234 as examined through their statements below:

(I). Patrick Jensen Retaliated

Patrick Jensen affirmed that he would not object to a continuance if the Petitioner was “in fact suspended”.⁴⁸ This meant that the Petitioner’s right of redress and speech would be abridged by the Commonwealth if the Petitioner would not have been first punished in lieu of the continuance;

(II). Jim Guynn Retaliated

Jim Guynn affirmed that the Petitioner is not allowed to “seek” redress or exercise speech without being punished with suspension⁴⁹;

(III). Judge Stein Retaliated

Judge Stein held “if you’re going to have counsel by then that is fine, if you don’t have counsel, we will probably do it anyway” (emphasis added).⁵⁰ Judge Stein acted to seek punishment of the Petitioner without Counsel. Judge Stein was aware that the Petitioner lost \$30,000⁵¹ to an attorney. Nothing was stopping Judge Stein from appointing Counsel for the Petitioner as the case is quasi-criminal. Judge Stein’s use of the word “we”⁵² confirms that Judge Stein, Patrick Jensen, and Jim Guynn all-in-concert would seek to

⁴⁶ App. V *infra.*, p. 90

⁴⁷ App. EE *infra.* p.91

⁴⁸ *supra* note 35

⁴⁹ *supra* note 36

⁵⁰ *supra* note 37

⁵¹ App. G *infra.* at p. 46

⁵² *supra* note 37

retaliate due to the Petitioner having invoked unalienable constitutional rights (emphasis added).

Summary

Judge Stein stated: “[T]he court doesn’t subscribe any bad motive to either party in this case”.⁵³ Judge Stein concedes in affirming the inexistence of a “bad motive” and the existence of zero-justification for the increase in punishment upon the Petitioner.

Block v. Ribar, 156 F.3d 675 (6th Cir. 1998) the Sixth Circuit affirmed that retaliation entails three elements. In application to this case; it would require that: the Petitioner’s conduct is protected, Petitioner was subject to adverse action that could discourage an ordinary person from continuing similar conduct, and a connection between the Petitioner’s conduct and the adverse action existed.

The adverse action in this case is the unwarranted harassment by Patrick Jensen, Jim Guynn, and Judge Stein having publicly suspended the Petitioner with-the-intent to cause irreparable embarrassment and harm. The protective conduct is the Petitioner exercising U.S. Const. Amend. I. the right of speech and governmental redress.

The Seventh Circuit Court held in *Bart v. Telford*, 677 F.2d 622, 626 (7th Cir. 1982):

The effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights, it need not be great in order to be actionable...An entire campaign of harassment which through trivial in detail may have been substantial in gross.

The Petitioner has been the subject of a campaign consisting of relentless irreparable harassment by the Respondent. The last element requires a connection between the Petitioner’s protected conduct and the adverse action brought by Patrick Jensen, Jim Guynn, Judge Stein, and the Respondent. *Blackledge v. Perry* a landmark case will help provide

⁵³ *supra* note 21

clarity in identifying this last element.⁵⁴ The case involves a defendant who appealed a verdict to the State Supreme Court and subsequently was indicted for a felony by the prosecution. The oral argument in *Blackledge v. Perry* will accentuate this goal.

Justice Marshall asked Richard League, the attorney general if the defendant would have been punished had the defendant never sought to redress with the higher court.⁵⁵ Richard League's responded that he would not have been punished.⁵⁶ Justice Marshall then stated "So because he appealed, he was indicted?"⁵⁷ The attorney general responded "I would say so, yes sir".⁵⁸

The Petitioner went unsuspended for 300 days from the time the Respondent filed the petition under Virginia Code §24.2-234 alleging violations of Virginia Code §24.2-233(1) on December 2 2020. Had the Petitioner not filed the Continuance, the Petitioner would have never been suspended as indicated by Patrick Jensen on August 12 2021.⁵⁹

In *United States v. Ruesga-Martinez*, the Ninth Circuit held: "On the record before us there is absolutely no evidence that justifies the increase in the charges brought against appellant".⁶⁰ The Petitioner having eagerly sought asylum by redressing the State court in filing the Continuance with an effort to bring the petition to an end had received vengeful retaliation from Judge Stein, Patrick Jensen, Jim Guynn, and the Respondent in doing so. In quoting the Court in *United States v. Goodwin*: "To punish a person because he has done what the law plainly allows him to do is a due process violation "of the most basic sort".⁶¹

⁵⁴ 417 U.S. 21 (1974)

⁵⁵ *Id.* at 12:10-12:18

⁵⁶ *Id.* at 12:19-12:23

⁵⁷ *Id.* at 12:23-12:27

⁵⁸ *Id.* at 12:27-12:37

⁵⁹ *supra* note 35

⁶⁰ F.2d 1367 (9th Cir. 1976) at 1370

⁶¹ 457 U.S. 368 (1982)

Decision Below was Vindictiveness

Vindictiveness can be described as the Court held:

“In cases in which action detrimental to a defendant has been taken after the exercise of a legal right, the presumption of an improper vindictive motive has been applied only where a reasonable likelihood of vindictiveness existed”.⁶²

Vindictiveness is defined as “disposed to seek revenge, intended for or involving revenge”.⁶³ Causes do exist to compel someone to be vindictive seeking revenge absent being provoked. In an article titled “Revenge and the people who seek it” by Michael Price in researching the work of renown psychologist Ian McKee, PhD⁶⁴ having published a paper on Social Justice Research (Vol. 138, No. 2). Ian McKee, supports the logic that “People who are more vengeful tend to be those who are motivated by power, by authority and by the desire for status,” he says, “They don't want to lose face”.⁶⁵ Kevin Carlsmith, PhD indicated “you are willing to sacrificing your well-being in order to punish someone who misbehaved” when you are vengeful.⁶⁶ Judge Stein, Patrick Jensen, and Jim Guynn took extreme career risks.

(I). Prosecution Vindictiveness

On September 28 2021 during the court hearing Patrick Jensen stated the Petitioner had wanted the following in the Continuance that was filed:

“[A] bunch of extremely unreasonable demands, he had wanted the **board of supervisors charged with perjury**, and **Mr. Guynn charged with perjury**, essentially, he wanted motions made that have no basis in fact or law.; Mr. Kern is exactly correct the Commonwealth did not seek to suspend him **last December** when my office was appointed and that was something that **I discussed with Mr. Guynn back then** quite frankly at that point I did not see any legal basis in doing it;

⁶² *Id.* at (a)

⁶³ Dictionary-Merriam-Webster.com- “vindictive”: <https://www.merriam-webster.com/dictionary/vindictive> on 05/07/2022

⁶⁴ American Psychological Association, June 2009 Vol 40, No 6 at <https://www.apa.org/monitor/2009/06/revenge>

⁶⁵ *Id.*

⁶⁶ *Id.*

Contrary to what Mr. Kern thinks. Attorneys have to follow the law. We have to see what the facts are. We have to apply them to the law. The motions that we make before court have to be made in good faith. There was no good faith basis to suspend Mr. Kern **until word of his issues with his counsel came up in that motion to continue**. That motion of continue clearly shows says he was trying to delay this matter unnecessarily that is why we did not file anything prior to that. **I am aware of Mr. Kern filing something in federal court naming myself and numerous other people** (emphasis added).⁶⁷

Patrick Jensen concedes that discussions with Mr. Guynn took place in December of 2020. At this time Jim Guynn had not been appointed as Special Prosecutor. Jim Guynn was Counsel for the Respondent at the time. Jim Guynn was subsequently appointed as Special Prosecutor on March 3 2021 by Judge Stein, App. J *infra.*, at p. 71.

The Court held in *Hartman v. Moore*, regarding the element of prosecutor vindictiveness:

[M]ust show that the nonprosecuting official acted in retaliation, and must also show that he induced the prosecutor to bring charges that would not have been initiated without his urging.⁶⁸

Jim Guynn Counsel for the Respondent having aided and abetted the Respondent to file a petition under the penalty of perjury⁶⁹ is the identified “nonprosecuting” official on behalf of the Respondent. Patrick Jensen conceded that Jim Guynn prior to being appointed as Special Prosecutor had influenced Patrick Jensen’s decision to not seek suspension on December 2 2020.⁷⁰ This nonprosecutor influence was demonstrated once more as Patrick Jensen sought to have Jim Guynn appointed as Special Prosecutor on March 3 2021.⁷¹ Patrick Jensen could have received assistance from any attorney across the Commonwealth of Virginia but picked Jim Guynn, the Respondent’s Counsel. Jim Guynn’s influence on Patrick Jensen demonstrates that a “nonprosecutor” relationship existed contributing to prosecutor

⁶⁷ *supra* note 21

⁶⁸ 547 U.S. 250 (2006) at C

⁶⁹ *supra* note 6 p. 42

⁷⁰ *supra* note 21

⁷¹ App J *infra.* p. 71, Commonwealth Motion to Appoint Special Prosecutor

influence and vindictiveness on December 2 2020 and henceforth on September 28 2021 as punishment towards the Petitioner went from zero to one-hundred percent.

During the August 12 hearing Jim Guynn maintained a relationship as both Special Prosecution and Counsel for Respondent having further placed influence on Patrick Jensen stating in further support:

“You do not get to seek a continuance two weeks before trial and keep your position until a jury tells you to go back or not”.⁷²

The Court in *Hartman v. Moore* also held:

Some sort of allegation, then, is needed both to bridge the gap between the nonprosecuting government agent’s motive and the prosecutor’s action, and to address the presumption of prosecutorial regularity. And at the trial stage, some evidence must link the allegedly retaliatory official to a prosecutor whose action has injured the plaintiff. The connection, to be alleged and shown, is the absence of probable cause.⁷³

Jim Guynn counsel for the Respondent saw a perfect opportunity to have the Petitioner immediately removed from the school board through Patrick Jensen via suspension and co-conspirator and long-time ally of the Respondent: Judge Stein. The motive was removal through suspension.

The Ninth Circuit held in *United States v. Ruesga-Martinez*:

Pearce and Blackledge therefore establish, beyond doubt, that when the prosecution has occasion...because the accused has exercised some procedural right, the prosecution bears a heavy burden of proving that any increase in the severity of the alleged charges was not motivated by a vindictive motive.⁷⁴

Patrick Jensen’s own admissions built the vindictive bridge crossing the motive ravine.

(a) Suspension due to Respondent Motives

The Respondent, the controlling entity of the Alleghany County School Board was facing an approximate half-million-dollar discrimination settlement due to the intentional

⁷² *supra* note 36

⁷³ 547 U.S. 250 (2006)

⁷⁴ 534 F.2d 1367 (9th Cir. 1976) at 1369

discrimination of an employee of the school board. It was discussed in multiple school board meetings that that it was a fact the school board had hired an unqualified male over a qualified female for an employment position. It was presented that the damages for such violation of the public trust would be significant. The Petitioner supports the vindication of those wronged. Petitioner supported the creation of a job the employee could fill to regain equity and self-esteem in an attempt to unravel the wrong caused by the school board. The Respondent in-order-to keep the Petitioner from the details of the monetary renumeration of the financial settlement the Petitioner was suspended on September 28 2022. October 11 2022, twelve days later the employee dismissed the federal complaint; a customary practice.

The Petitioner also an advocate against child sexual abuse and was critical of the current policies of the school board. A sex scandal investigation involving the Virginia State police and potentially twenty-eight (28) underage females came into existence involving an employee of the school system prior to the suspension.⁷⁵

It was going to be advantageous for the Respondent to have the Petitioner suspended. The Petitioner was very outspoken on the abuses by other board members of using settlements to escape accountability.⁷⁶ Petitioner supports correcting the wrong that occurs, however individuals responsible for the wrong should be held accountable so it doesn't happen again. These issues demonstrating a complete violation of the public trust provides significant motive for the Respondent to have the Petitioner suspended.

The Petitioner after being encouraged by the Respondent to run for a seat on the Board of Supervisors on October 27 2020 headed the cause. Subsequently the Respondent used the suspension as a means to disrupt the free and fair election in November of 2021 which the Respondent succeeded in doing causing the Petitioner to lose.

⁷⁵ App. I *infra*. p. 69

⁷⁶ App. H *infra*. p. 53-55

Summary

Patrick Jensen's prosecution of suspension was vindictive and well established. It is also supported: as Jim Guynn had maintained a "nonprosecution" relationship inciting revenge due to Petitioner filing a continuance, an appeal to the Fourth Circuit, a federal complaint against Patrick Jensen, Jim Guynn, and Judge Stein, and members of the Respondent in Federal District prior to September 28 2021. The Petitioner's Continuance was a beacon for aid that had been ignored. The Court opined in *North Carolina v. Pearce*, 395 U.S. 711, 724 (1969):

A court is without right to . . . put a price on an appeal. A defendant's exercise of a right of appeal must be free and unfettered. . . . It is unfair to use the great power given to the court to determine sentence to place a defendant in the dilemma of making an unfree choice. (internal quotations omitted)

(II). Judicial Vindictiveness

The Court held in *Blackledge v. Perry*, 417 U.S. 21, 28 (1974):

[T]he rationale of our judgment...was not grounded upon the proposition that actual retaliatory motivation must inevitably exist. Rather, we emphasized that since the **fear of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction**, due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of the sentencing judge. (internal quotations omitted) (emphasis added)

The Court in *Blackledge v. Perry* held that even the existence of "fear" of vindictiveness could violate due process, and it is further argued that fear of vindictiveness should not be grounded to appealing but in all regards to the fair administration of justice. Supported by the Ninth Circuit in *United States v. Ruesga-Martinez*⁷⁷ having opined that the "mere appearance of vindictiveness" can cause due process to be violated requiring that prosecution or a judge with the burden to prove otherwise that it doesn't exist.

⁷⁷ 534 F.2d 1367, 1369 (9th Cir. 1976)

Counsel for Petitioner, and former U.S. District Attorney, John Fishwick attempted to address the appearance and existence of fear that vindictiveness was established involving Judge Stein via a letter sent directly to Judge Stein on January 27 2021.⁷⁸ John Fishwick stated:

“[H]e has asked us to make an inquiry about whether or not this presents a conflict for you, either as a Circuit Court Judge or in your former position as Alleghany County Commonwealth Attorney”.⁷⁹

No response was provided. Judge Stein failed to recuse himself from the case.

Judge Stein’s term began as the presiding judge of Alleghany County Circuit Court after being appointed by the Virginia General Assembly on July 1 2019. Prior to appointment to the bench Judge Stein was the Commonwealth Attorney in Alleghany County. Judge Stein maintained close political ties with the Respondent for many years.

On May 2 2017, Judge Stein as Commonwealth Attorney sought redress with the Respondent in-order to get more funding for a radio system on behalf of the sheriff’s department stating:

“[N]o body went to the school board and said pick school raises, if you want raises for your school teachers this year or do you want New Tech, pick one. That’s not the way it works. That should not be the way it works.”⁸⁰

Unfortunately, that is the way it works.⁸¹ The Respondent had misappropriated another \$500,000 up to \$1,000,000 in funds from the school board, App. G *infra.* p.35. The Continuance provided support of the erroneous school board action item stating “the leadership committee of the County of Alleghany and Alleghany County School Board met”.⁸²

⁷⁸ App. H *infra.*, p. 60

⁷⁹ *Id.*

⁸⁰ May 2 2017, Judge Stein with Board of Supervisors, Courtesy Alleghany Journal:
<https://www.youtube.com/watch?v=kRqWGmnMJZU>

⁸¹ “Board of Supervisors Threaten to Cut Budget”, Recorded Audio, Courtesy Quill Accounting and Tax LLC, retrieved from: <https://www.donnietamkern.com/projects-3-1>

⁸² *Id.*

The leadership committee does not exist. This meeting was never opened up to the public as required by law. In addition, the \$1,000,000 congruent conversation comes from a recorded conversation between the Petitioner and Superintendent Eugene Kotulka in which the Superintendent disclosed that the County Administrator on behalf of the Respondent demanded the delivery of funds up to \$1,000,000 from the school board.⁸³

Judge Stein as Commonwealth Attorney revisited the Respondent publicly to encourage salary increases for the sheriff's department.⁸⁴ On March 15 2019 Judge Stein makes a final appeal to the Respondent establishing a quid-pro-quo relationship:

"[T]hank you for everything you have done over the years. We have had some conversations over the years from time to time...I have never really been here to ask for anything from my office; tonight, I am".⁸⁵

Judge Stein's long-term relationship with the Respondent also created a nonprosecuting relationship assisting a vindictive motive. The Respondent insisted there wasn't a judge in the State that wouldn't remove the Petitioner; it is now apparent that Judge Stein was one of them.⁸⁶ Judge Stein appointed Jim Guynn as Special Prosecutor so that the Respondent could influence the decision of the prosecutor as the bench had already been compromised.

The Petitioner during a school board meeting in the Fall of 2018 was told by Superintendent Eugene Kotulka in a closed session meeting that a request was made to the Commonwealth Attorney *id est*. Judge Stein to investigate a grandmother; a guardian of a child left motherless due to cancer. This investigation was retaliatory as this family like the Petitioner filed an Office of Civil Rights complaint against the school division. The

⁸³ Return of Funds up to \$1,000,000, Recorded Audio, Courtesy Quill Accounting and Tax LLC, retrieved from: <https://www.donnietamkern.com/projects-3-1>

⁸⁴ May 10 2017, Judge Stein with Board of Supervisors, Courtesy Alleghany Journal - <https://www.youtube.com/watch?v=SJ4svh6rytw>

⁸⁵ March 15 2019, Judge Stein with Board of Supervisors, Courtesy Alleghany Journal - https://www.youtube.com/watch?v=lyyzPq_6iE&t=29s

⁸⁶ *supra* note 1

grandmother and child were moved out of the community with the help of a group of physicians at the detriment of a retaliatory school system: subsequently only to have police arrive later on their door step.

The Court held *North Carolina v. Pearce*, 395 U.S. 711,725 (1969)

[S]ince the **fear** of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction, due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of the sentencing judge. (emphasis added).

The Petitioner feared the vindictiveness of the prosecution and Judge Stein. John Fishwick's letter to Judge Stein on January 27 2021 proves it. App. H *infra.*, p. 60. Patrick Jensen, Jim Guynn and Judge Stein all in-concert were sick mentally with vengeance; their corroborated public suspension of the Petitioner put it on display. The Petitioner having also filed a Notice of Removal, an appeal with the Fourth Circuit, and then a complaint on numerous people including Patrick Jensen, Jim Guynn, and Judge Stein had created the motive to ORDER the vindictive suspension.

The Court also held:

Fifth Amendment guarantee... And it protects against multiple punishments for the same offense (*North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)).

The Petitioner was punished when the Respondent filed the petition on December 2 2020 casting the Petitioner into including, but not limited to irreparable public humiliation, harassment, and gas lighting. On this date Judge Stein waived suspension, enacting a zero-degree of punishment. On September 28 2021 Judge Stein enacted punishment increasing suspension from zero to one-hundred percent (100%) for the same offense. Judge Stein admitted that no bad motive had existed.⁸⁷ U.S. Const. Amed. V. protects from multiple punishments for the same offense, the Petitioner has been punished multiple times.

⁸⁷ *supra* note 21

In concluding, the Court affirmed in *Blackledge v. Perry*:

Due process of law requires that such a potential for vindictiveness must not enter...We hold, therefore, that it was not constitutionally permissible for the State to respond...by bringing a more serious charge...⁸⁸

Patrick Jensen: Perjury is “Baseless”

Reiterating Patrick Jensen’s statements during the September 28 2021 hearing:

“[C]harged with perjury, and Mr. Guynn charged with perjury... he wanted motions made that have no basis in fact or law... I am aware of Mr. Kern filing something in federal court naming myself and numerous other people”.⁸⁹

Patrick Jensen is wrongheaded in his claim that the perjury claim by the Petitioner was “baseless”.⁹⁰ Perjury is not baseless. The Respondent filed a petition under the penalty of perjury which Respondent’s Counsel Jim Guynn drafted and each member of the Respondent signed it. Perjury is a very good defense; especially if it involves fabricating girls’ panties, as was the case in *Vargas v. Peltz*⁹¹ in examined below:

(I) “The Panties”- Textbook Perjury

*Vargas v. Peltz*⁹² a case in the district court for the Southern District of Florida. Maria Vargas alleged sexual harassment against Nelson Peltz. Maria in a deposition under oath testified that Nelson gave her a pair of panties around September of 1992.⁹³ Maria produced the pair of panties during the deposition as evidence.⁹⁴ The panties went under investigation and it was determined that the panties submitted into evidence by Maria at her deposition under oath were not available for purchase until November 10 1993.⁹⁵ There was no way

⁸⁸ 417 U.S. 21, 29 (1974)

⁸⁹ *supra* note 21

⁹⁰ *supra* note 74

⁹¹ 901 F. Supp. 1572 (S.D. Fla. 1995)

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

Maria could have been given the panties she presented in her testimony which Maria had also entered into evidence therefore perjuring her own testimony.

The District Court held:

“False evidence in the form of women's panties indeed concern the central issue in this case...federal case law is well established that dismissal is the appropriate sanction where a party manufactures evidence which purports to corroborate its substantive claims... it is firmly established that this court has the inherent power to dismiss an action when a party conducts litigation in "bad faith" and in an abusive manner”.⁹⁶

The unclean hands doctrine (*Precision Instrument Mfg. Co. v. Auto Main. Mach. Co.*, 324 U.S. 806, 814 (1945) warrants reversion of the decision below. The suspension under Virginia Code §24.2-236 was a bi-product of the Petition filed by the Respondent in December 2 2020 in the commission of perjury.

Decision Below is Wrong

The Honorable Chief Justice in delivering the opinion of the Court in *King v. Burwell*, 576 U.S. II (2015) stated “If the statutory language is plain, we must enforce it according to its terms”. The Honorable Chief Justice goes on to say “But oftentimes the “meaning—or ambiguity—of certain words or phrases may only become evident when placed in context”. This argument will be supported by the statutory plain language and the context in which the language was used.

(I). Virginia Code §24.2-236- Prohibits subsequent event-Plan Language

Virginia Code 24.2-236 states that “in the event of a proceeding”.⁹⁷ Event means “a noteworthy happening”⁹⁸ and “event” in this statute is singular. “Proceeding” is singular. The plain language of this statute means that once a noteworthy happening **comes into**

⁹⁶ 901 F. Supp. 1572 (S.D. Fla. 1995) at 54

⁹⁷ App. P *infra*. p. 84

⁹⁸ Merriam Webster Dictionary-“Event” noun, <https://www.merriam-webster.com/dictionary/event>

existence the determination of suspension should be made (emphasis added). Following are eligible events: “§24.231, §24.2-232, §24.2-233, §24.2-234”.⁹⁹ The only two statutes that relate to the Petitioner are §24.2-233, and §24.2-234. Virginia Code §24.2-233 and §24.2-234 came into existence on December 2 2020 and does not allow for a subsequent “event” once the “event” has already came into existence. If this was not the case the Virginia General Assembly should have used “In a judicial proceeding” replacing “the event of a”; this however was not what was written;

(II). Virginia Code §24.2-236- Prohibits subsequent event-Context

Virginia Code §24.2-236 states in part “[A]ny officer convicted of a felony under the laws of any state or the United States shall be automatically suspended upon such conviction”.¹⁰⁰ The statute does not allow for a circuit court to wait 300 days, and then apply the suspension to a convicted felon. The statute requires the circuit court to immediately suspend. Circuit court action is mandated, as the statute in addition holds “regardless of any appeals, pleadings, delays, or motions”. The statute clearly states “the circuit court may enter”. The context of the statute in considering application to a convicted felon implicates that the court “in the event” and at the time it came into existence is expressly required to entertain the option of suspension, and not at a subsequent time period during the proceeding;

(III). Virginia Code §24.2-236- Prohibits Motion

The statute clearly says “in the event of a judicial proceeding”.¹⁰¹ A motion is not considered a “judicial proceeding” in this context, as it specifically identifies the following “§24.231, §24.2-232, §24.2-233, §24.2-234” as an eligible judicial proceeding, *id est*. “event”: a motion does not qualify.¹⁰² If the Virginia General Assembly wanted a motion to trigger an

⁹⁹ *supra* note 97

¹⁰⁰ *supra* note 97

¹⁰¹ *supra* note 97

¹⁰² *supra* note 97

“event” to enact suspension it would have decreed it so. It didn’t. The intent of the statute is based on the language “the circuit court” at its own discretion and not under prosecutorial duress will enter an order to suspend, based on a “event” when a singular “judicial proceeding” comes into existence. Statute states “[T]he Court may, in its discretion, continue the suspension...”¹⁰³;

(IV). Virginia Code §24.2-236- Prohibits “event” under-§24.2-236

The codes stated a judicial proceeding under “§24.231, §24.2-232, §24.2-233, §24.2-234”, Virginia Code §24.2-236 is not included nor was it meant to be, if that was the case the Virginia General Assembly would have decreed it so. To allow a motion pursuant §24.2-236 to create a judicial proceeding is re-writing the statute from the bench;

(V). “Posture” of the Petitioner?

Judge Stein, in the restating the decision below opines

“[W]e have a petition brought by the Board of Supervisors the same people that appointed Mr. Kern which is a different posture than when we have an elected official” *supra*. note 21

Incorporating the posture of the Respondent Judge Stein failed to incorporate the posture of the Petitioner. A quasi-“employee” relationship is established through the appointment process where loyalty is governed by the Oath of Office. If Judge Stein would have incorporated the posture of the Petitioner, then Judge Stein should have realized other statutes within the Code of Virginia provide substantial defenses to the suspension by the Respondent which include but not limited to Virginia Code §2.2-3900 Human Rights Act, Virginia Code §40.1-27.3 Retaliatory Action Against Employee Prohibited, and Virginia Code §2.2-3010.1 Discrimination and Retaliatory Actions Against Citizen Whistle Blowers Prohibited. The posture of the Petitioner would also require Judge Stein to have provided

¹⁰³ *supra* note 97

evidence hearing under the contestations (21-1537, Pet. 2) as contained in the Notice of Removal as it was also filed with the Alleghany County Circuit Court despite it being remanded. Example, the Civil Rights Act of 1964 bars any form of punishment for helping decrease the burden of discrimination (21-1537, Pet. 2). Many postured positions existed that supersedes suspension under Virginia Code §24.2-236 therefore reversal is required. Judge Stein's failure to analyze the Petitioner's posture renders the decision below clearly erroneous.

(a). Virginia Code §2.2-3900-Human Rights Act Supersedes

According to Virginia Code §2.2-3900 Human Rights Act, the Petitioner is protected from unlawful discrimination.¹⁰⁴ The law states "It is the policy of the Commonwealth to: safeguard all individuals within the Commonwealth from unlawful discrimination". *Id.* The Petitioner is "an individual" as the law states "all".¹⁰⁵ This Court held that "retaliation is, by definition, an intentional act. It is a form of 'discrimination'..." in *Jackson v. Birmingham Bd. of Ed.*¹⁰⁶

(b). Virginia Code §40.1-27.3

The Petitioner refused to partake in illegal activity that the Respondent had forced upon the Petitioner to carry out. It is illegal for an appointing body to discharge, discipline, threaten, discriminate, penalize, or take other retaliatory action against an appointee for refusing to partake in illegal activities.¹⁰⁷

¹⁰⁴ App. Q *infra.*, p. 84

¹⁰⁵ *Id.*

¹⁰⁶ 544 U.S. 167, IIA (2005).

¹⁰⁷ App. S *infra.*, p. 88

(c). Virginia Code §2.2-3010.1 Whistle Blower...Supersedes

The Petitioner was protected from the petition filed by the Respondent due to activities protected by Virginia Code §2.2-3010.1.¹⁰⁸ where Virginia Code §2.2-3010.1 states:

No governmental agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action. *Id.*

Summary

The acts, order, and decision below for all these reasons by Judge Stein places the suspension under §24.2-236 as “clearly erroneous”. In summation Virginia Code §24.2-236 was intended for the circuit court at its own discretion to enter a suspension free from party pressure and as soon as the event came into existence and not in a future time period, nor by a Motion, or a in a judicial proceeding under its own code. Judge Stein was able to provide the Petitioner a due process hearing to address the Petitioner’s posture. The decision below was wrong and an absolute usurp by Judge Stein of the powers held by the Virginia General Assembly. Judge Stein held: “**all preliminary challenges** that could have been brought to this petition we are past those” (emphasis added).¹⁰⁹

Judge Stein decision below unequivocally concedes the Petitioner had cause to show that the suspension was premature as Judge Stein use of “all preliminary challenges”. Judge Stein then proclaims in stating: “we are past those”; as these challenges could not be used in justifying the cessation of suspension. There is nothing stopping a person from make a choice to do good. Judge Stein’s had a choice and it was wrong for the lack of better words.

¹⁰⁸ App. R *infra.*, p. 87

¹⁰⁹ *supra* note 21

The opinion of this Court is fitting for this case: “[T]he judicial branch of government does not have the authority “to rewrite clear statutes under the banner of [their] own policy concerns” (*Azar v. Allina Health Servs.*, 587 U.S. 139 S. Ct. 184, 1815 (2018)).

CRUEL AND UNUSUAL PUNISHMENT

The suspension under Virginia Code is §24.2-236 a form of cruel and unusual punishment a violation of U.S. Const. Amend. VIII. As U.S. Constitution Amend. VIII states:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.¹¹⁰

U.S. Const. Amend. VIII. is not bound to physical pain, punishment must not be administered without a violation of the law, the administration of punishment must not be arbitrary et al., and the punishment must not be excessive and disproportionate.

(I). Not Bound to Physical Pain-

Trop v. Dulles, 356 U.S. 86, 101 (1958) the Court held regarding “cruel and unusual punishment”:

The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. We believe, as did Chief Judge Clark in the court below...that use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. There is, instead, the **total destruction of the individual's status in organized society**. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself (emphasis added).

The holding by the Court provides two concrete ideas in the application of U.S. Const. Amend. VIII.; the application of the Amendment must evolve, cruel and unusual punishment

¹¹⁰ App. W *infra.*, p. 90

is not restricted to physical punishment, and punishment that seeks to destroy a citizen's status in society is considered cruel and unusual.¹¹¹

Trop v. Dulles gave birth to the “evolving standards of decency” principal.¹¹² This principle takes into account societies views on what is considered cruel and unusual as the Court held: “Similarly, it must be questioned whether expatriation can really achieve the other effects sought by society in punitive devices”.¹¹³

The Court's affirmation in the use of the “evolving standards of decency” was supported by a prior Supreme Court case in *Weems v. United States*, 217 U.S. 349 (1910). The Court in supporting evolving interpretation of the Constitution held in *Weems v. United States*:

While legislation, both statutory and constitutional, is enacted to remedy existing evils, its general language is not necessarily so confined, and it may be capable of wider application than to the mischief giving it birth.¹¹⁴

(II). Absent a Violation of the Law

In *Powell v. Texas*, 392 U.S. 514, 550 (1968) the Court held:

I cannot say that the chronic alcoholic who proves his disease and a compulsion to drink is shielded from conviction when he has knowingly failed to take feasible precautions against committing a criminal act, here the act of going to or remaining in a public place. On such facts, the alcoholic is like a person with smallpox, who could be convicted for being on the street, but not for being ill, or, like the epileptic, who could be punished for driving a car, but not for his disease.

The Court's holding in *Powell v. Texas* is significant as the Court affirmed that if another court is going to enact punishment and for the punishment to avoid breaching “cruel and unusual” punishment, an actual violation of the law must have been committed.¹¹⁵

(III). Method of Inflicting Punishment

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ 217 U.S. 349 (1910) at 350

¹¹⁵ *Id.*

In *Furman v. Georgia*, 408 U.S. 238, 295 (1972), a landmark case which reaffirms when a punishment is carried out “arbitrarily”, “wantonly”, “freakishly” it is disapproved of. The Court held:

Although it is difficult to imagine what further facts would be necessary in order to prove that death is... wantonly and . . . freakishly inflicted, I need not conclude that arbitrary infliction is patently obvious...The probability of arbitrariness is sufficiently substantial that it can be relied upon...when there is a strong probability that an unusually severe and degrading punishment is being inflicted arbitrarily, we may well expect that society will disapprove of its infliction.¹¹⁶

(IV). Excessive, Forfeiture, Disproportionate

United States v. Bajakajian, 524 U.S. 321, 333, 334 (1998) the Supreme Court held:

[F]orfeitures have historically been limited to the property actually used to commit an offense and no more...**A forfeiture that reaches beyond this strict historical limitation is *ipso facto* punitive and therefore subject to review under the Excessive Fines Clause.** The excessiveness of a punitive forfeiture involves solely a proportionality determination (emphasis added).

United States v. Bajakajian in holding property subject to forfeiture could be considered punitive and “excessive” under U.S. Const. Amend. VIII. if the forfeiture was derived from a disproportionate determination.¹¹⁷ The Court held:

The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish. 524 U.S. 321, 333, 334 (1998)

In *United States v. Bajakajian* the Court determined that one way to consider this disproportionate determination was to consider other offenses and penalties associated with the similar offenses and the harm caused by the offender.¹¹⁸ The Court concluded the

¹¹⁶ *Id.* at 295

¹¹⁷ *Id.* at 334

¹¹⁸ *Id.* at 339

punishment was not proportionate to the crime due to lack of harm caused, and it did not compare to a scenario of a hypothetical drug dealer.¹¹⁹

Summary-US Const. Amend. VIII-Punishment

The suspension was a punishment enacted in a quasi-criminal proceeding. The punishment as Judge Stein proclaims was not based on “bad faith” but insisted in supporting the Commonwealth’s posture due to the Petitioner’s Counsel issues the Petitioner was facing. The suspension was administered in a wonton, freakish, arbitrarily and in a non-conformity fashion. The punishment was commenced in a retaliatory and vindictive fashion as no violation of law was committed. Unless advocating for the disabled, an African American, and the Petitioner’s own child is now considered a crime in this country. The Petitioner has not committed any crime to warrant any punishment. The Petitioner went unsuspended for 300 days which supports the punishment was excessive. In comparison Respondent, Chairman Matt Garten while elected was never petitioned to be removed nor suspended when he was charged with physically abusing a police officer.¹²⁰ Other school board members have not been petitioned for removal by the Respondent for violating Virginia Code §24.2-233(1) which would lead to suspension.¹²¹ The Petitioner is being accused of violating §24.2-233(1) for filing a complaint with the United States Office of Civil Rights and State officials. Due to the disproportionate of harm between Matt Garten a member of the Respondent and other school board members the suspension is deemed “cruel and unusual” as it is disproportionate and was inflicted wantonly, freakishly, arbitrarily, and in a non-conformity fashion.

¹¹⁹ *Id.* at 339

¹²⁰ App. H *infra.*, p. 59

¹²¹ *Id.* at p. 61-68

Summary-U.S. Constitution VIII-Excess Forfeiture

The decision below by Judge Stein under Virginia Code §24.2-236 required that the Petitioner's compensation be held in escrow.¹²² The suspension does not remove the Petitioner from his position on the School Board. The Petitioner is still a member of the school board, however unable to "act" out the duties of a school board member. The statute in support states: "during the suspension the court may appoint some suitable person to act in the officer's place".¹²³ To "act in the officer's place" does not equal replacement. Virginia Code §22.1-71 states in-part "school board members appointed or elected by district or otherwise shall have no organization or duties except such as may be assigned to them by the school board as a whole".¹²⁴ Since the order below, the punishment has become an **excessive forfeiture** of the Petitioners appurtenances. This excessive forfeiture has occurred regarding the Petitioner's membership on the school board also a violation of the COURT ORDER, and is contempt of court; and a violation of the Petitioner's U.S. Const. Amend. VIII rights.

The school division in partnership with the Virginia School Board Association (hereinafter VSBA) recognizes members of the school board as supported by Teddy Martin, VSBA Board President.¹²⁵ It does not recognize court appointed substitutes as school board members. A school board member if not elected, can only be appointed by the governing body under state statute Virginia Code §22.1-44.¹²⁶ The "act" of receiving gifts is not considered an action of a school board member under Virginia Code §22.1-71.¹²⁷ All appurtenances belong strictly to the school board member and no one else. The Petitioner annually would receive appreciations gifts due to membership on the school board. During the 2020-2021 school year

¹²² App. E *infra.*, p. 11

¹²³ App. P *infra.*, p. 84

¹²⁴ App. L *infra.*, p. 80

¹²⁵ App. Y *infra.*, p. 91

¹²⁶ App. M *infra.*, p. 81

¹²⁷ *supra* note 124

the Petitioner received a hand-crafted box which was engraved, and a certificate from the VSBA.¹²⁸ Gifts of appreciation were given out in February of each year.¹²⁹ The Petitioner in March would also receive a complementary ticket to an annual recognition dinner for teachers.

On March 18 2022 at 1:41PM the Petitioner contacted Superintendent Kim Halterman. Petitioner addressed Kim Halterman why the Petitioner had not received his appreciation gifts or the ticket.¹³⁰ Kim Halterman stated:

“The wooden Virginias for school board members were gifts to those present February 21. They were a little surprise from the kids at one of the schools. There are no additional wooden Virginias to distribute to my knowledge”.¹³¹

Petitioner sent an email to the event coordinator questioning the deadline to purchase the ticket, and if an extension could be made to get a ticket.¹³² The event coordinator confirmed the deadline had not passed when Kim Halterman had said it did.¹³³ Kim Halterman was **dishonest** in her admission (emphasis added). The coordinator was able to extend the availability for Kim Halterman to purchase the ticket.¹³⁴ Kim Halterman was once again requested to purchase the ticket by the Petitioner.¹³⁵ Kim Halterman failed to purchase the ticket.

In addition, Kim Halterman having refused to relinquish the Petitioner's gift of appreciation is also a violation of school board policy. It is a past practice that all school board members who are not present may opt to receive appreciation via delivery. In support and in recalling February 24 2020 and February 15 2021 absent board members received

¹²⁸ App. GG *infra*. p. 104

¹²⁹ App. DD *infra*. p. 99, & App. EE *infra*., 100

¹³⁰ App. AA *infra*. p. 93

¹³¹ *Id.*

¹³² App. BB *infra*. p. 95

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

appreciation gifts at later times.¹³⁶ In addition, and in support on November 16 2020 board member Craig Lane had departed and the Petitioner impartially asked the board if Craig Lane would be coming back to receive a recognition plaque.¹³⁷ In recalling it was discussed that Craig Lane opted to have his mailed.

In explaining the board's "past practice" rule: the school board does not adhere to Robert's Rules of Order, absent policy, the school board follows a tradition of past practice this was confirmed at the July 6 2020 reorganization meeting.¹³⁸ The minutes are ambiguous however, in summary, a board member tried to move the closed session; the school board attorney got involved for ten to fifteen minutes looking for policy related to Robert's Rules of Order. The attorney advised the school board that it did not go by Roberts Rules of Order and when absent policy the board has been governed by past practice.¹³⁹ Kim Halterman was required to provide the Petitioner an option to come in person or have the appreciation gift mailed.

Further, Kim Halterman since December 13 2021 ceased communicating with the Petitioner.¹⁴⁰ Referencing the Petitioner's email log via text messages.¹⁴¹ The Petitioner was never informed he would have to be physically present to receive the recognition gifts as this had never been a requirement in past practice nor should it be since gifts awarded to a school board member belong to the "school board member" by virtue of Virginia Code §22.1-44. Court appointed substitutes are not considered "school board" members if appointed under Virginia Code §24.2-236 but a substitute.¹⁴²

¹³⁶ App. DD *infra.* p. 99, & App. EE *infra.*, 100

¹³⁷ App. FF *infra.* p.102

¹³⁸ App. CC *infra.* p. 98

¹³⁹ *Id.*

¹⁴⁰ App. HH *infra.* p.105

¹⁴¹ *Id.* at page 105

¹⁴² App. M *infra.*, p. 81

The forfeiture of the Petitioner appurtenances exceeds State statute which requires only compensation be placed in escrow and was not only a violation of a court order but also the Petitioner's rights under U.S. Const. Amend. V. and U.S. Const. Amend. XIV.

IRREPARABLE HARM

Judge Stein's callous decision below suspending the Petitioner in retaliation, in vindictiveness and in-concert with Patrick Jensen and Jim Guynn Special Prosecutor and Counsel for the Respondent was pure evil. The decision below was administered wantonly, arbitrarily, without conformity, and in a freakish manner causing irreparable harm; a form of cruel and unusual punishment. The suspension caused a prohibitory and stigmatizing effect stripping away human dignity as the case is quasi criminal. The American Bar association has opined in-part:

“...actions that criminalize parent advocacy...taking acts to “push out” the family from the school have reverberations in the community and dire consequences for the family” (...).¹⁴³

Irreparable harm is defined as harm that would not be adequately compensated by monetary damages or an award of damages that cannot be provided with adequate compensation months later.¹⁴⁴ Alleghany County Public School will host its last school board meeting on **June 21 2022** and close its doors forever as the new Alleghany Highlands School division begins on July 1 2022 because the Petitioner sought appointment among other things to create a joint school system in May of 2018.

¹⁴³ *supra* American Bar Association, Rosa Hirki, “Alleging Retaliation on Behalf of Student’s with Disabilities”, July 02 2019:

<https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2019/summer2019-alleging-retaliation-on-behalf-of-students-with-disabilities/>

¹⁴⁴ *supra* Legal Information Institute, Cornell Law School retrieved on May 7 2022:

https://www.law.cornell.edu/wex/irreparable_harm

This opportunity is irreplaceable and no compensation exists for the Petitioner to take his seat once more and to fulfill his oath as promised when the Petitioner's term began on July 1 2018. No amount of compensation can tip the scales of justice to allow the Petitioner to regain any ounce of dignity and humanity that has been stolen through the caustic public suspension of his office.

GRANT OF WRIT OF CERTIORI

The Petitioner's Petitioner for writ of certiorari under Supreme Court precedence will more likely than not, be granted and will prevail based on precedence in:

- (I). *Georgia v. Rachel*, 384 U.S. 780 (1966) denial of a hearing,
- (II). *Thermtron Products, Inc. v. Hermansdorfer*, 423 U. S. 336 (1976), Fourth Circuit failed to analyze §1447(c) and §1447(d) *in pari materia* as the district court's remand order was "clearly erroneous" and the Fourth Circuit should have reversed (*United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948))
- (III). Supreme Court Stare Decisis holding in *BP, P.L.C., et al., v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021) that the entire remand ORDER is appealable, not the district court's decision to remand.
- (IV). This Court's holding requiring that appellate courts and district courts construe the inartful pleadings of *pro se* actions liberally (*Boag v. MacDougall*, 454 U.S. 364 (1982)). This Court affirmed

"allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence...we conclude that he is entitled to an opportunity to offer proof" (*Haines v. Kerner*, 404 U.S. 519 (1972)).

Fourth Circuit knowing that the district court denied the Petitioner an opportunity to offer supportive evidence as the Petitioner in a *pro se* capacity specifically stated in the Notice of Removal: "COMES NOW the Respondent Donnie T.A.M. Kern asking the court for liberal

construe in interpreting this potentially ‘inartful pleading (*Boag v. MacDougall*, 454 U.S. 364, 365 (1982))’.¹⁴⁵ The Fourth Circuit should have reversed.

The Petitioner has 100% chance of the writ of certiorari being granted risk this great Court committing treason against the U.S. Constitution (*Cohens v. Virginia*, 19 U.S. 6 Wheat. 264 404 (1821))

STATISFACTION OF INJUNCTIVE RELIEF

The Honorable Chief Justice John G. Roberts Jr., cited in an Opinion in Chambers pertaining to an application submitted in the case *Teva Pharmaceuticals USA, Inc., et al. v. Sandoz, Inc., et al.* having ordered April 18 2014 that the following would need to be demonstrated:

“(1) a ‘reasonable probability’ that this Court will grant certiorari, (2) a ‘fair prospect’ that the Court will reverse the decision below, and (3) a ‘likelihood that irreparable harm [will] result from the denial of a stay”

It is understood that the same demonstration would need to apply regarding this emergency injunction that is being requested as held in *Am. Trucking Ass’ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers). An issuance of injunction grants judicial intervention that has been withheld by lower courts, the legal rights at issue must be “indisputably clear” (*Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (citation omitted).

It has been contested, hopefully, to the Chief Justice’s satisfaction that this petition demonstrated exceedingly each of these requirements making it indisputably clear of the Petitioner’s legal rights in this quasi-criminal case.¹⁴⁶ clearing a path for the Chief Justice to grant the injunction, a stay, and **RELIEF**.

¹⁴⁵ App. H *infra.*, p. 48

¹⁴⁶ *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975) opined- “state proceeding which, in important respects, is more akin to a criminal prosecution than are most civil cases”.

CONCLUSION

This case has been a campaign of irreparable harassment no legal document can encompass as there is nothing short or plain in describing the horrors the Petitioner had succumb to in the last four years at the hands of the Respondent, and the Alleghany County School Board for attempting to end discrimination against the disabled, an African American and the Petitioner's own child.

"What you allow, you teach" as stated by JB Bufkin, former CEO of the Alleghany Highlands YMCA. To allow the bat of sadistic retaliation, and heinous violations of equal protections to swing relentlessly unchecked is the equivalent of gripping the bat and waiting your turn.

I have forgiven these individuals for their wrong against me this is the Christian way. I do not seek a resolution that would dismantle the reputation of another person. Drafting this legal vessel and using the words encompassing it is against my own moral, personal beliefs and has been a nauseating experience I do not wish to relive. I believe that these individuals have contributed good deeds to our society at one time or another and are very good people; just made a very bad decision. Please pick one reason to reverse so we can begin to repair the effects of the suspension. My hand of friendship will always be extended.

RELIEF

The imbalance in the scales of justice cannot be forgiven only rebalanced. The irreparable harm caused by the suspension and in my absence as a participating member of the school board cannot be replaced but this court can circumvent repairment and prevention.

I ask that you respectfully enjoin the parties to provide **RELIEF** as stated out in **APPENDIX RELIEF (Writ.Ap.115)**.

This Court held:

Lewis v. Casey:

It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm. 518 U.S. 343, 349 (1996);

North Carolina v. Pearce:

[P]unishment based on the impermissible motivation described by the Court is as I have said, clearly unconstitutional, and courts must, of course, set aside the punishment if they find, by the normal judicial process of factfinding, that such motivation exists. 395 U.S. 711, 741 (1969);

Sullivan v. Little Hunting Park, Inc.,

[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that, where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. 396 U.S. 229, 239 (1969)

I will also pray that you will have resolve in all that is currently transpiring in Washington D.C. Seek justice for all and keep Deuteronomy 29:29 close by. With best wishes, I remain your humble and loyal public servant of the Clifton Forge West District, God Speed.

Respectfully submitted.

DONNIE T.A.M. KERN, MSA, EA
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June 2022

CERTIFICATE OF SERVICE

I hereby certify that on this day 13 of June, 2022 I paper filed an original having been post marked via USPS the true and correct foregoing:

[EXTROADINARY EMERGENCY] APPLICATION FOR WRIT OF

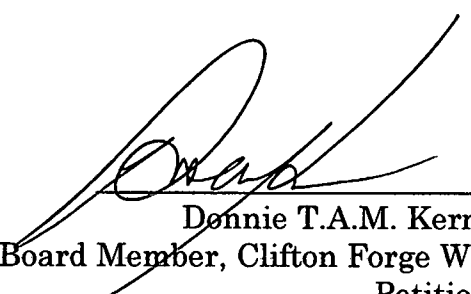
INJUNCTION along with two copies with the Clerk of Court for the United States Supreme Court. A hard-copy identical to the paper filed brief was sent post marked via USPS to the counsel on record of the Respondent(s) including those below:

&

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on this day 13 of June, 2022..



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CERTIFICATE OF COMPLIANCE

1. This application complies with the type-volume limitations of Supreme Court Rules 33.2(a) as it is printed on 8½- by 11 paper, double spaced except for single spaced indented quotations, on opaque, unglazed, white paper and signed by the party proceeding pro se.

2. Subparagraph 1(g) of rule 33 does not apply to this document prepared under Rule 33.2(a).

3. This brief consist of 40 pages which excludes contents specified in subparagraph 1(d) of this rule, and the page containing Counsel/*Pro Se*

4. Complies with the typeface requirements because it has been prepared in a proportionally spaced typeface using Word 2016 in a 11-point Century Schoolbook a serif typeface used by the Supreme Court of the United States.

CERTIFICATE

I certify under penalty of perjury that the foregoing is true and correct this day 13

June, 2022



DONNIE T.A.M. KERN, MSA, EA

Petitioner, Pro Se

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TABLE OF APPENDICES

	PAGE
APPENDIX A.....	1
ORDER-Dismissed-Fourth Circuit of Appeals, January 24 2022	
APPENDIX B.....	4
MOTION-Appellant to File Writ of Injunction with the Chief Justice, Justice of the Fourth Circuit	
APPENDIX C.....	8
ORDER-Granting Motion to Dismiss Petition for Rehearing and Rehearing En Banc	
APPENDIX D.....	9
DOCKET REPORT- Petition for Writ of Certiorari, June 8 2022	
APPENDIX E.....	10
ORDER-Suspended pursuant §24.2-236-Alleghany County Circuit Court, September 28 2022	
APPENDIX F.....	12
DENIED-Temporary Restraining Order (TRO)-Federal District Court, September 27 2022	
APPENDIX G.....	14
MOTION-Continuance-Alleghany County Circuit Court, August 12 2021 (GRANTED)	
APPENDIX H.....	47
REMANDED-Notice of Removal (7:21-cv-00471-TTC), September 10 2021	
APPENDIX I.....	69
MOTION-Appellant Constitutionality & Other, 4th Cir, January 24, 2022	
APPENDIX J.....	71
ORDER-Appoint Special Prosecutor, Alleghany County Circuit Court, March 3 2021	
APPENDIX K.....	76
EMAIL- Notice to Parties of Complaint and TRO, September 27 2021-(Separate from Case)	
APPENDIX L.....	80
Virginia Code §22.1-71 -School Board Corporate Powers	

CONTINUED	PAGE
APPENDIX M.....	81
Virginia Code §22.1-44- Appointment of School Board Members	
APPENDIX N.....	82
Virginia Code §24.2-234-Officer Removal	
APPENDIX O.....	83
Virginia Code §24.2-233(1) -Violations under Officer Removal	
APPENDIX P.....	84
Virginia Code §24.2-236-Suspension from Office Pending Hearing	
APPENDIX Q.....	84
Virginia Code §2.2-3900-Human Rights Act	
APPENDIX R.....	87
Virginia Code §2.2-3010.1- Whistle Blower	
APPENDIX S.....	88
Virginia Code §40.1-27.3-Retaliatory Action Against Employee Prohibited	
APPENDIX T.....	89
Virginia Code §40.1-33-1- Retaliatory Actions Prohibited; civil penalty	
APPENDIX U.....	90
U.S. Constitutional Amendment I	
APPENDIX V.....	90
U.S. Constitutional Amendment V	
APPENDIX W.....	90
U.S. Constitutional Amendment VIII	
APPENDIX X.....	91
U.S. Constitutional Amendment XIV	
APPENDIX Y.....	91
Email-Teddy Martin, VSBA Chairman	
APPENDIX Z.....	92
Virginian Review News Release-School Board Appreciation Gifts	

CONTINUED	PAGE
APPENDIX AA.....	93
Email-Kim Halterman	
APPENDIX BB.....	95
Email-Teresa Hammond	
APPENDIX CC.....	98
ACSB July 6 2020 minutes Page 3-7-Closed Session Motion	
APPENDIX DD.....	99
ACSB February 24 2020 minutes Page 1-Appreciation-Craig Lane Absent	
APPENDIX EE.....	100
ACSB February 15 2021 minutes Page 1-2-Appreciation-Jennifer Seckner Absent	
APPENDIX FF.....	102
ACSB November 16 2020 minutes Page 1-2-Kern Questioned Craig Lane Plaque	
APPENDIX GG.....	104
2021 VSBA and Appreciation Gifts to Petitioner (image)	
APPENDIX HH.....	105
Text Messages-Email Confirmations School Board Email Account	
APPENDIX RELIEF.....	115
IRREPARABLE HARM RELIEF-SUSPENSION	

APPENDIX A

USCA4 Appeal: 21-2046

Doc: 22-1

Filed: 01/24/2022

Pg: 1 of 1

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

J U D G M E N T

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

**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. Kern 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 "[f]ederal officers or agencies sued or prosecuted"); 28 U.S.C. § 1443 (exception for cases involving "[c]ivil 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

APPENDIX B

NO: 21-2046

In The
United States Court of Appeals
For the Fourth Circuit

ALLEGHANY COUNTY BOARD OF SUPERVISORS,

Appellee,

v.

DONNIE T.A.M. KERN,

Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Case Number 7:21-cv-00471-TTC
Honorable Thomas T. Cullen

[EMERGENCY] APPELLANT'S MOTION: PERMISSION TO FILE WRIT OF
INJUNCTION WITH THE CHIEF JUSTICE, JUSTICE OF THE FOURTH
CIRCUIT OR REMOVE TEMPORARY STAY OR APPELLANT'S VOLUNTARY
DISMISSAL OF PETITION FOR REHEARING AND REHEARING EN BANC NO
LATER THAN JUNE 2 2022 12:00AM

Donnie T.A.M. Kern, MSA, EA
Appellant; *Pro Se*
115 Church Street
Clifton Forge, VA 24422
540-958-4958
quilltaxation@gmail.com

COMES NOW Appellant's [EMERGENCY] motion seeking permission to file an application for writ of injunction with United States Supreme Court Chief Justice and Circuit Justice of the Fourth Circuit John G. Roberts., Jr. as the appellee in-concert with the Alleghany County School Board and Superintendent Kim Halterman, at or around February 2022 and March 2022 violated a court order issued by the Alleghany County Circuit Court on September 28 2021;

Or it is prayed that the Fourth Circuit of the United States Court of Appeals will remove the temporary stay on June 2 2022 at 12:00AM until June 7 2022 12:00AM to allow the appellant to file the application for writ of injunction with the United States Supreme Court Chief Justice and Justice for the Fourth Circuit John G. Roberts., Jr';

Or it is with a heavy heart and disheartened spirit that the Appellant voluntarily dismisses the Petition for Rehearing and Rehearing *En Banc* filed on February 7 2022 at June 2 2022 at 12:00AM nullifying the temporary stay issued on February 7 2022 by this court.

BACKGROUND

1. The appellant is an appointed school board member for Alleghany County Public Schools, in Virginia with a term ending June 30 2022. The last scheduled meeting with the Alleghany County School Board is scheduled for June 16 2022;
2. Current irreparable harm is being caused that no amount of compensation can remedy as the Appellant was unconstitutionally suspended via vindictiveness

and retaliatory treatment by Judge Edward Stein presiding judge of the Alleghany County Circuit Court, Commonwealth Attorney Mary Pettitt via Patrick Jensen, and Jim Gynn Special Prosecutor and Counsel for Appellee (App A. *infra.*);

3. Absent a Flux Capacitor or an application for writ of injunction to the Chief Justice or Justice of the Fourth Circuit John G. Roberts., Jr. the irreparable harm that could have been prevented will be cemented in the confines of history;
4. The Fourth Circuit opined in *U.S. v. Dickerson*, 166 F.3d 667(4th Cir. 1999):

“We are a court of law not politics” (emphasis added)
5. Restating 4.; **Prove it** (emphasis added);
6. The Appellee, the Alleghany County School Board, and Superintendent Kim Halterman are like the losers of a monopoly game. They have landed on boardwalk and things are getting rough, and now they are invoking the Free Parking rule when the Free Parking rule doesn't exist. The Appellant should not have to stand idle allowing their lawlessness to cast grave insult to the justice system; they should be held in contempt of court;
7. The Appellant willfully swaps contempt of court with due process allowing the appellant to file the writ of injunction (App. A, *infra.*) with the Chief Justice and Justice for the Fourth Circuit;

8. On May 18 2022 the Clerk of the Supreme Court after receiving the application of writ of injunction filed by the Appellant/Petitioner responded to the Appellant/Petitioner:

It appears the Fourth Circuit has yet to rule on your petition for reconsideration and reconsideration *en banc*. Thus, the Fourth Circuit's stay entered February 7, 2022 remains in effect. Therefor your application to stay the Fourth Circuit mandate is legally premature.

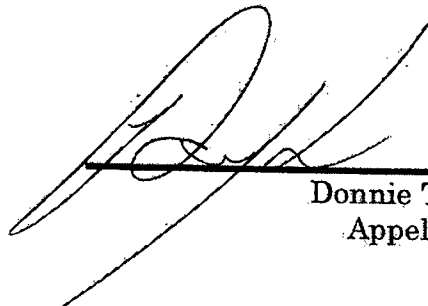
Should the Fourth Circuit deny your petition for reconsideration and reconsideration *en banc*, you may resubmit to this Court. (App. B, *infra.*).

SUMMARY

It is mercifully prayed this Court will grant the Appellant permission to file the writ of injunction with the Chief Justice and Justice of the Fourth Circuit John G. Roberts Jr., or remove the temporary stay or accept this motion as the Appellant's voluntary dismissal of the petition for rehearing and rehearing *en banc* filed on February 7 2022. Please and thank you.

CERTIFICATE

I certify the foregoing is true and correct this day 31 May, 2022



Donnie T.A.M. Kern,
Appellant, *Pro Se*

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 court grants the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

APPENDIX D

	Search documents in this case:	Search
No. 21-1537		
Title:	Donnie T. Kern, Petitioner v. Board of Supervisors of Alleghany County	
Docketed:	June 8, 2022	
Linked with 21A634		
Lower Ct:	United States Court of Appeals for the Fourth Circuit	
Case Numbers:	(21-2046)	
Decision Date:	January 24, 2022	

DATE	PROCEEDINGS AND ORDERS
Apr 18 2022	<p>Application (21A634) to extend the time to file a petition for a writ of certiorari from April 24, 2022 to June 8, 2022, submitted to The Chief Justice.</p> <p style="text-align: center;">Main Document Lower Court Orders/Opinions</p>
Apr 21 2022	Application (21A634) granted by The Chief Justice extending the time to file until June 8, 2022.
Jun 03 2022	Petition for a writ of certiorari filed. (Response due July 8, 2022)

NAME	ADDRESS	PHONE
Attorneys for Petitioner		
Donnie T. Kern	115 Church St. Clifton Forge, VA 24422	(540) 958-4958
Party name: Donnie Kern		

APPENDIX E

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF

ALLEGHANY

COMMONWEALTH OF VIRGINIA,

Petitioner,

v.

DONNIE T.A.M. KERN,

Respondent.

**ORDER ON MOTION TO SUSPEND
RESPONDENT FROM THE
ALLEGHANY COUNTY SCHOOL
BOARD PENDING THE HEARING ON
THE PETITION FOR REMOVAL**

Case No.
CL20000827

UPON CONSIDERATION OF the written motion and addendum filed by the Commonwealth to suspend the respondent from the Alleghany County School Board pending the hearing on the petition for removal, a hearing was held by telephone on September 28, 2021. The Commonwealth was represented by Mr. Jensen, and the respondent appeared *pro se*. Upon consideration of the pleadings and the arguments, the Court finds that the Commonwealth's position is well taken and grants the Commonwealth's motion over the objection of Mr. Kern.

Pursuant to Va. Code § 24.2-236, and for the reasons set forth in the hearing, it is hereby **ORDERED** that the respondent Donnie T.A.M. Kern is **SUSPENDED** from his office on the Alleghany School Board pending the hearing on the petition for removal. Further, it is **ORDERED** that the Alleghany County Treasurer withhold any compensation due to the

respondent in a separate account pending the disposition of the petition for removal. If the proceedings result in favor of Mr. Kern, the compensation shall be paid over to him. Otherwise, any funds shall be paid back to Alleghany County.

The respondent's objections to the Court's ruling are noted.

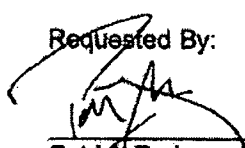
The Clerk is directed to provide a certified copy of this Order to the following:

1. Counsel for the Commonwealth;
2. The Respondent, Donnie Kern, *pro se* (115 Church Street, Clifton Forge, VA 24422);
3. Peter Huber, Alleghany County Administrator (9212 Winterberry Avenue, Covington, VA 24426);
4. The Alleghany County Board of Supervisors (9212 Winterberry Avenue, Covington, VA 24426);
5. The Alleghany County School Board (100 Central Circle, Low Moor, VA 24457); and
6. Teresa Brown, Treasurer, Alleghany County (9212 Winterberry Avenue, Suite F, Covington, VA 24426).

Entered this the 28 day of SEPTEMBER, 2021.
Entered this the 28 day of September, 2021.

JUDGE: _____

Requested By:


Patrick R. Jensen
Jim Guynn
Commonwealth of Virginia

Objected to for the reasons stated:

Signature waived per Rule 1:13
Donnie Kern
Respondent, *pro se*

Page 2 of 2

I certify that this document is a true copy of a record/filing in the Alleghany County, Virginia Circuit Court and that, as clerk of this court, I have custody of the original document.
DEBRA N. BYER, CLERK

BY  9-30-2021
() CLERK (X) DEPUTY CLERK ISSUANCE DATE

APPENDIX F

U.S. District Court

Western District of Virginia (Roanoke) CIVIL DOCKET FOR CASE #: 7:21-cv-00495-JPJ

Kern v. Garten et al
Assigned to: Senior Judge James
P. Jones Cause: 28:1983 Civil
Rights

Date Filed: 09/27/2021
Date Terminated: 12/13/2021 Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other Jurisdiction:
Federal Question

Plaintiff

Donnie T.A.M. Kern
115 Church Street
Clifton Forge, VA 24422
540-958-4958
PRO SE

represented by **Donnie T.A.M. Kern**

V.

Defendant

George M. Garten
In Official Capacity of Chairman & Member Alleghany County Board of Supervisors

Defendant

Stephen A. Bennett
In Official Capacity of Member Alleghany County Board of Supervisors

Defendant

Cletus W. Nicely
In Official Capacity of Member Alleghany County Board of Supervisors

Defendant

M. Joan Vannorsdall
In Official Capacity of Member Alleghany County Board of Supervisors

Defendant

James M. Griffith
In Official Capacity of Member Alleghany County Board of Supervisors

Defendant Shannon P. Cox

In Official Capacity of Chairman Alleghany County Board of Supervisors

Defendant

Gregory A. Dodd
In Official Capacity of Chairman Alleghany County Board of Supervisors

Defendant

Gregory A. Dodd
In Official Capacity of Member & Political Incumbent Alleghany County Board of Supervisors

Defendant

Patrick Jensen
In Official Capacity of Commonwealth Attorney Petitioner

Defendant Jim Guynn

In Official Capacity of Special Counsel For Commonwealth Attorney Petitioner

Defendant

Hon. Judge Ed Stein*In Official Capacity of Presiding Judge Alleghany County Circuit Court Case CL20-827*

Date Filed	Docket Text
09/27/2021	COMPLAINT against Stephen A. Bennett, Shannon P. Cox, Gregory A. Dodd(In Official Capacity of Member & Political Incumbent Alleghany County Board of Supervisors), Gregory A. Dodd(In Official Capacity of Chairman Alleghany County Board of Supervisors), George M. Garten, James M. Griffith, Jim Guynn, Patrick Jensen, Cletus W. Nicely, Ed Stein, M. Joan Vannorsdall (Filing & Administrative fee \$ 402., receipt# 700069443), filed by Donnie T.A.M. Kern. (Attachments: # <u>1</u> Complaint Part 2, # <u>2</u> Civil Cover Sheet)(aab) (Entered: 09/28/2021)
09/27/2021	EMERGENCY MOTION for Temporary Restraining Order by Donnie T.A.M. Kern. (aab) (Entered: 09/28/2021)
09/28/2021	ORAL ORDER: Plaintiff Kern's emergency motion for a temporary restraining order (ECF No. <u>2</u>) is hereby DENIED. A written order in support of this ruling will follow. Entered by Judge Thomas T. Cullen on 09/28/2021. <i>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</i> (Order mailed to Pro Se Party via US Mail)(ck)
09/29/2021	ORDER TRANSFERRING CASE. Case transferred to Chief Judge Michael F. Urbanski for all further proceedings. Judge Thomas T. Cullen no longer assigned to case. Signed by Judge Thomas T. Cullen on 9/29/2021. (Order mailed to Pro Se Party via US Mail)(ams)
09/29/2021	ORDER TRANSFERRING CASE. Case transferred to Senior Judge James P. Jones for all further proceedings. Chief Judge Michael F. Urbanski no longer assigned to case. Signed by Chief Judge Michael F. Urbanski on 9/29/21. (mka)
10/05/2021	ORDER DISMISSING COMPLAINT with leave granted to the plaintiff to file, within 14 days, an Amended Complaint meeting the requirements set forth. Signed by Senior Judge James P. Jones on 10/5/2021. (Order mailed to Pro Se Party via US Mail)(aab)
10/08/2021	Emergency Motion for comprehensive filing re <u>6</u> Order Dismissing Complaint . filed by Donnie T.A.M. Kern. (sln) Modified on 10/13/2021 to reflect event of motion per Order received (sln). (Entered: 10/12/2021)
10/08/2021	MOTION Requesting Pacer E-filing Privileges by Donnie T.A.M. Kern. (sln) (Entered: 10/12/2021)
10/13/2021	ORDER denying Motion <u>7</u> For Leave to File Corrected Document; denying <u>8</u> Emergency Motion for Request for Pacer E-File. Signed by Senior Judge James P. Jones on 10/13/21. NEF and Order copy mailed to PROSE party via US Mail.(sln)
10/18/2021	AMENDED COMPLAINT & Pleading for Declaratory Judgment against George M. Garten, et al filed by Donnie T.A.M. Kern.(sln) Modified docket text to reflect document title on 10/18/2021 (sln)
10/18/2021	Emergency MOTION for Temporary Restraining Order by Donnie T.A.M. Kern. (sln)
10/18/2021	Second Emergency MOTION Requesting Pacer E-filing Privileges by Donnie T.A.M. Kern. (sln)
10/28/2021	Summons Issued as to George M. Garten.(Attachments: # <u>1</u> Summons Issued as to Stephen A. Bennett, # <u>2</u> Summons Issued as to Cletus W. Nicely, # <u>3</u> Summons Issued as to M. Joan Vannorsdall, # <u>4</u> Summons Issued as to James M. Griffith, # <u>5</u> Summons Issued as to Shannon P. Cox, # <u>6</u> Summons Issued as to Gregory A. Dodd, # <u>7</u> Summons Issued as to Patrick Jensen, # <u>8</u> Summons Issued as to Jim Guynn, # <u>9</u> Summons Issued as to Hon. Judge Ed Stein)(ams)
10/28/2021	ORDER denying <u>11</u> Emergency MOTION for Temporary Restraining Order by Donnie T.A.M. Kern; denying <u>12</u> Second Emergency MOTION Requesting Pacer E-filing Privileges by Donnie T.A.M. Kern. Signed by Senior Judge James P. Jones on 10/28/2021. (Order mailed to Pro Se Party via US Mail)(ams)
12/10/2021	MOTION to Voluntary Dismiss Complaint Under Rule 41 by Donnie T.A.M. Kern. (sln)
12/13/2021	ORDER DISMISSING CASE. Signed by Senior Judge James P. Jones on 12/13/2021. (Order mailed to Pro Se Party via US Mail)(ams)

APPENDIX G

1

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

COMMONWEALTH OF VIRGINIA,

)

Petitioner,

)

)

CASE NO. CL20-827

v.

)

Donnie T.A.M. Kern

)

Respondent

)

)

Motion for Continuance

Background

The defendant who was represented by counsel as of August 9 2021 suspends representation and comes forth pro se with a motion for continuance in the trial by jury scheduled August 25, 26, and 27 of 2021 under Va.R. Sup. Ct. 8:14 due to conflicts arising out of representation, abuse of process and malicious discovery attempts initiated by the Commonwealth in carrying out the petition filed by the Alleghany County Board of Supervisors on December 2 2020. Due to these circumstances and the current trial date as scheduled the defendant decrees would cause significant undue burden in the defendant's ability to respond to discovery request accordingly as required under law and will deny the defendant due process and equal protection under the laws which the defendant should be afforded under the United States constitution. The defendant charges that to continue with the current scheduled court date would not be in the best interest of justice.

Facts**Defendant's Counsel**

- As of the filing of this motion counsel has only furnished a copy of the reply to the discovery request made to the Alleghany County Board of Supervisors, and the October 27 2020 hearing transcript the defendant had with the Alleghany County Board of Supervisors to the defendant. Discovery requests were also sent by counsel to Jacob Wright, Amy Trail, Eugene Kotulka, and Dr. Elizabeth Heath. The defendant has not been furnished the official reply responses pertaining to these discovery request.
- The October 27 2020 hearing transcript was provided to the defendant on June 21 2021 but was in custody by counsel at or around December 4 2020, and numerous requests were made by the defendant for the transcript.
- The Defendant upon reviewing the October 27 2020 hearing transcript with the Alleghany County Board of Supervisors requested counsel on advice on having perjury charges brought against members of the Alleghany County Board of Supervisors, and Special Prosecutor Jim Guynn, counsel for Alleghany County Board of Supervisors whose appointment was confirmed by the Honorable Ed Stein Circuit Court Judge to serve under the Commonwealth Attorney's office in carrying out the allegations within the petition. The defendant argues that he is mandated to show cause under §24.2-235 of the Code of Virginia why he should not be removed from the School Board and contests that the Alleghany County Board of Supervisors committing perjury in the commission of filing a petition declared under perjury is a good defense. Counsel ignored request.
- The Defendant on July 7 2021 sent counsel documents which included a personnel schedule of the defendant to show the time constraints the defendant is under and the limited time the

defendant has to engage in organizing his own defense: (see below)

Estimated Work Schedule		24	24	24	24	24	24	24
	Estimated Monthly Hours	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Work		8	8	8	8	8		
Work Overtime		1	1	1	1	1		
Religious								8
Family		1	1	1	1	1	5	
Fiduciary (Father) Visit							5	
Fiduciary (Father) Financial	3							
Business Owner	3							
School Board	6							
Troop 2 Boy Scout Chairman	12							
Dinner		1	1	1	1	1	1	1
Breakfast		1	1	1	1	1	1	1
Lunch		1	1	1	1	1	1	1
Physical/Mental Health		0.75	0.75	0.75	0.75	0.75	0.75	0.75
Sleep		9	9	9	9	9	9	9
Average Weekly Monthly Activities	6	22.75	22.75	22.75	22.75	22.75	22.75	20.75
Time Available Per Week	10.75	1.25	1.25	1.25	1.25	1.25	1.25	3.25
Reduced by Avg Weekly Month Activities	6							
Total Time Per Week	4.75							

The defendant has approximately 4.75 hours to assist with reviewing documents, looking for evidence, meeting with counsel, drafting questions or other required memos to share with counsel. This time is also allotted to assisting with the Commonwealth's discovery requests which are prejudicially burdensome.

- The Defendant on July 16 2021 inquired once again with counsel to proceed with having charges of perjury brought against the Allegheny County Board of Supervisors, and Special Prosecutor Jim Guynn so that the defendant would be able to show cause why he should not be removed under §24.2-235. Counsel suggested that the defendant do it and declined.
- The Defendant on July 16 2021 requested of counsel to file a motion of Equitable Estoppel/Unclean Hands doctrine for the Court to deny members of the Allegheny County Board

of Supervisors the equity being sought which is to remove the defendant from his position on the Alleghany County School Board. Counsel suggested that the defendant do it and declined.

- The Defendant on July 27 2021 was instructed by counsel to stop making requests under the Unclean Hands Doctrine, and that perjury charges to be brought against members of the Alleghany County Board of Supervisors or counsel could no longer represent the defendant. The defendant also asked to request that the trial be moved up for better preparation could be made counsel responded that would not happen unless the defendant got new counsel.
- Counsel told the defendant that they would object to a recent deposition request by the Commonwealth but did not do so. The defendant fears for his safety in partaking in the deposition schedule on 8/11/2021.
- The defendant and counsel have different points of strategy in handling the defense of the defendant's case. The defendant took the oath to uphold the US Constitution and Virginia Constitution and believes that all available options that would benefit the taxpayers of the Alleghany Highlands and the defendant should be utilized in resolving the case prior to going to trial. The defendant believes this has not occurred and the defendant would be denied justice without first initiating appropriate motions to bring the case to close.
- The defendant also believes that all evidence and parties to the case should be brought forward with honesty and integrity and at this time and with little time available will not occur.

Commonwealth Abuse of Process

- Counsel sent the defendant on June 22 2021 a discovery request by the Commonwealth. The request was significantly burdensome. The defendant unknown at the time was unaware of the time request to complete. The defendant relies on clear and understandable direction by counsel. At this time the defendant has furnished information as requested in the

17. Copies of any complaints you received regarding your position on the School Board.

RESPONSE:

The defendant believes that to acquire all of these it would more time than the defendant has allotted to manage the defendant's own defense. Request #4 would require an intensive search and require the defendant to listen to numerous amounts of audio recordings to determine if it would fall under the discovery request and the defendant would likely over look a file that would need to be turned over creating potential for obstruction. In addition, counsel for the defendant would also be required to listen to the audio recordings creating an astronomical financial impact upon the defendant. #6 and #7 the defendant has relinquished the OCR complaint filed on December 11 2019 but asserts that it was a violation of his federally protected rights and a deliberate interference by the Commonwealth.

The defendant humbly reminds the court as cited by the United States Department of Justice and the Federal Bureau of Investigation:

Section 242 of Title 18- Deprivation of rights under color of law which makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prison guards and other law enforcement officials, as well as

- Commonwealth has requested through discovery a deposition with the defendant scheduled August 11 2021. Prior to the deposition request the defendant sat in an approximate six-hour hearing with Jim Guynn and members of the Alleghany County Board of Supervisors on October 27 2020. During the hearing Jim Guynn created many uncomfortable conversations with the defendant. Below are a series of conversations that took place during the hearing on October 27 2020. We remind the court that a petition filed by members of the Alleghany County Board of Supervisors was filed under the penalty of perjury.

Q-Jim Guynn, A-Donnie Kern

Hearing under False Pretenses: Page 6-8

8 Q. And what were you told your duties as
9 a school board member would be?

10 A. This seems kind of off topic. I was
11 asked to come here and provide testimony. I'm
12 ready.

13 Q. Well, I'm hoping to get a little bit
14 of background so that I will understand and it
15 will give me a little bit more insight into the
16 testimony that you're going to give.

17 A. How about let me give the testimony
18 and then if I still haven't answered all of your
19 questions, you can answer any of the questions
20 that I have, too.

21 Q. This is going to be that you will
22 answer my questions. We are not -- so this is
23 not --

24 A. So this isn't me sharing information

1 like I was invited to do?

2 Q. You will be sharing information as
3 you answer our questions.

4 A. I don't get it.

5 Q. What do you mean you don't get it?

6 A. My personal experience, I came here
7 to talk about it, and you're wanting to ask
8 questions.

9 Q. Right. That's what an investigation
10 is, we ask questions.

11 A. But I was told they wanted to hear my
12 testimony.

13 Q. Who told you that?

14 A. Matt, in September, I recall he said,
15 we would like to have Mr. Kern come and we would
16 like to hear his testimony, something of that
17 nature. I perceived that to be me coming and
18 talking about it.

19 Q. All right.

20 A. So now you're saying that is not what
21 we're doing?

22 Q. No, I think I'm trying to do that by

1 A. I would love to answer questions, but
2 I think we're off topic with that one.

3 Q. Why don't you humor me a little bit
4 and just tell me if you had any training to be a
5 school board member.

6 A. Sure.

Need for Attorney Assistance: Page 11

8 Q. What does it depend on?

9 A. The circumstances that I need to run
10 by my attorney. I didn't come here to validate
11 who purchased or paid for this. I didn't do that.
12 I came here to testify.

13 Q. Did you ask the newspaper to run it?

Threat of Taking a Break: Page 13-14

1 Q. Mr. Kern, here's what is getting
2 ready -- you know, we're going to go about five
3 more minutes and you're going to keep acting like
4 that, then we are going to break.

5 A. I'm not acting like anything.

6 Q. You're not answering my questions.

7 A. I don't understand some of your
8 questions.

Question Fail: Page 30

2 A. Yes, she's referring to a student.
 3 Q. A particular student?
 4 A. Yes.
 5 Q. And she's not referring to a
 6 practice, for instance? You're not putting kids
 7 in closets?
 8 A. So -- I don't understand that
 9 question.
 10 Q. I'm not sure I do, either. Let's
 11 back up a second.

Can you hear me?: 36

17 Q. Mr. Kern, am I not -- can you not
 18 hear me? I mean, I will speak up if I need to.

Rear-End Threat: 36-37

24 Q. Here's the interesting thing about
 1 this. I can sit here all day and do this. I can
 2 subpoena your rear end and bring you back tomorrow

You need to listen: 38-39

16 A. I didn't put that. That is what Amy
17 Trail said.

18 Q. Okay. But you put in what Amy Trail
19 said and said closet, and you expected --

20 A. I didn't say closet. Amy Trail said
21 closet.

22 Q. You need to listen to me. Okay? You
23 need to listen.

24 A. I think that is a two-way street.

Jim Guynn Agrees with use of "Closet" statement: 40

3 A. I think also, I want to point out,
4 the benefit of this was for the anonymity of the
5 student because I believe in protecting the
6 student's confidential information.

7 Q. I agree with you. But my question to
8 you is where do you say that you are referring to
9 a seclusion room as a closet anywhere in that
10 letter?

Jim Guynn and I agree on the prohibited use of seclusion: Page 40

13 Q. And, okay. And would you agree with
14 me that it would be -- that putting a kid in a
15 closet would be inappropriate?

16 A. I think putting anyone in a closet
17 could potentially be inappropriate. But again, I
18 want to reiterate, seclusion should be utilized as
19 a method of last resort. Method of last resort
20 means you have exhausted all interventions. All
21 interventions.

22 Q. Okay.

23 A. Every single one that you can
24 possibly think of should be exhausted.

Attention Deficit Disorder Issues Exhibited: 42-Defendant Inability to Recall

3 A. Sorry, repeat that.

4 Q. Weren't you told by Amy Trail that
5 she made that statement to Dr. Heath? I mean,
6 that's what you just told us 20 minutes ago.

7 A. What did I tell you 20 minutes ago?

8 Q. That Amy Trail made that statement to
9 Dr. Heath.

10 A. No, Amy Trail stated she made that
11 statement to Dr. Heath.

12 Q. That's just what I asked you.

13 A. Amy Trail stated to me that she
14 stated that to Dr. Heath.

Mr. Kern is encouraged to run for Board of Supervisors: 46-47

20 A. Look, man, I came here to testify and
21 provide facts. You're way off topic. I mean, I
22 think this has gone like across the bridge.

23 Q. So here's how we get back on topic.
24 You answer my question. My question is that I'm

1 trying to get at is, did you have any conversation
2 with Dr. Heath about that statement before you put
3 it in the paper?

4 A. How about you let me provide my
5 testimony and then you can ask these off-the-wall
6 questions?

7 Q. That's not the way it's going to
8 work.

9 A. Maybe it should work that way.

10 Q. Then maybe you should run for the
11 Board of Supervisors.

12 A. I'm probably going to do that.

13 Q. Good. In the meantime, you need to
14 answer my question.

Can you not read?: 48

19 A. Well, maybe Covington disapproves of
20 secluding children. It has a lot to do with it.
21 Q. Doesn't it assume that Dr. Heath does
22 approve of it?
23 A. I don't know what it assumes.
24 Q. Can you not read it today --

False Pretenses #2: 51-52

16 A. I am sorry, Amy Trail told me the
17 conversation, so the quote that I used, that is
18 true. I have it recorded. I mean, I don't
19 understand your questioning. Do we care about
20 kids in here? I would like to give testimony on
21 my personal factual experience with the School
22 Board operations. Do we care to hear about that?
23 Q. We're going --
24 A. How would your question lead them to

1 believe that they need to return legal fees?

2 Q. What?

3 A. Isn't this the point of this, to
4 decide if we're going to give back legal fees to
5 the School Board?

6 Q. No, it doesn't have anything to do
7 with that.

8 A. Well, that is what they've been
9 saying. Ain't that what you-all said in a meeting
10 or something --

11 Q. No.

12 A. -- you implied, we're going to figure
13 out, you know, based on whatever, we're going to
14 decide if we're going to give out money back to,
15 these legal fees back to the School Board.

16 Q. I told you at the beginning the
17 School Board is very concerned about the operation
18 of the school district.

19 A. You mean the Board of Supervisors.

20 Q. The Board of Supervisors is very
21 concerned about the operation of the School Board.

22 A. Let's get to the point of concern so
23 I can make them know that they should be
24 concerned.

December 2 2020 Petition Allegation #4

4: Most recently, Kern made the false statement about locking a special needs student in a closet in an advertisement he placed in *The Virginian Review*. Kern has admitted that he made no effort to determine the truth or falsity of the statement prior to publishing it.

Perjury: 54

3 Q. You took Amy Trail's word for it
4 without checking with anybody else. Right?

5 A. No, no.

Attention Deficit Disorder Issues Exhibited: Preparation Required: 60

14 Q. Is my question difficult? Are you
15 not understanding it?

16 A. Sometimes I do not understand your
17 questioning.

18 Q. Okay.

19 A. Sometimes I don't understand how I
20 can give a response because I didn't prepare
21 myself for that. I have to have really good
22 preparation before I do something.

December 2 2020 Petition Allegation #4

4. Most recently, Kern made the false statement about locking a special needs student in a closet in an advertisement he placed in *The Virginian Review*. Kern has admitted that he made no effort to determine the truth or falsity of the statement prior to publishing it.

Perjury: 72-74, 79-81

9 Some of this goes back to obviously
10 the aggravating circumstances of this conversation
11 happened before I filed the complaint, the report.

12 So, you know, back to the closet and
13 the seclusion room. You know, in July of 2020, we
14 had a closed session meeting, and finally the
15 situation was brought up by Dr. Heath in a closed
16 session. And all I got out of the meeting was the
17 student had a 504 plan, the student had anxiety.
18 And the student was on suspension.

23 I eventually reported it to the
24 School Board. Then I reported it to Child

1 Protective Services because I felt no progress was
2 being made by the School Board. I felt they were
3 more concerned about the employee who led me on to
4 the situation. I believe this was a civil rights
5 violation. I also believe it could have an
6 adverse, long-term detrimental impact on the
7 student.

8 So, again, my understanding of the
21 9 School Board policy, JGD, requires that any
10 suspension longer than ten days be brought to the
11 School Board for approval. It is my understanding
12 that the situation was never brought to the School
13 Board until July of 2020.

14 It is my understanding that the Child
15 Protective Services is mandated to provide a
16 report of the investigation to the members of the
17 School Board. I'm unaware of any report that was
18 made to the School Board in conclusion of the
19 investigation I asked for.

20 Randy Tucker in November, as I
21 recall, stated, "We are being investigated." So
22 we had, at some point should have been given a
23 report. Never got a report, at least that I am
24 aware of. It is my understanding that Federal law

14 Q. What do you mean by "outside help"?

15 A. Well, again, if you read the
16 sentence, "Due to the student's situation, and
17 others, coupled with aggravated circumstances, I
18 made the conscientious decision to ask for an
19 investigation from state officials."

20 Q. What happened in that investigation?

21 A. We will get to that, too, do you
22 mind?

23 Q. I do mind. I would like to know now.

22 Q. What did you do? What did you try to
23 do about it?

24 A. Well, at, you know, the situation,
1 you know, with the closet, I reported it to the
2 School Board. I said, "We need to do an
3 investigation."

4 They said, "We ain't going to do any
5 investigation." Okay. So I contacted Child
6 Protective Services.

7 Q. What did they say?

8 A. As I stated before, I've not seen a
9 report. They are -- according to what I
10 understand, they are supposed to provide a written
11 report to the School Board and say this is what we
12 found.

13 Q. So you haven't heard anything back
14 from them?

15 A. No.

Complaining about time in a hearing to get the truth: 96

17 A. But I would like to make sure it's
18 noted on the report.
19 Q. It will be attached to it.
20 A. It would make me feel really good.
21 Q. Okay, we are going to be here a long
22 time.
23 A. I will make it brief, believe me,

Attention Deficit Disorder Issues Exhibited: Recalling 155-156

19 A. So are you saying that because
20 Alleghany County is putting, not properly treating
21 a transaction like purchasing a \$40,000 truck is
22 acceptable? Is that what we're talking about?

23 Q. My question to you was you had made
24 the statement that you would like to see a

1 separate audit done for the School Board.

2 A. Did I make that statement?

3 Q. Yeah.

4 A. When did I make that statement?

5 Q. About ten minutes ago.

6 A. Well, well...

Attention Deficit Disorder Issues Exhibited: Recalling 157

1 Q. Okay, well, I thought we were talking
2 about the finances. I had sort of moved past
3 civil rights violations, but, so were you not
4 telling me that you thought there should be a
5 separate financial audit of the schools?

6 A. I can't remember what I said, but...

He doesn't care: 192-193

20 A. You know, let's -- hey, let's talk
21 about that. I believe that is a really good
22 opportunity to, let's discuss that. Do you mind?

23 Q. I asked you a question.

24 A. Do you mind?

1 Q. I asked you a question. What I would
2 really like is an answer, I really don't care --
3 (Simultaneous talking.)

Yes or No you can't read that: 194

1 talking) -- Mr. Kern, hold up. Here is what I
2 will agree to do. You answer the question yes or
3 no and then you can explain it. But if you don't
4 answer it yes or no, then you are not going to sit
5 there and read that.

6 A. But I need to read this because I
7 think it is very important.

Recorder...?: 199

14 Q. Why don't you just go ahead and lay
15 the recorder up on the table. We don't care.
16 We've got a reporter here.

17 A. It's been sitting here.

18 Q. Good.

19 A. Anyway, can we get back?

The defendant has attention deficit disorder and requires advance preparation in order to fully participate in any legal proceeding which may include but not limited to written, drafted documents and notes. The petition filed by members of the Alleghany County Board of Supervisors on December 2 2020 covers a three-year period and many details, without proper accommodations the defendant's access to due process would be stifled and ultimately sequester the defendants access to justice.

The defendant was mocked for bringing a recorder to the October 27 2020. The defendant would like to make it known to the court that significant typographical errors are present within the

SUBJECT	Return of Funds to Alleghany County
RATIONALE	The leadership committees of the County of Alleghany and the Alleghany County School Board met during the FY2021 budget process to discuss the local funding effort for FY2021. It was decided by the committees that the school board would return to the county \$500,000.00 in fund balance (FY2020 year-end operating balance or, if that was insufficient, from cumulative fund balance) in lieu of the county reducing its local FY2021 appropriation to the school board by an equivalent amount. The July 1, 2020 memorandum on Year-End Operating Balance Summary reflects this \$500,000.00 obligation to be paid from the FY2020 operating balance. This will be an action item for the September 21, 2020 school board meeting.
ESTIMATED COSTS	\$500,000.00
BUDGET CATEGORY	Fund Balance
LEGAL REFERENCE	N/A
STAFF CONTACTS	Keven Rice
ADMINISTRATOR'S RECOMMENDATION	

The Alleghany County School Board does not have a leadership committee, the only standing committee of the school board which is the Administrative Budget Committee and the Committee on Board Governance. No leadership committee. This leadership committee and its discussion in returning these funds was no less than a violation of the Freedom of Information Act. The defendant participated in the hearing on October 27 2020 and did so to the best of his abilities which is required under the defendant's oath of office.

The defendant provides this information so that the court understands that the defendant is not asking continuance due to frivolous reasons but because the Commonwealth and the Alleghany County Board of Supervisors counsel Jim Guynn has maliciously prosecuted the defendant and has enacted

abuse of process in carrying out discovery. The defendant requires the ability to re-engage current counsel or find new counsel that will standup to these abuses and prevent them from occurring and to have all facts, evidence, and witnesses presented at court so that the defendant may show cause.

The defendant also brings to the court's attention that members of the Alleghany County Board of Supervisors did in fact commit perjury. The petition filed on December 2 2020 stated under allegation #4:

4. Most recently, Kern made the false statement about locking a special needs student in a closet in an advertisement he placed in *The Virginian Review*. Kern has admitted that he made no effort to determine the truth or falsity of the statement prior to publishing it.

Allegation #4 states "Kern has admitted that he made no effort to determine the truth or falsity of the statement prior to publishing it". This is a farce. Jim Guynn and each member of the Alleghany Board of Supervisors sat in the hearing and heard the defendant Donnie T.A.M Kern discuss the student's situation with the School Board via an email, then subsequently in closed session with board members, then the defendant reported it to Child Protective Services, then reported the student's situation in a report sent to state officials, and approximately two years later was discussed July of 2020 with Dr. Elizabeth Heath in closed session.

In addition, the defendant will point out that petition allegation #8 states "Kern refused to participate in the investigation even though it was mandated by school board policy". Seen Below:

8. Kern refused to participate in the investigation even though it was mandated by school board policy.

The defendant on October 27 2019 ironically and exactly a year before the October 27 2020 hearing under oath with the Alleghany County Board of Supervisors sent members of the Board of Supervisors an email with it attached letters of communication by and between the Alleghany County School Division in regards to the investigation.



Donnie Kern <votedtamb@yahoo.com>
To: millwork2002@aol.com, joanvannorsdall@gmail.com, ubustd@aol.com, griffjames@aol.com, kickma@aol.com, and 2 more...



Sun, Oct 27, 2019 at 12:45 PM

Board of Supervisors,

Please see attached

Thanks

Donnie T.A.M. Kern



102779.Ltr B... .pdf
6.7MB

The defendant in a letter drafted and sent to Fred Vaughan on September 19 2019 stated below:

Dear Mr. Vaughan:

I write in response to your letter of September 18, 2019, denying my request that I be provided with copies of the complaints against me, as well as any other documents, including witness statements, connected in any way to the allegations being made against me. Although I am not an employee, I will consider cooperating with this investigation if I am provided all documents connected to this investigation, including, but not limited to, those I have identified in my letter of September 15, 2019.

The defendant indicated cooperation, there was never any refusal on the defendants' part.

Members of the Alleghany County Board of Supervisors were provided these statements on October 27 2019, however in the petition they falsely accused the defendant of refusing to participate in an investigation. Below are the letters sent to members of the Board of Supervisors in the October 27 2019 email.

October 27, 2019

VIA ELECTRONIC MAIL
millwork2002@aol.com

Honorable Stephen A. Bennett, Chairman
Alleghany County Board of Supervisors
6800 Rich Patch Road
Covington, Virginia 24426

Dear Alleghany County Board of Supervisors:

The Alleghany County School Board has advised its attorney and Superintendent Gene Kotulka to speak with the attorney of Alleghany County. It is my understanding that, through this process, the Alleghany County Board of Supervisors will consider my removal from office. I am writing today to urge the Board of Supervisors to refrain from taking this drastic and unwarranted option.

Throughout my career as a public servant, constitutional officer, and member of the Alleghany County School Board, I have been dedicated to the simple mission of making our schools a better place. I have and, so long as I am able, will fight for the rights of Alleghany County's students, especially its most vulnerable students, and ensure that its taxpayers' dollars are being expended appropriately. I do not deny that I submitted a report to the state police, auditor of public accounts, and the state inspector general, containing my well-founded suspicions of fraudulent activity. But my report on the school systems' budget and expenditures, and its treatment of many of our most vulnerable students, was submitted solely with the best interests of Alleghany County, its taxpayers, and its students in mind.

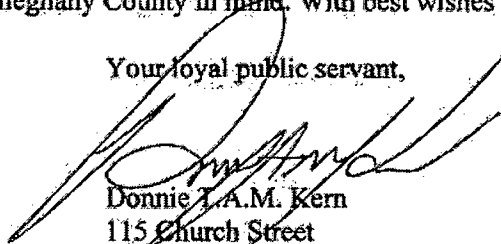
Rather than engage with my serious concerns regarding the school system's budget and treatment of disabled students, Alleghany County Public Schools, through the School Board, employees such as Fred Vaughn, Compliance Officer, and Superintendent Kotulka, and others, conducted an investigation against me that was, in a word, unfair. I was accused of wrongdoing and misconduct, of making "outrageous and highly inflammatory" false statements, but was told nothing of the specific accusations against me, nor who my accusers were, nor what aspect of my report was false and defamatory. I attempted to engage in good faith with the investigation, as you can see for yourself in the past communications I have had with Alleghany County Public Schools' officials, which are enclosed—but my efforts were met with little more than resistance, stonewalling, and an overall lack of transparency at every turn.

It is my position that Alleghany County Public Schools unlawfully retaliated against me, thereby infringing upon my First Amendment rights. Further, should the Board of Supervisors petition for my removal from office pursuant to Virginia Code § 24.2-234, or otherwise interfere

with my duties as a duly-appointed member of the School Board, I would view these actions as retaliation against me as well.

I am frustrated that I have to write this letter; that things have escalated to this level. Nevertheless, I felt it was important that the Board of Supervisors hear my side of the story, my perspective, before bringing this matter to a vote. Most of all, I would emphasize that at all times as a member of the Alleghany County School Board I have acted in good faith, with the best interests of the taxpayers and students of Alleghany County in mind. With best wishes I remain

Your loyal public servant,



Donnie L.A.M. Kern
115 Church Street
Clifton Forge, VA 24422

CC: M. Joan Vannorsdall (joan.vannorsdall@gmail.com); Richard Lee Shull (ubustd@aol.com); James M. Griffith (grifjames@aol.com); Matt Garten (kickma@aol.com); Shannon P. Cox (spcox70@gmail.com); and Cletus W. Nicely (cnicely@ntelos.net).

Enclosures

The petition allegation #11 stated below:

11. Kern has made false and baseless complaints of illegalities and corruption at Alleghany County Public Schools that have disrupted the work of the school administration and cost the school division thousands of dollars in legal fees that were otherwise unnecessary.

The defendant would like to make the court aware that this statement within the petition and under proper investigation would also be subject to the commission of perjury. The complaint the defendant filed to state officials provided numerous documents. Had those documents been adequately reviewed they would have noticed these facts (FY2018-2019, FY2019-2020, FY2020-2021 was not available at the time):

"Facilities"-	Budgeted	Spent
• FY2015-2016: #6000- -"Facilities":	\$410,000	\$0
• FY2016-2017: #6000- -"Facilities":	\$410,000	\$0
• FY2017-2018: #6000- -"Facilities":	\$410,000	\$0
• FY2018-2019: #6000- -"Facilities":	\$389,785	\$60,656.55
• FY2019-2020: #6000- -"Facilities":	\$0	\$0
• FY2020-2021: #6000- -"Facilities":	\$0	\$0
"Debt Service"-	Budgeted	Spent
• FY2015-2016: #7100- -"Debt Service":	\$0	\$410,967.50
• FY2016-2017: #7100- -"Debt Service":	\$0	\$406,185.00
• FY2017-2018: #7100- -"Debt Service":	\$0	\$410,997.50
• FY2018-2019: #7100- -"Debt Service":	\$0	\$0
• FY2019-2020: #7100- -"Debt Service":	\$0	\$0
• FY2020-2021: #7100- -"Debt Service":	\$0	\$0

"Facilities" and "Debt Service" are expenditure categories' listed within Allegheny County School Boards Operating Fund Year-End Balance. \$390,592.50 is listed as an expenditure of Debt Service for June during the FY2016-2017 school year.

6000	FACILITIES	\$ 1,002,533.00	\$ 113,597.92	\$ 1,002,796.50	\$ 127,773.98	100.72
6200	ARCHITECTURE/ENGINEERING SERVICES	\$ 410,000.00	\$ -	\$ -	\$ 410,000.00	0.00
7100	DEBT SERVICES	\$ -	\$ -	\$ 37,693.79	\$ 197,083.73	300.00
7200	INTEREST PAYMENT ON BONDS	\$ -	\$ 390,592.50	\$ 406,183.00	\$ 406,183.00	0.00

The payment for "Debt Service" went straight to the Allegheny County Board of Supervisors via the Treasurer of Allegheny County on June 13 2017.

179292	6/13/2017	TREASURER, ALLEGHENY COUNTY	DIRECT	\$ 4,107.00
179293	6/13/2017	WALMART	DIRECT	\$ 390,592.50
			DIRECT	\$ 21.72

Accordingly, under the ASFRIN Chart of Accounts it states below:

67000 Debt Service and Fund Transfers

A number of outlays of governmental funds are not properly classified as expenditures, but still require budgetary or accounting control. These include debt service payments (principal and interest) and certain transfers of monies from one fund to another. These accounts are not used with proprietary funds.

Debt service payments made by the local governing body on behalf of the school division (i.e., the funding is not appropriated to the school division budget) should not be reported as debt service payments on the ASRFIN. Only the debt service/capital funds appropriated to and paid directly by the school division should be reported on the ASRFIN.

"Only the debt service/capital funds appropriated to and paid directly by the school division should be reported on the ASFRIN"

It is apparent the Debt Service was not appropriated by the Allegheny County Board of Supervisors in reviewing the Operating Fund balance, yet the Allegheny County School Board listed the expenditure anyway and shipped the money back to the Board of Supervisors. This occurred for the past three years at a tune of approximately \$1.2 million dollars. Members of the Allegheny County Board of Supervisors

should have known this was not proper treatment. The defendant believes that under an appropriate investigation this could be another potential perjury charge. There was nothing baseless about the defendant's complaint filed with state officials. Under penalty of perjury the petition was filed.

Alleghany County School Board in accordance with the procedures set forth in Virginia Code
§ 24.2-235 and remove Respondent Kern from the Alleghany County School Board.

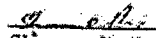
BOARD OF SUPERVISORS OF ALLEGHANY
COUNTY

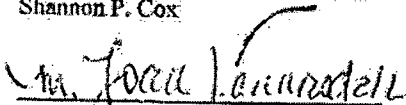
By: 

Of Counsel

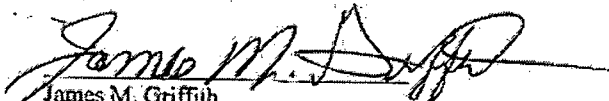
Jim H. Guynn, Jr. (VSB #22299)
Guynn, Waddell, Carroll & Lockaby, P.C.
415 S. College Avenue
Salem, VA 24153
Phone: 540-387-2320
Fax: 540-389-2350
jimg@guynnwaddell.com
Counsel for Alleghany County Board of Supervisors

We declare under penalty of perjury that the foregoing is true and correct:



Shannon P. Cox


M. Joan Vannorsdall


Richard Lee Shull


James M. Griffith


Matt Garten


Stephen A. Bennett


Cletus W. Nicely

The defendant has the right to seek under reasonable suspicion that perjury charges be brought against members of the Board of Supervisors prior to the defendant's trial so that the defendant has the ability to show cause why the defendant should not be removed, and the commission of perjury by members of the Board of Supervisors would be a cause to show. Without having this available defense, the defendant is denied due process and equal protection under the laws.

The defendant also make note to the court that under the American Bar Association (2019 edition) Model Rules of Professional Conduct:

Rule 3:1 Meritorious Claims and Contentions "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...". It is commented by the ABA (2019 Edition) Model Rules of Professional Conduct "the advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty to not abuse legal procedure".

Rule 3.3: Candor Toward the Tribunal (a) A lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. (3)...If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of the falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including if necessary, disclosures to the tribunal.

Rule 3.4 Fairness to Opposing Party and Counsel, a lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such

act. (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonable diligent effort to comply with a legally proper discovery request by an opposing party.

Rule 3.8 Special Responsibilities of a Prosecutor the prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; (g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted the prosecutor shall: (1) promptly disclose the evidence to an appropriate court or authority...

Rule 4.1: Truthfulness in Statements to Others in the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6

Rule 4.4: Respect for Rights of Third Persons (a) in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.3: Reporting Professional Misconduct (a) a lawyer who knows that another lawyer has committed a violation of the Rules of Professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Rule 8.4: Misconduct it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of

justice. (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

The defendant questions the conduct of Jim Guynn in related to carrying out the hearing with the Alleghany County Board of Supervisors on October 27 2020, in drafting the petition signed under perjury by members of the Alleghany County Board of Supervisors and as now a special prosecutor for the Commonwealth. The defendant would also make it known to the court that the Commonwealth of Virginia has Cannons of Judicial Conduct. It prescribes under Disciplinary Responsibilities:

D. Disciplinary Responsibilities. —

- (1) A judge who receives reliable information indicating a substantial likelihood that another judge has committed a violation of these Canons should take appropriate action. A judge having knowledge that another judge has committed a violation of these Canons that raises a substantial question as to the other judge's fitness for office should inform the Judicial Inquiry and Review Commission.
- (2) A judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Code of Professional Responsibility should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Code of Professional Responsibility that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects should inform the Virginia State Bar.
- (3) A judge shall have absolute immunity from civil action with respect to the discharge of disciplinary responsibilities required or permitted by Sections 3D(1) and 3D(2).

Due Process

- Defendant requires the assistance legal expertise which the defendant does not personally have in responding filing and responding to discovery request, depositions, trial litigation, and responses to legal mandates required throughout this process.
- Defendant requires time to acquire legal counsel to provide a defense and show cause under §24.2-235 which the defendant has already expensed over \$30,000 since December 2020 in an attempt to do just that.
- Defendant requires that the following individuals to be deposed and questioned properly prior to trial at bare minimum: Amy Trail, Kevin Rice, Kim Lemburg, Matt Garten (Board of Supervisors), Richard Shull (Board of Supervisors)
- Defendant requires ample opportunity to review deposition transcripts prior to trial
- Defendant requires the opportunity to strategically pick expert witnesses pending deposition responses during discovery.
- Defendant requires additional discovery attempts to secure proper evidence to be provided prior to trial.
- Defendant requires the opportunity to review discovery reply/evidence furnished prior to trial
- Defendant requires the opportunity to review with counsel exhibits submitted as evidence
- Defendant requires the opportunity to go over questions that will be asked during trial
- Defendant requires the opportunity to file a protective order against abuse of process and malicious discover against the Commonwealth.
- Defendant requires the opportunity to have members of the Alleghany County Board of Supervisors charged with perjury so that the defendant may use the verdict as a defense under §24.2-235

APPENDIX H

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

)	
)	NO. _____
)	
Commonwealth of Virginia)	
)	AMENDED
Petitioner ,)	RESPONDENT'S NOTICE OF
)	REMOVAL NO: 7:21-cv-00448
)	PURSUANT
V.)	28 U.S.C. §1331, §1441, & §1443
)	CASE NO. CL20-827
)	ALLEGHANY COUNTY CIRCUIT
)	COURT
)	
DONNIE T.A.M. KERN)	
)	
Respondent, Pro Se.)	

AMENDED

RESPONDENT'S NOTICE OF REMOVAL OF CIVIL ACTION

PURSUANT 28 U.S.C. §1331, §1441, & §1443

PLEASE TAKE NOTICE that the Respondent Donnie T.A.M. Kern hereby amends it's previously filed Notice of Removal pursuant 28 U.S.C. §1446(b)(3). This amendment is for the sole purpose of amending Donnie T.A.M. Kern's Notice of Removal filed on August 24 2021. Amending the Notice of Removal is being

done in good faith, in the best interest of justice, and to eliminate further delay which could occur by Donnie T.A.M. Kern appealing the order to remand of the Notice of Removal to the United States appellate court pursuant 28 U.S.C. §1447(d) as the Notice of Removal was filed pursuant 28 U.S.C. §1443 permitting appeal to the United States appellate court. Amending the Notice of Removal will aim to remove any confusion and will explicitly show that the Notice of Removal is proper under 28 U.S.C. §1331, §1441, and §1443 all of which are considered federal subject matter jurisdictional elements for removal into the United States District Court. The Amended Notice of Removal is amended and filed timely under 28 U.S.C.

§1446(b)(3) as it is filed within the 30-day statute of limitations.

COMES NOW the Respondent Donnie T.A.M. Kern asking the court for liberal construe in interpreting this potentially “inartful pleading” (Boag v. MacDougall, 454 U.S. 364, 365 (1982)), via Pro Se, in seeking judicial asylum, without adequate and desperate need of counsel submits this pleading in justifiable self- defense in response to the villainous, retaliatory provocation by the Commonwealth of Virginia, Petitioner on behalf of the Alleghany County Board of Supervisors in the filing of a motion on August 13 2021 in the Alleghany County Circuit Court to suspend Donnie T.A.M. Kern from the Alleghany County School Board under Virginia Code §24.2-236 pending the hearing on the petition for

The Respondent received the following email message from an employee of the school division:

your letter to the editor, ACPS concerns...

[REDACTED]@hotmail.com]

Sent: Wednesday, October 24, 2018 4:06 PM

To: Donnie Kern

Hello, Mr. Kern,

I read the original article written about the school board meeting as well as your responding letter. Thank you for asking questions. Please continue to do so. Until Mr. Tucker stands with you instead of against you, however, I'm afraid the end result will be more of what you have already experienced. I'm not sure why the other board members cannot see (or refuse to see) the hidden trails.

Your call to action resonated with me, but you need to know that parents have tried to stand up. Unfortunately, many of the parents who understand what has occurred here since 2015 also work here. We have met retaliation in ways that would surprise you, including retaliation against our children and our finances. I still have three children in this system, and I need my job. At this point, I am justifiably afraid to voice my concerns.

Sincerely,

[REDACTED]

"The pupil dilates in darkness and in the end finds light, just as the soul dilates in misfortune and in the end finds God."

-Victor Hugo. *Les Misérables*

The Respondent made a report to Child Protective Services after receiving an email from another school employee that an African American child was being discriminated against. The Respondent first reported it to the School Board and Eugene Kotulka, Superintendent, but Allegheny County Public Schools refused to investigate the matter.

From [REDACTED]
Sent [REDACTED] 2018 7:35 PM
To: Donnie Kern
Subject: [REDACTED]

On [REDACTED] 2018, [REDACTED] informed me that they would be placing a student who will be known as "the student" into [REDACTED]

[REDACTED] All the while the student is out of the classroom and not receiving instruction, placing the student further and further behind [REDACTED]

[REDACTED] I hope that something can be done. I am of the belief that none of this would be happening were not African American, someone needs to advocate for the student.

AGREEMENT

This AGREEMENT is made as of this 26th at 8:14pm day of July, 2020, between Eugene P. Kotulka (hereinafter "Superintendent") and the Alleghany County School Board, a Virginia body politic, (hereinafter "Board").

REASONS FOR AGREEMENT

1. The Board and the Superintendent entered into a contract dated July 1, 2017, whereby the Superintendent was employed as Division Superintendent for a period commencing July 1, 2017, and ending June 30, 2021 (hereinafter called the "Contract").
2. Under the Contract, the Superintendent would be entitled to substantial payments and benefits for the period remaining on his Contract.
3. The Board and Superintendent mutually have agreed to a date for the Superintendent's retirement earlier than otherwise contemplated in the Contract effective close of business on September 30, 2020, and to reach agreement and resolve any questions regarding his entitlement to payments and other benefits upon retirement under the Contract or otherwise.

AGREEMENT

For and in consideration of the mutual promises and commitments specified herein, the parties agree as follows:

1. Retirement. Upon execution of this Agreement, the Superintendent will retire as Division Superintendent of the Alleghany County Public Schools effective as of the close of business on September 30, 2020. A copy of the Superintendent's letter of retirement is attached hereto as Exhibit A.

(a) The Superintendent will remain on administrative leave until the effective date of his retirement.

(b) The Superintendent will remove all personal items from his office and return any Board property to the Clerk of the Board by July 20, 2020 at 12:00 p.m.

(c) The Superintendent's automobile entitlement will end on July 22, 2020 at 12:00 p.m.

2. Payments. The Superintendent shall be entitled to the following payments from the Board:

(a) The Board will pay the Superintendent his current salary until the effective date of his retirement.

(b) The Board will pay the Superintendent \$22,553.71 for unused annual leave.

(c) The Board will pay the Superintendent \$2088.75 for unused accumulated sick leave in Alleghany County Public Schools, earned pursuant to the Board policy in effect on that date.

(d) The Board agrees to pay the premium for the Superintendent for family coverage in the Board-sponsored health insurance program through September 30, 2020.

(e) Notwithstanding any prior Agreement to the contrary, the payments provided for in subparagraphs (a) through (d) above constitute the total and complete financial obligation to the Superintendent on the part of the Board, and the Superintendent shall not be entitled to any further payments from the Board in any amount related to his employment by the Board.

3. Non-Disparagement. The parties agree not to disparage, criticize, or speak negatively of the other. This Agreement is entered into in good will for the mutual benefit of the parties, and the Superintendent and the Board agree to treat all communications with each other and with the public in that positive light. Other than official action required by state law, the parties agree that the only public statement to be issued by either party will conform to the statement attached hereto as Exhibit B.

4. Confidentiality. The Superintendent represents and agrees that he will keep the terms, conditions, covenants, and existence of this Agreement strictly confidential, and will not disclose, or cause to be disclosed, any information concerning this Agreement that is not made generally available to the public as required by law to any person except his immediate family members, legal counsel, and accountant, and then only after such persons have agreed not to disclose any facts concerning the settlement. The Superintendent further agrees not to disclose, or cause to be disclosed, any information concerning this Agreement to any media or publishing entity. Notwithstanding the foregoing, the Superintendent's obligation of confidentiality shall not extend to any disclosure mandated by law, order by a court of competent jurisdiction.

5. Superintendent's Cooperation. Superintendent recognizes that, because of his position with the Board, it is important that the Board's employees and the public perceive that his retirement is a mutually desirable and positive event. This Agreement is entered into in good will for the mutual benefit of the parties, and the Superintendent agrees to treat all communications with the Board and with the public in that positive light. From the effective date of the Agreement until 5:00 p.m. on September 30, 2020, Superintendent agrees to cooperate with the Board to resolve pending litigation or state and federal complaints arising during the Superintendent's employment about which the Superintendent has knowledge. The Board agrees to announce publicly only that the Superintendent is retiring as set forth in Exhibit B. The Board will make no other statements regarding the end of Superintendent's employment except as set forth herein.

6. General Release. In consideration for this Agreement and the benefits accorded to him hereunder, Superintendent agrees, for himself and his heirs, representatives, successors and assigns, as follows: Superintendent has retired from employment with the Board effective September 30, 2020. Superintendent waives, releases and forever discharges the Board and its employees and agents, from any and all claims, known or unknown, that he has or may have

relating to or arising out of his employment with the Board and the cessation thereof, including but not limited to any claims for any cash payments except as provided herein (but excluding reimbursement for expenses accrued and documented in accordance with Board policy), any claims of wrongful discharge, breach of express or implied contract, fraud, misrepresentation, defamation, liability in tort, claims of any kind that may be brought in any court or administrative agency, any claims under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, or any other federal, state or local law relating to employment, employee benefits or the termination of employment, or any other claim arising out of or relating to Superintendent's employment, excepting only his benefits under the VRS retirement plans, the provisions of this Agreement, and Article XII, "INDEMNITY", of the July 1, 2017, Contract, which are not waived or released, and which by mutual consent of the parties survive this Agreement and remain in full force and effect.

The Superintendent recognizes that in signing this Agreement, including its release of claims, he is waiving his right to pursue any and all claims under the Age Discrimination in Employment Act, 29 U.S.C. § 626 et seq. ("ADEA"), arising prior to the date that he executes this Agreement. The Superintendent acknowledges that he has been given the opportunity to consider this General Release for at least twenty-one (21) days, which is a reasonable period of time, and that he has been advised to consult with an attorney in relation thereto prior to signing this General Release. The Superintendent further acknowledges that he has had a full and fair opportunity to confer with his attorney, that he has carefully read and fully understands all of the provisions of the General Release, and that he has executed it of his own free will, act and deed without coercion and with knowledge of the nature and consequences thereof. If the Superintendent executes this General Release in less than twenty-one (21) days, he acknowledges that he has thereby waived his right to the full twenty-one (21) day period. For a period of seven (7) calendar days following the execution of this General Release, the Superintendent may revoke this General Release by delivery of a notice revoking the same within that seven (7) day period to Patrick T. Andriano, Reed Smith LLP, Riverfront Plaza – West Tower, 901 E. Byrd Street, Suite 1900, Richmond, VA 23219, pandriano@reedsmith.com. If the Superintendent does not advise Mr. Andriano that he revokes this General Release within the revocation period, the General Release shall become effective and shall be forever enforceable. The Superintendent understands that if he revokes this General Release, he will not be entitled to the consideration set forth in this Agreement, including the consideration in Paragraph 2 and its subparts, and that if he has received such consideration, he agrees to repay the Board for all sums paid to or on his behalf.

7. Board's General Release. In consideration for the promises and obligations stated herein and the Superintendent's resignation, the Board, for itself and its successors, to the extent permitted by law, waives, releases and forever discharges the Superintendent from all claims, known or unknown, that Board may have or may hereafter discover against Superintendent arising out of or related to his employment and the discharge of his duties as Superintendent.

8. No Admission. It is understood and agreed that the Board has admitted no liability for the benefits provided herein or for any other benefits other than those provided by contract or Board policy. The Board and the Superintendent have entered into this Agreement for the

The Respondent objected to the use of the settlement agreement. The Respondent's objection to Jacob Wright, Chair and Danielle Morgan Vice Chair of ACPS is below.

August 3rd 2020

Alleghany County School Board

Peers,

Between July 22 to August 2, 2020 I have carefully reviewed the agreement between the Alleghany County School Board and Superintendent Eugene Kotulka. Upon my review I have a concerning self-reflection involving signing this agreement. My review in summary, indicated to me that the School Board is:

- Paying \$24,642.46 in unused Personal Leave and Sick Leave. Reviewing school board policies this seems to be more payout of Personal Leave and Sick Leave than what the Superintendent may have earned (or a combination of both).
- Paid Administrative Leave along with current employment benefits during the Administrative Leave period until the Superintendent's retirement date.
- Agreeing to "Non-Disparagement" to the extent required by law in the state of Virginia to not disparage, criticize, or speak negatively of each other, to communicate publicly in a positive light, and to reference a three-sentence retirement statement when required.
- Agreeing to "Confidentiality" of the agreement to the extent required by law.
- Agreeing to receive "Cooperation of the Superintendent" to help with ongoing state and federal complaints and litigation matters up until his retirement date in exchange for communication pertaining to the Board that will be revered as positive in the public light.
- Agreeing to a "Liability Release" - so that the School Board and Superintendent are never held accountable for their improprieties or that these improprieties are never known as to not erode the public trust.
- Indemnity (Under Section XII of the July 1, 2017 Contract) indefinitely forever.

All of which were supposedly negotiated in good faith and with mutual consideration.

On July 6, 2020 the School Board discussed just providing a \$30,000 lump sum payment and a "gag order" (in this agreement it's called a Non-Disparagement clause). This was supposedly agreed upon by the Superintendent then. The difference between the July 6, 2020 agreement and the current July 20, 2020 agreement; other than the 14 days lapse of time, indicates that the School Board has positioned itself in a position of weakness instead of a position of strength. This position realignment I opine, originates from the need of self-preservation and dismissal of accountability in contrast to mutual consideration.

As you may or may not be aware; I have filed a complaint with the United States Department of Education Office of Civil Rights which was promulgated by retaliatory actions of this School Board due to my attempt to secure the civil rights of our most vulnerable children. This complaint at this time is still under investigation. I have had my legal team send correspondence to this School Board in-regards to my own child's experience of intentional discrimination and the grievous denial of a free and appropriate education which to this day is still **unresolved** [emphasis added]. This correspondence was shared with this School Board. My family and I have extraneously suffered due to the shenanigans of this School Board financially, educationally, and emotionally.

Furthermore, School Board policy does not require that I sign this agreement, my signature of acceptance and agreement is not needed. The School Board has never valued my opinion, if the School Board did value my opinion the Superintendent Eugene Kotulka would have been terminated in November of 2018 or in July 2020 along with other individuals that have made some really bad choices. The School Board would be incorporating budgetary best practices recommended by federal agencies and the Virginia School Board Association so that we are not asking for millions in funds that go unspent each year. The School Board's, Special Education Advisory Committee would be robust and affluent so that all of our community's children receive a free and appropriate education. My two children would be currently enrolled in Alleghany County Public Schools receiving a free and appropriate education instead of being homeschooled like the other 107 students which currently is costing our community approximately \$650,000 each year.

In addition, I believe this agreement is an interference and sequestration of my constitutional rights and ability to seek governmental redress which I am currently in the process of exercising. I view this agreement as an intentional and retaliatory effort by this School Board. This agreement is repulsively insulting. The School Board's best option is to remove Superintendent Eugene Kotulka, because retaliation should never be tolerated. Superintendent Eugene Kotulka deserves no less than to be accountable for his actions, along with others that were involved. This agreement is nothing more than a safety mechanism of self-preservation for the Superintendent, and current members of this School Board; excluding me.

If Superintendent, Eugene Kotulka felt his "integrity" was dishonored leaving him with the only option of resigning from office (which he publicly did on June 22, 2020) then there would be no need of such an agreement. If the School Board is willing to remunerate over \$50,000 in salary and benefits (some of which were never earned) this Superintendent should be thrilled with leaving. Why is there a need for the bells and whistles in this agreement which is self-evident to silence and protect everyone's interest excluding mine. The provisions within this agreement are an apparent conflict of interest.

Under the Code of Virginia §22.1-65 it states:

"A division superintendent may be assessed a reasonable fine, suspended from office for a limited period or removed from office by either the Board of Education, upon recommendation of the Superintendent of Public Instruction or the school board of the division for sufficient cause. A division superintendent may appeal to the appropriate circuit court any decision of the Board of Education or school board to assess a fine against him or to suspend or remove him from office and shall be entitled to a trial de novo on such appeal of whether there was sufficient cause therefor"

The School Board should enact §22.1-65 under the code of Virginia. I have presented amazing support that could be used for the Superintendent's removal to the United States Office of Civil Rights which is approximately 500 plus pages including audio. The School Board could rely on this information alone. I will gladly testify in an administrative or judicial hearing.

It was the overall consensus of this School Board wanting him removed...why the need for an agreement? If the School Board enacted §22.1-65 the School Board would not have to pay out anything. We would save approximately \$50,000. As we all have learned in the past two years; and I opine the

wise words of Jacob Wright, Chairman "Donnie was right about things that we didn't know". I am right about this.

This agreement is no more than a "settlement" as a peer on this Board has described it.

How do you think it made me feel when Fred Vaughn, Director of Human Resources for the School Board came to my workplace, forcing a complaint letter in my hand and coercing me to go visit an interrogator the very next day, emailing me, calling me...non-stop harassment?

How do you think it made me feel when Dr. Elizabeth Heath told my wife that she didn't have to be invited to a meeting to discuss 504 plan accommodations for our child? Most recently on July 20th 2020 during closed session, once again out of concern for the security of the civil rights for our most vulnerable children; I reference my own personal experience with a 504 plan. I indicated that my experience as a parent with Dr. Elizabeth Heath and the 504 plan was not great. She replied that "I am not aware of any plan". How do you think this made me feel?

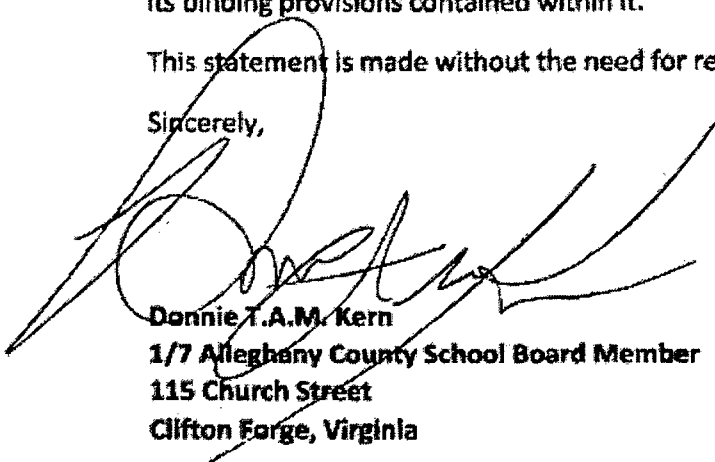
I will tell you how I feel. I opine that this School Board may have a systemic issue with **Child Find** (emphasis added). In case you were not aware, you provide individualized instruction through an Individual Education Plan (IEP) and not a 504 Plan. You may want to fix that. I am not sure at this point if Amy Trail's statement about this School Board's mistreatment of an African American student being placed in a "closet" is completely without merit.

You say this agreement was done in mutual consideration? Let me share with you how I feel. I think not.

On behalf of all my constituents who have been wronged by the Alleghany County School Board I unequivocally object to this agreement. Based on the information I have provided you and under good conscious I am unable to sign this heinous agreement indicating my agreeing or approval of it or any of its binding provisions contained within it.

This statement is made without the need for reply or continued discussion. With best wishes I remain

Sincerely,



Donnie T.A.M. Kern
1/7 Alleghany County School Board Member
115 Church Street
Clifton Forge, Virginia

Paid Advertisement

Greater Alleghany and Covington Community and Editor:

"I am not asking what is going on. I am just telling you whatever it is it can't be right, so you might want to fix that. I don't want to come down to that school and find out she/he is still in a closet somewhere" as stated by Amy Trail to Dr. Elizabeth Heath, Director of Special Education for Alleghany County Public Schools pertaining to the scholastic conditions within the Alleghany County School system in-regards to the treatment of an African American student.

Amy Trail was a Special Education consultant for the Alleghany County School Board. Dr. Elizabeth Heath opined that Amy Trail was "the support that we need but don't have the resources to provide". As it was told to me by an employee, this same African American student one day was carrying gifts and when the student was asked who the lucky person was that would be receiving these gifts, the student identified the individual responsible for placing them in the "closet" as described by Amy Trail and stated: "I just want she/he to like me".

Due to this student's situation and others coupled with aggravated circumstances I made the conscientious decision to ask for an investigation from state officials. To this day no investigation has ever occurred. I was told the situation was the responsibility of the appointed Alleghany County School Board. What came next was Dr. Elizabeth Heath providing a defamatory letter to be read-aloud like a story book detailing my own child's substandard experience with the Alleghany County School Board. The Alleghany County School Board then requested \$60,000 from the Board of Supervisors for legal fees so the School Board could have their attorney's "Deal with Mr. Kern" as stated by Randy Tucker, Chairman. I publicly asked for diplomacy in this newspaper after this was stated. Instead of being met with compassion and understanding the door of vengeance was opened and retaliation ensued and unfortunately is still currently ongoing. The United States of America is now reviewing approximately eleven incidents of retaliation by the Alleghany County School Board.

The Alleghany County School Board epically failed to deal with me just as they have failed so many of our most vulnerable children in providing a free and appropriate education. I felt inclined to write this letter because of the upcoming vote on the joint school system. I feel I would be doing a disservice to our most vulnerable children, their families as well as the good people of Covington had I stayed silent.

This joint school system forgoes the opportunity to elect members of the new school board created under this proposal that will be voted on. The promise of self-governance is owed to each citizen and instead of fulfilling this promise endowed by the Declaration of Independence and correcting the mistakes of the past we are going to continue on this reckless path of appointment. I have been on the Alleghany County School Board for two years. I do have lots too learn as Randy Tucker mentioned in our August 17 2020 meeting.

I would like to provide a small reflection of what I have learned thus far since my appointment on the Alleghany County School Board. Appointed and administrative officials are absent any accountability for their actions or inactions. The Board of Supervisors wants the School Board to return \$500,000 that was budgeted but never spent. The Board of Supervisors has stated that if we do not return this money, they will cut the exact amount from our 2021-2022 budget. The Board of Supervisors threatened to cut the School Board's budget if we provided a raise to staff in the 2020-2021 budget. An impermissible amount of \$700,000 in class room instruction funds were unspent for the 2019-2020 fiscal year; yet we can't equalize staff salaries at the cost of \$460,000. Despite having a plethora of unspent funding year-after-year, the School Board is beseeched in what it can and cannot do with it. The School Board currently has no parliamentary procedures in conducting board meetings. We do not always follow the Freedom of Information Act. No consistency in appointing mandated committees; example the school board policy mandates we have a Budget Committee, this committee is appointed during the reorganization of the school board. This Budget Committee has yet to be appointed in 2020. I offered to serve on it, and utilize my accounting skills that I obtained in completing my Master's Degree in Accounting and fix all the budget problems but when the time came to appoint, Jacob Wright decided not to and moved on to the next agenda item. I abstain from voting on financial spending due to not receiving adequate information to ascertain if the School Board is adhering to its mandated budget on a monthly basis. I do not receive information regarding assets and liabilities enabling me to understand the school board's financial condition. How am I supposed to approve the payment of bills, if I am not provided information to know if we overspent or not? The School Board and Board of Supervisors in approving the 2020-2021 budget will magically purchase a \$90,000 school bus with \$75,000. They also approved the reduction of \$120,000 in speech services despite having an increase of students bringing the total to 67 students that would require these services. It was explained to me that we didn't have enough money. The School Board is about to approve the return of \$500,000 to the Board of Supervisors that could have been used to correct these deficiencies. I was informed during the August 17th public meeting that the Joint Services Committee will be appointed by the Superintendent versus the School Board in an effort to begin having meetings that are not open to the public.

Three months into my term I sat in a closed session meeting where "He who shall not be named" sent the police after a child advocate for a credentialing snafu. "He who shall not be named" encouraged our School Board to eliminate a position because it was held by an employee that was described as a "major ADA compliance issue, a major, major one". As a parent I asked my school system to help accommodate my child yet I am told we don't have money to do it with. Which is supportive due to the rationale of Randy Tucker indicating that if a "kid needs a dog, were not supplying the dog" during a budget meeting. In case you were not aware in the last six years the home school population has increased 33% that's a total of 107 children that are currently homeschooled. I learned the hard way of why: now my two children have been homeschooled for two years now. The homeschool population creates an unrealized revenue source of approximately \$650,000 because these families do not enroll them in our school system

This method of appointment has to end, God willing I will see that it does, as I have made preparations to collect signatures beginning in January to have a referendum placed on the ballot in 2021. I have strived to be honest, accountable, and transparent to the public. I created a Facebook page in 2019: Alleghany Fireside w/ Donnie Kern to do just that. If anyone want to assist with the referendum project please reach out. Let's make history together.

I commend the efforts of the joint committee in putting the joint school proposal together. I support working together and achieving economies of scale. I think Mr. Dressler and Mrs. Zeek would have been good participants to have at the table as they have brought up very good scenarios that are not explained in this proposal. I feel responsible for this effort, so I feel I owe you why I will not be voting in favor of it. I do not believe having an appointed school board is unacceptable. I recommend that the joint committee stay the plan until the proposal voted on with an elected school board. As it was suggested to me by Senator Creigh Deeds, you should request a legal opinion from the Virginia Attorney General if the plan can be proposed with having an elected school board.

Good people of Covington, if you want the administrative and appointed leadership that I have had to learn about over the course of two years, then you are about to get it. However, I will not be held responsible for giving it to you. You do not deserve it, no one does. You will have to get it from someone else. I refuse to expose another family, student, or staff member to the treatment that others have received by the Alleghany County School Board, I will not condone this treatment now or in the future. I am voting no on the joint school plan as it is currently being proposed. If you want to attempt to stop this machine, I recommend collecting 301 signed letters indicating disapproval, make a copy, then send them to Senator Creigh Deeds and Delegate Terry Austin to show there isn't community support. Have individuals that show up during the vote to sign such a letter. Pack the house when the vote occurs with your governing bodies and tell them how you feel. You can also come show support with your presence in silence or through applause. If you want to say something and don't know what to say you, can read this letter. It may incite tears, anger, or vomiting, something I experience each time I think about its contents. Invite WDBJ7. This letter is intended to seek governmental redress in an attempt to secure the civil rights our most vulnerable children protected by such rights. It is a violation of federal law to retaliate against an individual that attempts to secure the rights of those that are protected by such rights. With best wishes I remain, always



Donnie T.A.M. Kern, M.S.A., EA
School Board Member-ACPS
Clifton Forge West District
115 Church Street
Clifton Forge, Virginia 24422

Your loyal public servant
Donnie T.A.M. Kern

On September 9 2020, George "Matt" Garten the new Chairman for the Alleghany County Board of Supervisors in replacing Steve Bennett who became the Vice Chairman stated at the conclusion of a joint meeting between the Alleghany County School Board and the Alleghany County Board of Supervisors (https://www.youtube.com/watch?v=_B-mjZqT5sU&t=46s):

"...Last week Virginian Review published a paid piece written by school board member Donnie Kern.

Those of you who read the piece would agree with me that it contained a number of serious allegations and references. The allegations imply that numerous



GEORGE GARTEN
A&B

officers, representatives, employees of Alleghany County and Alleghany County School Board have engaged in conduct, if true would be considered illegal and unethical...We should begin by holding a meeting and summing Mr. Kern to testify before us under oath to eliminate and clarify allegation made in his written paid piece"

John P. Fishwick, Jr.

Telephone: 540.345.5890

Facsimile: 540.345.5789

john.fishwick@fishwickandassociates.com
www.fishwickandassociates.com



**FISHWICK &
ASSOCIATES^{PLC}**

Professional Arts Building
30 Franklin Road
Suite 700
Roanoke, VA 24011

Mailing Address:
P. O. Box 749
Roanoke, VA 24004

January 27, 2020

Hon. Edward K. Stein
Alleghany County Circuit Court
266 West Main Street
Covington, VA 24426

Re: Board of Supervisors of Alleghany County v. Donnie T. A. M. Kern
Case No.: CL20-827

Dear Judge Stein:

As you know, we represent Donnie Kern in the above referenced matter. Ann Gardner, the current Commonwealth's Attorney for Alleghany County, has recused herself from prosecuting this case on the basis that doing so "would constitute a conflict of interest for the Alleghany County Commonwealth's Attorney's office." Our client is a current Alleghany County School Board member, and it is his understanding that matters involving the School Board have come before the Commonwealth's Attorney's office in the past. He has asked us to make an inquiry about whether or not this presents a conflict for you, either as a Circuit Court Judge or in your former position as Alleghany County Commonwealth's Attorney. Thus, I am requesting guidance from you on the issue of a possible conflict, and if you agree that a conflict exists, how best to proceed with this matter.

Thank you for your attention to this matter. I look forward to hearing from you.

With kind regards, I remain

Very truly yours,

Fishwick & Associates PLC

John P. Fishwick, Jr.

May 31, 2021

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

Steve Bennett
Greg Dodd, Clifton Forge West District Incumbent
George Mathew Garten, Chairman
Cletus Nicely
James Griffith, Vice Chairman
Joan Vannorsdall
Shannon Cox
VIA: EMAIL

Honorable Members of the Board of Supervisors,

I have been encouraged to run for the Board of Supervisors to represent the Clifton Forge West District. To aid my candidacy, I want to demonstrate to my constituents I am going to work towards ending all acts of prejudice and retaliation towards individuals who strive to be part of the self-governance process in our great republic. Members of the Board of Supervisors (you) have taken a keen interest in my personal and public performance, as well as my ability to properly represent the Clifton Forge West District as a member of the Alleghany County School Board.

Due to the opinions of the members of the Board of Supervisors regarding my performance, the members have consequently and callously petitioned for me to be removed. Since the members of the Board of Supervisors have positioned itself to monitor the private and public lives of public officials, I only find it prudent that I share the following information with you as it should aid you in making your upcoming School Board appointment decision. May 29 2021 via the Virginian Review it was published you would be making the school board appointment on June 1 2021. One appointment will be to re-appoint Jacob Wright to represent the Boiling Springs district as a member of the Alleghany County School Board.

Jacob Wright confided in me in July of 2018 in a conversation indicating that he created a hostile work environment that was so extreme and "wild" as he described it ultimately leading to Keven Rice resigning. Jacob Wright states:

"We have to keep Keven on his toes. You know I got him to resign once, right? Hahaha I used to drive him wild. We have to be adamant about budget and finance"
Jacob Wright

Jacob Wright (Grey Text):

Yes! We need to take the lead. I need to go over quite a few things with you to kind of get you up to speed. I appreciate all of your questions tonight. I had a lot of the same ones. We have to keep Keven on his toes. You know I got him to resign once, right? Hahaha I used to drive him wild. He have to be adamant about budget and finance.

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

In addition, Jacob Wright boasted with pride when he shared his triumphant feat in causing Keven Rice to resign with other members of the School Board in February of 2021. This occurred when Gerald Franson, Danielle Morgan, Richard Shull, John Littleton, and I were all awaiting to interview a Superintendent candidate for appointment.

I remind you that Jacob Wright on October 6 2020 during your regular meeting stated that Keven Rice filed a complaint accusing me of creating a hostile work environment. I would like to point out that Keven Rice has never resigned (for a second time) while I have been on the School Board.

Jacob Wright, confessed to me that the School Board was going to chastise Eugene Kotulka, the former Superintendent for his treatment of me during the October 2019 school board meeting. Jacob Wright states:

"And I think someone is going to chastise Gene for how your situation was handled"

I (Donnie Kern) responded:

"An apology and a seat at the SEAC will suffice, no chastising necessary [sic]".

The School Board was going to retaliate against the school superintendent Eugene Kotulka. I didn't want that. No one should be retaliated against.

Jacob Wright

And I think someone is going to chastise Gene for how your situation was handled

9:34 AM

Me

An apology and a seat at the SEAC will suffice, no chastising necessary

9:39 AM

Jacob Wright has contributed to the systemic violation of School Board policies. I will share three examples.

First-The Budget Committee appointment snafu that we discussed on October 27 2021 during my six-hour interrogation. School Board policy requires that the budget committee be appointed in July at the re-organization meeting. During the July 2020 meeting this appointment was not made. Jacob Wright attempted to appoint the committee in December 2020, on the exact day that I would be removed from office due to the petition members of the Board of Supervisors filed, however I sought to have a trial by jury foiling this plot. Why didn't Jacob Wright make any effort or attempt to appoint the Budget Committee on August, September, October or November? I sent an email advising my peers on the School Board that by making the appointment in December the School Board would be violating the policy a second time, because the policy requires us to make the appointment in July during the reorganization meeting. We had to revise a policy that has been in good standing for many years to correct Jacob Wright's snafu.

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

Kern, Donnie

Re:

Peers,

I was surprised to see that we will finally be appointing the Administrative Budget Committee during the meeting on Monday.

I would like to emphasize that the policy states:

"The only standing committees of the Allegheny County School Board shall be the Special Committee on Board Governance and the Administrative Budget Committee.
The Special Committee on Board Governance and the Administrative Budget Committee shall be appointed by Board action annually at its re-organizational meeting." Policy BCF.

Bring this to your attention that it doesn't not provide a minimum or maximum number of members to be appointed to the committee. I feel that if anyone who has time to devote and would like to participate in this committee should avail themselves to seek appointment during the meeting this Monday. If we restrict participation to this committee when not indicated in the policy it could be seen as exceeding the authority vested in the policy.

I also want to point out that the School Board violated this policy due to not making the reappointment during the re-organization meeting in July. I do not think it prudent to violate it once more on Monday.

I also find it systematically troubling that the appointment of this committee is on a date in which I would be potentially removed from office by the Board of Supervisors.

I would like to express my interest in serving on this committee. I hope I will have your support. I will work cohesively with the rest of it's members and I feel there are improvements that need to be made so that I can participate fully in our school board meetings. These improvements will also help increase public transparency and trust in what we are doing in our annual operations.

I believe that this committee is subject to FOIA. The meeting should be open to the public and publicly posted as this committee's appointment is approved by the School Board, and this committee provides a benefit to the School Board i.e. a draft of the budget.

Thanks for your consideration.

Donnie T.A.M. Kern

School Board Member-AMS Class of 2001

Second- Jacob Wright exceeded his authority in enacting provisions contained in Policy KD by refusing to allow members of the public (students and parents) a chance to voice their concerns during the January 2021 called meeting to discuss the "Let Them Play" movement which focused on having our students return to sports safely during the pandemic. I have unequivocally supported our student's ability to return to sports. I believe my support for sports while a member of the School Board helped clear a path forward enabling our students to compete and to have the opportunity to earn a state title victory for the first time in the history of Allegheny County Public Schools. Over fifty (50) students and parents sent emails to members of the School Board seeking an audience to be listened to. They wanted to speak during this meeting. Jacob Wright's excessive authority silenced their voices.

The message sent by Sherman Callaghan on behalf of Jacob Wright stating:
"We are looking at an hour and a half at least to read all the comments. Policy KD permits the chairman to set a "reasonable time limit" for comments. I have spoken with Jacob and he is going to make a statement that X emails have been received in support of athletics but will not be read aloud."

Superintendent

As you have seen in your emails, we have received MANY emails Re: Athletics. I'm sure more will come in throughout the day today. We are looking at an hour and a half, at least, to read all the comments. Policy KD permits the chairman to set a "reasonable time limit" for comments. I have spoken with Jacob and he is going to make a statement that X emails have been received in support of athletics but will not be read aloud. All the comments will be included in the official minutes. Thank you.

9:38 AM

Writ.Ap.68

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

File: KD
(Also BDOH)

PUBLIC PARTICIPATION AT SCHOOL BOARD MEETINGS

Members of the community are invited and encouraged to attend meetings of the Allegheny County School board to observe its deliberations. Any member of the community may address the Board on matters related to the Allegheny County Public Schools at any regular meeting as provided in the accompanying regulation. Persons wishing to address the School board are requested to contact the superintendent, the School Board chairman, or their designees for placement on the agenda.

The chairman is responsible for the orderly conduct of the meeting and shall rule on such matters as the appropriateness of the subject being presented and length of time for such presentation. No one will be allowed to make additional presentations until everyone who wishes to speak has an opportunity to make an initial presentation.

A reasonable period of time as determined by the School board will be allocated at each regular meeting for community members to present matters of concern.

Adopted: November 17, 1997
Amended: October 20, 2008
Amended: October 21, 2013
Amended: November 16, 2015

Policy KD states that the School Board will set a "reasonable period of time", not the Chairman. I sent an email in response to my peers after our meeting encouraging them to resume in-person meetings and to end the denial of public comments. I stated:

"I feel that there are a lot of disgruntled individuals because we failed to allow them to share how they are feeling. Putting the emails into the minutes is not what these individuals wanted. They wanted to be heard. We failed them as a board. I feel strongly that we need to go back to in-person meetings...We should not view people's point-of-view as an attack but an opportunity to improve how we do things...We should not put a time restriction on our families. We signed up for this." Donnie T.A.M. Kern

KE to be shared with board members

Kern, Donnie

To: [redacted] , ACHIEVE IT Now

Cc: [redacted]

Attachments: [redacted]

Depps,

Thank you for sharing. I would also like to share my own feelings on how we handled this meeting. I feel that there are a lot of disgruntled individuals because we failed to allow them to share how they are feeling. Putting the emails into the minutes is not what these individuals wanted. They wanted to be heard. We failed them as a board. I feel strongly that we need to go back to in-person meetings. When this decision is made it needs to be done publicly. We should not view people's point-of-view as an attack but an opportunity to improve how we do things. If someone cannot make the meeting then they should be able to dial in. We should not put time restrictions on our families. We signed up for this. I am reviewing the sport mitigation plan.

I do want to say I think we did have a good open discussion. I think Mr. Callaghan did an impressive job by creating this opportunity to have it. I believe this is what this school board has been missing for a very long time. We need to throw all the options on the table instead of being hand feed recommendations.

Lastly please send me the budget that will be discussed at the next meeting we have. I would like to have it before the meeting so that I will be equipped to engage in active discussion. In past practice it has been handed to me at the meeting.

Thanks

Donnie T.A.M. Kern
School Board Member #45 Class of 2021

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

Third-The return of \$500,000 of approximately \$1.4 million dollars to the Alleghany County Board of Supervisors. As I recall, August 2020 the School Board was presented with an information item (pictured) to consider a request by the Board of Supervisors to return \$500,000 of \$1.4 million (approximate) of unspent funds by the school division. According to Eugene Kotulka during a private conversation this amount could be up to \$1,000,000 that would be returned to the Board of Supervisors.

The information item notifying the School Board of your request to have the funds returned stated the following "Leadership Committee...met during the FY2021 budget process". The School Board does not have a leadership committee and the School Board has never appointed a leadership committee. The only policy mandated committee is the Budget Committee and Governance Committee. Governance deals with policies of the School Division, not Leadership.

Who is on the Leadership Committee? When did this appointment take place? When did this Leadership Committee meeting take place? Did you invite the public to attend this meeting? The Freedom of Information Act requires meetings of this nature to be open to the public and for the public to be informed of the meeting. As a member of the school board, I do not recall ever in the past three years having heard of the Leadership Committee.

How can our community partake in self-governance if the public is denied access to these meetings and discussions?

In conclusion, I also know you are keen on expenses that are caused by School Board members. Jacob Wright initiated and negotiated a settlement by and between an employee of our school division. I brought this to your attention October 6 2020. I will

remind you once more. The approximate cost of this settlement is around \$50,000 to taxpayers which does not include the legal fees associated with drafting and commencing it. Please review the three pertinent clauses from this settlement (below)/(next page).

SUBJECT	Return of Funds to Alleghany County
RATIONALE	The leadership committees of the County of Alleghany and the Alleghany County School Board met during the FY2021 budget process to discuss the local funding effort for FY2021. It was decided by the committees that the school board would return to the county \$500,000.00 in fund balance (FY2020 year-end operating balance or, if that was insufficient, from cumulative fund balances) in lieu of the county reducing its local FY2021 appropriation to the school board by an equivalent amount. The July 1, 2020 memorandum on Year-End Operating Balance Summary reflects this \$500,000.00 obligation to be paid from the FY2020 operating balance. This will be an action item for the September 21, 2020 school board meeting.
ESTIMATED COSTS	\$500,000.00
BUDGET CATEGORY	Fund Balance
LEGAL REFERENCE	N/A
STAFF CONTACTS	Karen Rice
ADMINISTRATOR'S RECOMMENDATION	

FOR COMMUNITY ● FOR FAMILY ● FOR YOU

3. **Non-Disparagement.** The parties agree not to disparage, criticize, or speak negatively of the other. This Agreement is entered into in good will for the mutual benefit of the parties, and the [REDACTED] and the Board agree to treat all communications with each other and with the public in that positive light. Other than official action required by state law, the parties agree that the only public statement to be issued by either party will conform to the statement attached hereto as Exhibit B.

4. **Confidentiality.** [REDACTED] represents and agrees that [REDACTED] will keep the terms, conditions, covenants, and existence of this Agreement strictly confidential, and will not disclose, or cause to be disclosed, any information concerning this Agreement that is not made generally available to the public as required by law to any person except [REDACTED] immediate family members, legal counsel, and accountant, and then only after such persons have agreed not to disclose any facts concerning the settlement. [REDACTED] further agrees not to disclose, or cause to be disclosed, any information concerning this Agreement to any media or publishing entity. Notwithstanding the foregoing, [REDACTED] obligation of confidentiality shall not extend to any disclosure mandated by law, order by a court of competent jurisdiction.

5. **Cooperation.** [REDACTED] recognizes that, because of [REDACTED] position with the Board, it is important that the Board's employees and the public perceive that [REDACTED] is a mutually desirable and positive event. This Agreement is entered into in good will for the mutual benefit of the parties, and the [REDACTED] agrees to treat all communications with the Board and with the public in that positive light. From the effective date of the Agreement until 5:00 p.m. [REDACTED] agrees to cooperate with the Board to resolve pending litigation or state and federal complaints arising during the [REDACTED] employment about which the [REDACTED] knowledge. The Board agrees to announce publicly only that the [REDACTED] set forth in Exhibit B. The Board will make no other statements regarding the end of [REDACTED] employment except as set forth herein.

I refused to sign this agreement while all other members on the School Board approved. Please explain why the employees of the school division and public should perceive that this employee's retirement is mutually desirable and a positive event? Why not just hold the individual accountable, terminate employment and save \$50,000?

Please explain why the agreement requires that each party will not disparage, criticize, or speak negatively of the other? If our School Board did so many positive things why should the School Board be afraid of what this employee would have to say about members of the School Board?

Make no mistake, I offer this information as it pertains to the governmental affairs of our school division and that of the Board of Supervisors as a political candidate. As a fulfillment of my campaign promise, I share this information to prevent any future retaliation or prejudice against those who contribute to our great republic of self-governance. My constituents of the Clifton Forge West District want to know; will you re-appoint Jacob Wright? Will you petition him to have him removed from office?

Public Service Announcement: ***It is a federal crime under 6241 Title 18, and 6242 Title 18 to conspire and deprive an individual of their civil rights (Free Speech, Due Process, etc.). Sovereign immunity is no defense***

Greg Dodd my Clifton Forge West District representative, your words can inspire, and your actions speak for themselves. You make the choice to speak or remain silent. Let me catch you up to speed. In 2018, an employee came to me with a student complaint seeking an advocate. I chose to advocate for the child's civil rights (below left). I sent this complaint to the School Division.

They choose not to investigate until they had more information (below right).

From [redacted]
Sent: [redacted] 2018/7/35 PM
To: Donnie Kern
Subject: [redacted]

On [redacted] 2018 [redacted] informed me that they could be passing a student who will be known as The student, into [redacted]

[redacted] All the while the student is out of the classroom and not receiving instruction, placing the student further and further behind [redacted]

[redacted] I hope that something can be done from the belief that none of this could be happening once not African American someone needs to advocate for the student

Mr Kern

Good evening.

Thank you for providing the information below. [redacted]

[redacted] As your convenience, please provide the necessary information to begin the investigation.

Regards,

[redacted]

To: votedtamk@yahoo.com

Mr. Kern,

CPS received your complaint regarding a student [redacted]

[redacted]

I sent the complaint to Child Protective Services (CPS) they investigated (left). In fact, the issue was so bad, that a very famous outside advocate got involved: Amy Trail. This is what she said:

"I know Dr. Heath herself had a meeting with the Superintendent on Tuesday morning and another one this morning before she talked to me. So, I am sure. You know here is an idea, don't do it. I mean that sincerely. I told her, I am not asking what is going on, I am just telling you whatever it is it can't be right. So you might want to fix that. I do not want to come down to that school and find out that he is still in a closet somewhere. And I said it just like that. Because there is way more going on..." -Amy Trail

July of 2020 this situation was discussed by the School Board for the first time. Jacob Wright heard the audio. Members of the Board of Supervisors in their petition under the penalty of perjury said I admitted that I failed to determine the validity of the situation. Obviously based on what I just presented this is false. Read the transcript from October 27th. I never made this admission. In a recent court hearing it was stated that the members of the Board of Supervisors will not testify. I remind you, you represent me too.

Who is that nasty sounding person? Is that Amy Trail? Talking about smacking people? She doesn't sound very professional.

She was the individual the School Board hired to train everyone because she was the resource that we did have and needed according to Dr. Heath.

Did not

Donnie T.A.M. Kern
Political Candidate for the Clifton Forge West District Board of Supervisors: For Community, For Family, For You
115 Church Street
Clifton Forge, VA 24422
www.donnietamkern.com
votedtamk@yahoo.com

specific to special education. The Board still sought removal via the petition which violated the respondent's equal protection rights under U.S. Constitution.

Amendment. XIV, and 42 U.S.C. §1983 and §1985 as The Board did not seek removal of Jacob L Wright, member of the School Board for public swearing and intoxication in 2018 which could also be considered neglect of duty, misuse of office, or incompetence in the performance of duties.

Allegheny General District Court

Case #: GC17007641-00

Defendant: WRIGHT, JACOB LACY

Defendant Information			
Address: COVINGTON, VA 24426			
Gender: MALE		Race: WHITE	
Attorney:		DOB: [REDACTED]	
Case/Charge Information			
Defendant Status: RELEASED ON RECOGNIZANCE		Filed Date: 12/29/2017	Locality: COMMONWEALTH OF VA
Code Section: 18.2-388		Charge: PUBLIC SWEARING/INTOXICATION	
Case Type: MISDEMEANOR		Class: CLASS 4	
Offense Date: 12/23/2014		Arrest Date:	Complainant: PIERCE, JOHN
Amended Code Section:		Amended Charge:	
Amended Case Type:		Amended Class:	
Appeal Information			
Appeal Date:			
Hearing Information			
Date	Time	Result	Type
01/18/2018	09:00 AM	WAIVED	ADJUDICATORY
Disposition Information			
Disposition: PREPAID			
Sentence Time:		Sentence Suspended:	
Probation Type:		Probation Time:	
Operator License Suspension Time:		Restriction Effective Date:	
Operator License Restrictions:			
VASAP:			
Fine: \$25.00 *		Costs: \$86.00 *	
Fine/Costs Paid: YES		Fine/Costs Paid Date: 01/17/2018	
* This system cannot process online payments at this time. Please refer to 'How to Pay Traffic Tickets and Other Offenses' for more information.			

APPENDIX I

NO: 21-2046

**In The
United States Court of Appeals
For the Fourth Circuit**

ALLEGHANY COUNTY BOARD OF SUPERVISORS,

Appellee,

vs.

DONNIE T.A.M. KERN,

Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Case Number 7:21-cv-00471-TTC
Honorable Thomas T. Cullen

APPELLANT'S MOTION TO EXPEDITE-LOCAL RULE 12(c)
& INVOKE QUESTION OF UNCONSTITUTIONALITY UNDER
RULE 44(b) FEDERAL RULES OF APPELLATE PROCEDURE

Donnie T.A.M. Kern, MSA, EA
Appellant, Pro Se
115 Church Street
Clifton Forge, VA 24422
540-958-4958
quilltaxation@gmail.com

Guynn personally aided and abetted the drafting and filing of the petition that was signed by the appellee under penalty of perjury.

27. The United State Supreme Court have consistently overturned convictions when a Special Prosecutor has been appointed while equally holding interest in the outcome of a case as it did in *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787,807-13(1987). This Court, the Fourth Circuit Court of Appeals has also affirmed this holding in *Ganger v. Peyton*, 379 F.2d 709, 714 (4th Cir. 1967).

28. The school board is currently involved in a Virginia State Police investigation in which an employee of the school division has been accused of committing sexual crimes against approximately 28 female students. Appellant, the only member on the school board equipped with experience and skills in drafting policies related to the prevention of child sexual abuse. Appellant has a decade of youth development experience, trained as an instructor in child sexual abuse prevention, skilled in drafting anti-grooming policies and would be a tremendous asset to the school board and local community at this pivotal time period. Not expediting this case puts young girls and boys at risk of sexual abuse due to the current **incompetence** of the school board.

APPENDIX J

**COMMONWEALTH'S ATTORNEY
COUNTY OF MONTGOMERY**
55 East Main Street, Suite 2B
Christiansburg, Virginia 24073

Telephone (540) 382-5705

Mary K. Pettitt,
Commonwealth's Attorney

Fax (540) 381-6815

January 15, 2021

Via Certified Mail, Return Receipt Requested
Hon. Debra N. Byer
Clerk
Alleghany County Circuit Court
266 West Main Street
Covington, VA 24426-0670

Re: Commonwealth v. Donnie T.A.M. Kern
CL20000827-00

Dear Ms. Byer:

Enclosed please find the Commonwealth's Motion to Appoint Private Prosecutor to Assist the Commonwealth in the above-styled case. Please note the case was filed as "Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern."

Please contact me with any questions you may have.

Sincerely,


Patrick Jensen
Chief Deputy Commonwealth's Attorney
Montgomery County
Special Prosecutor for Alleghany County

CC with enclosures:

John Fishwick, Esq. (via electronic mail)
Jim H. Guynn, Jr., Esq. (via electronic mail)

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

COMMONWEALTH OF VIRGINIA¹

Petitioner,

v.

DONNIE T.A.M. KERN

Respondent.

**MOTION TO APPOINT PRIVATE
PROSECUTOR TO ASSIST THE
COMMONWEALTH**

CL20000827-00

COMES NOW the Commonwealth of Virginia, by her specially appointed attorney for Alleghany County, or one of her assistants, and respectfully requests that the Court appoint Jim H. Guynn, Jr., Esq., as a private prosecutor to assist the Commonwealth, under the supervision of the Special Prosecutor, during the pendency of this Petition. In support of this motion, the Commonwealth states as follows:

1. The respondent was appointed by the Alleghany County Board of Supervisors to the Alleghany County School Board.
2. Subsequent to that, the Board of Supervisors voted pursuant to Va. Code § 24.2-234 to authorize Jim H. Guynn, Jr., County Attorney for Alleghany County, to file a petition for removal.
3. The Petition, styled "Board of Supervisors of Alleghany County v. Donnie

¹ Once a petition for removal is filed the Commonwealth of Virginia prosecutes and becomes the party plaintiff. Va. Code § 24.2-237; Johnson v. Woodward, 281 Va. 403,

T.A.M. Kern" was filed on December 2, 2020.

4. This Court issued a Rule to Show Cause on December 3.
5. The respondent has demanded a trial by jury.
6. By law, petitions for removal are prosecuted by the Commonwealth's Attorney of that jurisdiction. Va. Code § 24.2-237.
7. Determining a conflict existed, the Alleghany County Commonwealth's Attorney recused herself and this Court appointed Mary Pettitt, Commonwealth's Attorney for Montgomery County, or one of her assistants, as the special prosecutor.
8. A trial court has the inherent authority to administer cases on its docket. Yarbrough v. Commonwealth, 258 Va. 347, 359, 519 S.E.2d 602, ____ (1999).
9. In Yarbrough, a Commonwealth's Attorney sought the appointment of a "special assistant" prosecutor from another jurisdiction to assist "because of the complex nature of the case." Id at 355. The trial court did so, relying upon its inherent authority to administer cases on its docket. Id at 355-356.
10. Since "a Commonwealth's Attorney, no less than any other member of the bar, is subject to the rules of professional responsibility, the duty of competence may require a Commonwealth's Attorney of lesser experience to seek the association of more experienced counsel when prosecuting a difficult, complex case." Id at 361.
11. "[A] trial court does not abuse its discretion in permitting the Commonwealth

707 S.E.2d 325 (2011).

to obtain the assistance of a Commonwealth's Attorney or assistant Commonwealth's Attorney from another jurisdiction who has greater familiarity with the issues involved in such prosecutions..." Id at 361-62.

12. The Supreme Court in Yarbrough found that the appointment of an assistant Commonwealth's Attorney falls within the broad discretion afforded to a trial court. Id at 361, 362.
13. This Petition involves complex civil issues outside of the usual realm of a Commonwealth's Attorney. The ethical rules require the Commonwealth to seek the assistance of an experienced civil litigator in order to perform our duties to the fullest extent permitted and required by the law.
14. Mr. Guynn is an experienced civil litigator who has extensive knowledge of the basis for the petition to remove.
15. Mr. Guynn has agreed to assist the Commonwealth in the prosecution of this Petition, under the supervision of the Special Prosecutor.

WHEREFORE, the Commonwealth respectfully requests that this Court appoint Jim H. Guynn, Jr., Esq. as a private prosecutor to assist the Commonwealth, under the supervision of the Special Prosecutor, for good cause shown, and for any other just and proper relief.

COMMONWEALTH OF VIRGINIA

By: 


Patrick Jensen
Chief Deputy Commonwealth's Attorney
County of Montgomery
Special Prosecutor for Alleghany County
VSB No. 48422
55 E. Main St., Ste. 2B
Christiansburg, VA 24073
540-521-9776
540-381-3815 (fax)
jensenpr@montgomerycountyva.gov

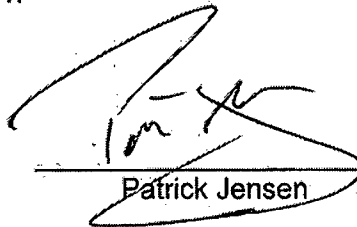
Certificate

I, the undersigned, do hereby certify the foregoing was sent via electronic mail to

John P. Fishwick, Jr., Esq.
Fishwick & Associates PLC
30 Franklin Road SW, Suite 700
Roanoke, VA 24011
John.Fishwick@fishwickandassociates.com

Jim H. Guynn, Jr., Esq.
Guynn, Waddell, Carroll & Lockaby, P.C.
415 S. College Ave.
Salem, VA 24153
jimg@guynnwaddell.com

on this the 15 day of January, 2021.



Patrick Jensen

APPENDIX K

Enclosure: Notice and TRO

From: Donnie Kern (votedtamk@yahoo.com)

To: kickma@aol.com; millwork2002@aol.com; cnicely@ntelos.net; joan.vannorsdall@gmail.com; grifjames@aol.com; spcox70@gmail.com; Gad6483@aol.com; jensenpr@montgomerycountyva.gov; jimg@guynnwaddell.com; bslemons@vacourts.gov

Date: Monday, September 27, 2021, 11:33 PM EDT

Please see the enclosed Notice and TRO

Thanks and Take Care

Donnie T.A.M. Kern



True and Correct Copy_2021-09-27_220708_TRO.pdf
6.2MB



Email Notice.pdf
2MB

NOTICE

September 27 2021

Defendants in Case: 7:21cv00495:
Honorable Members of the Alleghany County Board of Supervisors;
Patrick Jensen;
Jim Guynn;
Honorable Judge Ed Stein, Alleghany County Circuit Court;

Dear Hope-to-be-Friends:

Throughout my career as a public servant, and member of the Alleghany County School Board, I have been dedicated to the simple mission of making our school's a better place. I have and, so long as I am able, will fight for the rights of Alleghany County's student's, especially it's most vulnerable students and ensure that its taxpayers' dollars are being expended appropriately. Rather than engage with my serious concerns regarding the school system's budget deficiencies and treatment of disabled students you in retaliation; assailed and harassed me which has been administered prejudicially, wantonly, freakishly, and inhumanely.

I am a God-fearing man, and I will admit I am conflicted. Scripture tells me to show grace (1 Peter 4:8), but yet he placed me in this situation (Proverbs 16:9), so I question him every day why? In an effort of good will and forward progress

for our community I ask that you take this time to rethink the priorities of our community as I do not believe the current course that we are now all on is the most appropriate nor will it resolve in a greater benefit than all of us treating each other with civility and humility and working together.

You disagree with the desire and vision I have for our community to have an elected school board. I disagree with your vision to have an appointed one. There has to be a better way to resolve this. Because of our differences you have assailed me seeking my removal and suspension from the school board that I decree is but not limited to, unwarranted and irreparable harassment and was done through unconstitutional means. I will always extend the door of friendship to anyone that seeks to walk through it. Equal weights must be established. Currently I am the only individual who has privately invested in this bizarre political fiasco, as I have soaked over \$30,000 when I should never have had to.

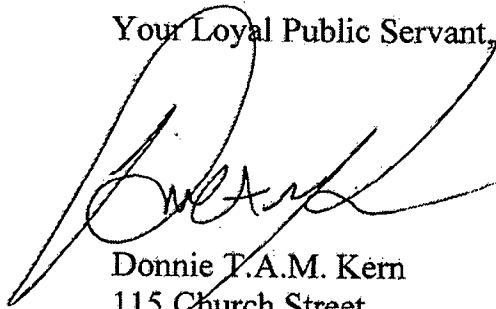
The Notice of Removal has been appealed to the U.S. Appellate Court. Today at approximately 4:30 I filed an approximately 400-page complaint and pleading for declaratory and injunctive relief with the United States District Court. Case reference 7:21cv00495. In addition, I filed a motion for an Emergency Temporary Restraining Order (TRO) to enjoin you from removing/suspending me from my position on the Alleghany County School board. This is attached to his correspondence. I will soon serve upon you the complaint.

Please understand and know that there is nothing more I would rather do than for us to gravitate to more diplomatic means in resolving our differences so we can bring this to a close and so that together we can focus on bringing commonsense progress to our community that can have an everlasting effect.

Under Rule 5.1 of the Federal Civil Procedures, I am to notify Mark Herring, Virginia Attorney General that I have questioned the constitutionality of the state statute you have alleged that I have violated when I adamantly profess have not.

Please excuse any grammatical or other errors you may find as I have had only three hours of sleep in the last 48 hours. With best wishes and always I remain

Your Loyal Public Servant,

A handwritten signature in black ink, appearing to read 'Donnie T.A.M. Kern', written over the typed name and address.

Donnie T.A.M. Kern
115 Church Street
Clifton Forge, VA 24422
540-968-2933
votedtamk@yahoo.com

APPENDIX L

Code of Virginia

Title 22.1. Education

Chapter 7. General Powers and Duties of School Boards

§ 22.1-71. School board constitutes body corporate; corporate powers

The duly appointed or elected members shall constitute the school board. Every such school board is declared a body corporate and, in its corporate capacity, is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law and may sue, be sued, contract, be contracted with and, in accordance with the provisions of this title, purchase, take, hold, lease and convey school property, both real and personal. School board members appointed or elected by district or otherwise shall have no organization or duties except such as may be assigned to them by the school board as a whole.

Code 1950, §§ 22-63, 22-94; 1980, c. 559; 1998, c. 102.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX M

Code of Virginia

Title 22.1. Education

Chapter 5. School Boards; Selection, Qualification and Salaries of Members

Article 3. Alternate Method of Selecting School Boards in School Divisions Comprised of a Single County

§ 22.1-44. Appointment of school board members and tie breaker by county governing body; terms; vacancies

If, in a referendum held as provided in § 22.1-42, it shall be determined that the members of the county school board shall be appointed by the governing body of the county, such governing body shall, by majority vote, thereafter appoint all members of the school board and the tie breaker, if any. Members of the school board and the tie breaker in office at the time of the referendum shall complete their terms and their successors shall be appointed by the governing body. The governing body shall determine whether the office of the tie breaker shall continue after the expiration of the term of the incumbent. Appointments of school board members and tie breakers, if any, shall be made at public meetings. The terms of office of the members of the county school board shall continue to be four years. Vacancies in the office of members of the county school board occurring other than by expiration of term shall be filled by appointment by the governing body for the unexpired terms. The term of office of the tie breaker, if any, shall continue to be four years. Any appointment to fill a vacancy in the office of tie breaker, if any, whether or not by expiration of term, shall be for a four-year term.

The school board shall consist of the same number of members from each magisterial or election district as is provided in § 22.1-36. The governing body of the county may appoint no more than two additional members from the county at large.

Code 1950, §§ 22-61, 22-79.1, 22-79.3; 1969, Ex. Sess., c. 25; 1970, cc. 88, 126; 1971, Ex. Sess., c. 225; 1972, c. 137; 1980, c. 559; 1981, c. 246.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX N

Code of Virginia Title 24.2. Elections

Chapter 2. Federal, Commonwealth, and Local Officers Article 7. Removal of Public Officers from Office

§ 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.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX O

Code of Virginia

Title 24.2. Elections

Chapter 2. Federal, Commonwealth, and Local Officers

Article 7. Removal of Public Officers from Office

§ 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 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 § 18.2-571, 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.

This section has more than one version with varying effective dates. Scroll down to see all versions.

The chapters of the acts of assembly referenced in the historical citation at the end of this

section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX P

Code of Virginia Title 24.2. Elections

Chapter 2. Federal, Commonwealth, and Local Officers Article 7. Removal of Public Officers from Office

§ 24.2-236. Suspension from office pending hearing and appeal

In the event of a judicial proceeding under § 24.2-231, 24.2-232, 24.2-233, or 24.2-234, the circuit court may enter an order suspending the officer pending the hearing. Any officer convicted of a felony under the laws of any state or the United States shall be automatically suspended upon such conviction, regardless of any appeals, pleadings, delays, or motions. The court may, in its discretion, continue the suspension until the matter is finally disposed of in the Supreme Court or otherwise. During the suspension the court may appoint some suitable person to act in the officer's place. The officer's compensation shall be withheld and kept in a separate account and paid to him if and when the judicial proceedings result in his favor. Otherwise, it shall be paid back to the county, city, town, or State Treasurer who paid it.

1975, cc. 515, 595, § 24.1-79.8; 1993, c. 641; 2017, cc. 354, 369.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX Q

Code of Virginia

Virginia Human Rights Act

§ 2.2-3900. Short title; declaration of policy

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability in places of public accommodation, including educational institutions and in real estate transactions;
2. Safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or military status;

3. Preserve the public safety, health, and general welfare;
4. Further the interests, rights, and privileges of individuals within the Commonwealth; and
5. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

1987, c. 581, §§ 2.1-714, 2.1-715; 1997, c. 404; 2001, c. 844; 2020, cc. 1137, 1140; 2021, Sp. Sess. I, cc. 477, 478.

§ 2.2-3901. Definitions

- A. The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of pregnancy, childbirth, or related medical conditions, including lactation. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.
- B. The term "gender identity," when used in reference to discrimination in the Code and acts of the General Assembly, means the gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.
- C. The term "sexual orientation," when used in reference to discrimination in the Code and acts of the General Assembly, means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.
- D. The terms "because of race" or "on the basis of race" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.
- E. As used in this chapter, unless the context requires a different meaning:

"Lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

"Military status" means status as (i) a member of the uniformed forces, as defined in 10 U.S.C. § 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran as defined in 38 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that if proven true would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 U.S.C. Chapter 50.

1987, c. 581, § 2.1-716; 1991, c. 457; 1997, c. 404; 2001, c. 844; 2005, c. 839; 2020, cc. 107, 152, 1137, 1138, 1139, 1140; 2021, Sp. Sess. I, cc. 477, 478.

§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors, and the elderly

The provisions of this chapter shall be construed liberally for the accomplishment of its policies.

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, military status, disability, or national origin is an unlawful discriminatory practice under this chapter.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the age of 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the Office of Civil Rights of the Department of Law (the Office) in accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia agency shall be referred to that agency. The Office may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Office shall have no further jurisdiction over the complaint. The Office shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

1987, c. 581, § 2.1-717; 1991, c. 457; 1997, c. 404; 2000, c. 933; 2001, c. 844; 2012, cc. 803, 835; 2020, cc. 1137, 1140; 2021, Sp. Sess. I, cc. 12, 196, 477, 478.

§ 2.2-3903. Repealed

Repealed by Acts 2020, c. 1140, cl. 2.

APPENDIX R

Code of Virginia

Title 2.2. Administration of Government Subtitle I. Organization of State Government Part E.
State Officers and Employees

Chapter 30.1. The Fraud and Abuse Whistle Blower Protection Act

§ 2.2-3010.1. Discrimination and retaliatory actions against citizen whistle blowers prohibited; good faith required; other remedies

- A. No governmental agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.
- B. To be protected by the provisions of this chapter, a citizen of the Commonwealth who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or that the citizen knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.
- C. Any citizen whistle blower disclosing information of wrongdoing or abuse under this chapter where the disclosure results in a recovery of at least \$5,000 may file a claim for reward under the Fraud and Abuse Whistle Blower Reward Fund established in § 2.2-3014.
- D. Except for the provisions of subsection F of § 2.2-3011, nothing in this chapter shall be construed to limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.).

2014, c. 403; 2016, c. 292.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX S

Code of Virginia

Title 40.1. Labor and Employment Chapter 3. Protection of Employees Article 1. General Provisions

§ 40.1-27.3. Retaliatory action against employee prohibited

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee:

1. Or a person acting on behalf of the employee in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official;
2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;
3. Refuses to engage in a criminal act that would subject the employee to criminal liability;
4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or
5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation.

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;
2. Permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth; or
3. Permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

C. A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorney fees and costs.

2020, c. 1136.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX T

Code of Virginia

Title 40.1. Labor and Employment Chapter 3. Protection of Employees

Article 2. Pay; Assignment of Wages; Sale of Merchandise to Employees

§ 40.1-33.1. Retaliatory actions prohibited; civil penalty

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee or independent contractor, or take other retaliatory action regarding an employee or independent contractor's compensation, terms, conditions, location, or privileges of employment, because the employee or independent contractor:

1. Has reported or plans to report to an appropriate authority that an employer, or any officer or agent of the employer, has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions; or
2. Is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

B. The provisions of subsection A shall apply only if an employee or independent contractor who discloses information about suspected worker misclassification has done so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be subject to the protections provided by subsection A.

C. Any employee who is discharged, disciplined, threatened, discriminated against, or penalized in a manner prohibited by this section may file a complaint with the Commissioner. The Commissioner, with the written and signed consent of such an employee, may institute proceedings against the employer for appropriate remedies for such action, including reinstatement of the employee and recovering lost wages.

D. Any employer who discharges, disciplines, threatens, discriminates against, or penalizes an employee in a manner prohibited by this section shall be subject to a civil penalty not to exceed the amount of the employee's wages that are lost as a result of the violation. Civil penalties under this section shall be assessed by the Commissioner and paid to the Literary Fund.

2020, cc. 204, 271.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX U

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-Legal Information Institute: Cornell Law School
<https://www.law.cornell.edu/constitution/amendmenti>

APPENDIX V

U.S. Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Courtesy-Legal Information Institute: Cornell Law School
<https://www.law.cornell.edu/constitution/amendmentv>

APPENDIX W

U.S. Constitution Amendment VIII

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

Courtesy-Legal Information Institute: Cornell Law School
<https://www.law.cornell.edu/constitution/amendmentviii>

APPENDIX X

U.S. Constitution Amendment XIV 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.

Courtesy-Legal Information Institute: Cornell Law School
<https://www.law.cornell.edu/constitution/amendmentxiv>

APPENDIX Y



Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Virginia School Board Appreciation Month Feb 2022

Teddy Martin II <tmartin2@henry.k12.va.us>

Sat, Apr 23, 2022 at 9:28 PM

To: Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Good Evening,

Hope you are doing well also.

VSBA recognizes February as School Board Appreciation Month by sending a resolution stating its appreciation of Virginia's School Board Members with a certificate of appreciation with the board member's name with a signature of the current President and Executive Director to the school board office. These are usually presented at the February board meeting to the members with the resolution often being read. Many boards have photos taken with the certificates and posted to social media/sent to news media.

Some localities may do more than that, but it's largely what I've seen.

Thanks,
Teddy Martin

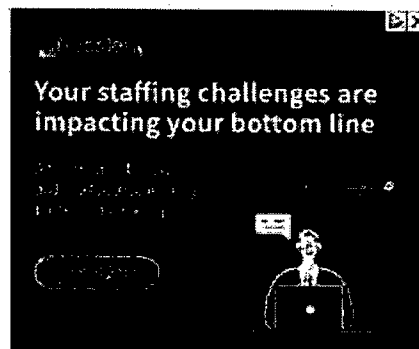
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COMMUNITY

School Board Appreciation Month



Published 15 days ago on February 24, 2022
By The Virginian Review



Members of the Alleghany County School Board were recognized Monday, February 22, 2022, as part of School Board Appreciation Month in February. Board members were presented with a certificate of appreciation and wooden plaques shaped like Virginia. The plaques were made by Career and Technical Education students at Clifton Middle School.

APPENDIX AA



Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Court Order/Property

2 messages

Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Fri, Mar 18, 2022 at 1:41 PM

To: khalterman@allegghany.k12.va.us

Cc: Jim Guynn <jimg@guynnwaddell.com>, travisa@guynnwaddell.com, "Patrick R. Jensen"

<jensenpr@montgomerycountyva.gov>, pettittmk@montgomerycountyva.gov, Brenda S Lemons <bslemons@vacourts.gov>, ocr.dc@ed.gov, mailoag@oag.state.va.us

Kim

Hi,

It has come to my attention that you are in possession of property i.e. appurtenances involved in my current membership on the Alleghany County School Board for the Clifton Forge West District. As you may know September 28 2021, I was suspended under VA Code §24.2-236. The law in which this suspension was enacted only allows for the holding of property which is specific to a school board member's salary; nothing else. In fact, the Honorable Judge Ed Stein said as much in the ORDER signed by him which states "the compensation shall be paid over to him. Otherwise, any funds shall be paid back to Alleghany County".

I have attached these two very important documents attesting to this claim for your reference. I point out that the ORDER was addressed to the Alleghany County School Board, I know you are not on the School Board but you are the Administrator of the School Board and whether or not the School Board follows the Court Order or not rest with you. I find it disheartening that I was not treated like all other members of the school board by being formally presented with this "block of wood". I believe these actions are in concert with the ongoing violations of Section 504, Civil Rights Act, and the Americans with Disabilities Act and have nexus with my advocacy for my child, disabled children, and an African American. Among other things these actions are a violation of my U.S. Constitutional Right under the 5th and 14th Amendment, as you have seized property belonging to me without due process.

In an effort to remedy this problem I plan on picking up my "block of wood" in-person on March 21 10:00AM, while I am there, please also turnover my complimentary ticket to the Alleghany Highlands Chamber Dinner which has been provided to members of the school board.

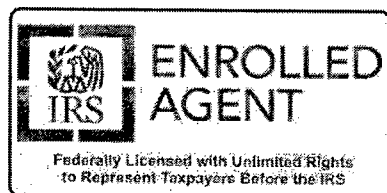
I have also attached a pdf of the block of wood in reference. Your sincere cooperation will be much obliged.

Thank You

Donnie T.A.M. Kern, EA, MSA

540-958-4958

Check Us Out On Facebook!




Any tax advice in this email should be considered in the context of the tax service that is being provided to you. Preliminary tax advice should not be relied upon and may be insufficient for penalty protection.

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3 attachments

 **24.2_236 VA Code Suspension.pdf**
17K

 **court order_09_28_2021.pdf**
274K

 **VR_Block of Wood School Board Appreciation.pdf**
117K

Halterman, Kimberly <khalterman@alleghany.k12.va.us>
To: Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Fri, Mar 18, 2022 at 4:16 PM

Hi, Mr. Kern. I hope you are doing well!

The wooden Virginias for school board members were gifts to those present February 21. They were a little surprise from the kids at one of the schools. There are no additional wooden Virginias to distribute to my knowledge.

The Alleghany Highlands Chamber of Commerce Dinner registration deadline for school board members has passed.

I hope this information helps. Take care.

From: Quill Accounting and Tax LLC [mailto:quilltaxation@gmail.com]

Sent: Friday, March 18, 2022 1:42 PM

To: Halterman, Kimberly <khalterman@alleghany.k12.va.us>

Cc: Jim Guynn <jimg@guynnwaddell.com>; travisa@guynnwaddell.com; Patrick R. Jensen <jensenpr@montgomerycountyva.gov>; pettittmk@montgomerycountyva.gov; Brenda S Lemons <bslemons@vacourts.gov>; ocr.dc@ed.gov; mailoag@oag.state.va.us

Subject: Court Order/Property

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

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APPENDIX BB



Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Dinner Ticket March 26

3 messages

Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Tue, Mar 22, 2022 at 3:01 AM

To: info@ahchamber.com

Cc: khalterman@alleghany.k12.va.us, ocr.dc@ed.gov, mailoag@oag.state.va.us, "Patrick R. Jensen"

<jensenpr@montgomerycountyva.gov>, petittmk@montgomerycountyva.gov, Jim Guynn <jimg@guynnwaddell.com>, "Lane, James" <james.lane@doe.virginia.gov>, ltgov@ltgov.virginia.gov

Teresa,

Hi, I know you are busy getting ready for the upcoming Alleghany Highlands Chamber Dinner on March 26th so I won't take up too much of your time. I invited you briefly to this email chain to make a humble request on behalf of our loving community. As you know I was suspended from the School Board. The suspension doesn't remove me from the board, it only places a substitute to act in on my behalf (§24.2-236). Code of Virginia §22.1-71 explicitly implies that duties of a school board member rest with assignment by the school board as a whole; that being said this allows me to attend the Chamber Dinner without being in violation of the Court ORDER issued by the Honorable Judge Ed Stein as the school board has never made it mandatory for members to attend. It was relayed to me that this is the first time in the History of Virginia this situation has ever arisen. This is why the large group on this email, so we can all learn from this experience.

That being said, under the Alleghany County school board's "Past Practice" doctrine (officially recognized approx. circa July 2020) the school board has always provided school board members with a complimentary ticket to attend the Chamber Dinner. The past two years I have attended this event as a gracious cheerleader supporting our teachers. Last year, I even drove over two hours from Swoop Virginia to attend and then drove back two hours back because I was simultaneously involved in a youth development training with the Boy Scouts. Supporting our teachers is important to me.

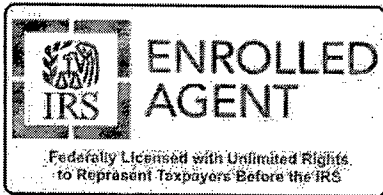
Kim Halterman, Superintendent and I have a dilemma that I believe you can help with. March 9 2022 the Alleghany Highlands Chamber Commerce sent out a newsletter to its members, do you recall this newsletter ? This March 9 2022 newsletter specifically stated that the deadline to order tickets was March 18 2022. I made a request of Kim for my complimentary ticket on March 18. Kim on March 18 2022 conceded that she would have gotten me the ticket but the deadline had passed. This March 9 2022 newsletter that was sent out by the Alleghany Highlands Chamber of Commerce supposedly to all members of the Chamber which includes Kim; contradicts Kim's concession as Kim could have ordered this ticket on March 18 2022 when I made the request for her to do so.

I am reaching out to you because I know you care about this community more than anyone, you are a leader and visionary that has helped generate numerous opportunities for so many people. I know you would do anything you could to create a stronger and more vibrant Alleghany Highlands. I humbly plea to you to extend this ticket deadline in this rare situation to allow Kim on behalf of the School Board to purchase this \$95.00 ticket so that I can attend the Chamber Dinner. I believe my presence will boost the morale of our community and enable some long-overdue healing that is needed.

I will sit wherever you have space. You can place me with and under the supervision of the Honorable Ed Stein, Jim, Patrick, and Travis; Bob Umstead it will not matter. As you may be aware I have been accused of causing tremendous amounts of legal fees, I assure you that is not the case. This is why I am reaching out now to avoid such future legal financial burden over a \$95 ticket and poor communication. If Kim and I cannot come up with a remedy, then there is a potential for a significant impact on the financial burden of the school division and I know it would be best for our community to avoid that.

I hope you will consider my request and allow Kim to purchase a ticket so that I may respectfully attend preventing any violation of the Court ORDER by our School Division as the ORDER only allows them to withhold compensation, nothing else and they should have provided me with a ticket but they didn't.

--
Donnie T.A.M. Kern, EA, MSA
540-958-4958
Check Us Out On Facebook!



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Alleghany Highlands Chamber <info@ahchamber.com>

Thu, Mar 24, 2022 at 3:22 PM

To: Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Cc: khalterman@alleghany.k12.va.us, ocr.dc@ed.gov, mailoag@oag.state.va.us, "Patrick R. Jensen"

<jensenpr@montgomerycountyva.gov>, pettittmk@montgomerycountyva.gov, Jim Guynn <jimg@guynnwaddell.com>, "Lane, James" <james.lane@doe.virginia.gov>, ltgov@ltgov.virginia.gov

Donnie,

Even though the RSVP deadline was March 18th, we have spoken with The Homestead and they have agreed to allow us to sell an additional ticket. I cannot speak to the compensation portion of your email but we would be glad to sell you a ticket if you are still interested in attending the event. Please let us know by 12noon, Friday March 25th.

Best regards,

Teresa

[Quoted text hidden]

Quill Accounting and Tax LLC <quilltaxation@gmail.com>

Thu, Mar 24, 2022 at 3:34 PM

To: Alleghany Highlands Chamber <info@ahchamber.com>

Cc: khalterman@alleghany.k12.va.us, ocr.dc@ed.gov, mailoag@oag.state.va.us, "Patrick R. Jensen"

<jensenpr@montgomerycountyva.gov>, pettittmk@montgomerycountyva.gov, Jim Guynn <jimg@guynnwaddell.com>, "Lane, James" <james.lane@doe.virginia.gov>, Itgov@ltgov.virginia.gov

Kim,

Would you please purchase my complementary ticket? I beleive you are equipped with a business Credit Card as I have seen it in action by the former Superintendent. I would be moved by your kindness and this would fix one of the two issues at hand.

Teresa, many thanks. It means a lot to me.

Donnie

[Quoted text hidden]

APPENDIX CC

Alleghany County Public Schools
Minutes of July 6, 2020 Reorganization, Year End Closeout and Regular Meeting

*Indicates an attachment

Page 3 of 7

APPOINT THREE REPRESENTATIVES TO SPECIAL COMMITTEE ON BOARD GOVERNANCE

Chairman Wright appointed Mr. Franson, Mrs. Seckner, and volunteered himself to the committee.

MOTION: That the Board approve Mr. Franson, Mrs. Seckner, and Mr. Wright to serve on the Special Committee on Board Governance.

MOTION: Mr. Tucker

SECOND: Mrs. Morgan

ROLL CALL VOTE: Unanimous

SUPERINTENDENT ADVISORY COMMITTEES

Mr. Kotulka stated these committees would be designated at a future meeting.

(21-01) PROVISION OF REQUIRED CODE OF VIRGINIA DOCUMENTS*

Pursuant to the Code of Virginia, Section 2.2-3702, Mr. Kotulka reminded School Board members that they are to read and familiarize themselves with the provisions of the Virginia Freedom of Information Act, the Virginia Conflict of Interest Act (School Board Policy BBFA), and the Virginia Public Records Act. Each document was provided to all Board members.

(21-02) ACCEPTANCE OF VSBA CODE OF CONDUCT*

Mrs. Morgan read the Code of Conduct. All Board members signed the form.

MOTION: That the VSBA Code of Conduct be adopted as presented.

MOTION: Mrs. Seckner

SECOND: Mr. Tucker

ROLL CALL VOTE: Unanimous

(21-03) LOCATIONS OF ALLEGHANY COUNTY SCHOOL BOARD POLICY MANUALS

Mr. Kotulka reported that copies of the Alleghany County School Board Policy Manual are available to the public at the Central Office Complex at 100 Central Circle, Low Moor, VA, and in each school's office and library. He noted the policy manual is also available on the school website, per state statutory requirement.

(21-04) APPROVAL OF 2020-2021 CALENDAR OF SCHOOL BOARD MEETINGS AND EVENTS*

The calendar was reviewed at the May and June meetings.

MOTION: That the Board approve the 2020-2021 calendar of School Board meetings and events, as presented.

MOTION: Mr. Tucker

SECOND: Mrs. Morgan

ROLL CALL VOTE: Unanimous

Chairman Wright suggested Closed Session be moved to the end of the agenda. There was discussion regarding the procedure for such action. It was determined this action required a unanimous vote.

MOTION: That Closed Session be moved to the end of the agenda.

MOTION: Mr. Kern

SECOND: Mrs. Morgan

ROLL CALL VOTE: Mr. Franson – YES

Mr. Kern – YES

Mr. Lane – YES

Mrs. Morgan – YES

Mrs. Seckner – YES

Mr. Tucker – NO

Mr. Wright – YES

Because there was not a unanimous vote to move the agenda item, this item was not moved.

APPENDIX DD



MINUTES
REGULAR MEETING OF THE ALLEGHANY COUNTY SCHOOL BOARD
February 24, 2020

The Alleghany County School Board held its regular meeting on February 24, 2020, at 6:00 p.m. at Jackson River Technical Center in Covington, Virginia.

PRESENT: Gerald E. Franson; Donnie T. Kern; Danielle I. Morgan; Jennifer S. Seckner; Randall S. Tucker, Chairman; and Jacob L. Wright, Vice Chairman. Also present: Eugene P. Kotulka, Superintendent; and Lorie C. Bess, Clerk.

Student Representative: Abby L. Martin (present)

ABSENT: R. Craig Lane

Chairman Tucker called the meeting to order at 6:00 p.m. The call to order was followed by a moment of silence and the recitation of the *Pledge of Allegiance*.

Chairman Tucker announced the following addition to the agenda:

1. Agenda item #20-213, "English Language Arts Textbook Adoption, Grades K-12". This is an Information item and will be inserted after agenda item #20-207.

COMMUNITY PARTICIPATION

(20-191) OPENING REMARKS AND WELCOME BY GLENN SPANGLER, DIRECTOR, JACKSON RIVER TECHNICAL CENTER

Mr. Spangler welcomed everyone to Jackson River Technical Center. He noted February is CTE Month (Career and Technical Education) and the theme this year is "Celebrate Today, Honor Tomorrow". He stated he and his staff are very proud of the work they do and thanked the Board for their support.

(20-192) SCHOOL BOARD COMMENDATIONS

VSBA Employer Commendation Program – Will Windham, CEO, LewisGale Hospital Alleghany

Division Spelling Bee Winner – Jason Kang

Spelling Bee Individual School Winners:

Callaghan Elementary – Madison Lowry
Mountain View Elementary – Jackson Sydenstricker
Sharon Elementary – Megan Powell
Clifton Middle School Grade 6 – Drake Gibson
Clifton Middle School Grade 7 – Keegan Morris
Clifton Middle School Grade 8 – Jason Kang

(20-193) RECOGNITION OF SCHOOL BOARD MEMBER APPRECIATION MONTH

Mr. Kotulka presented each Board member with a certificate of appreciation. He noted the gift left at each member's seat was a collaborative effort from all of the schools. He thanked each Board member for their service and dedication to the students and staff.

APPENDIX EE



MINUTES

February 15, 2021

The Allegheny County School Board held a regular meeting on February 15, 2021, at 6:00 p.m. at the Central Office Complex, 100 Central Circle, Low Moor, Virginia. This meeting was held pursuant to and in compliance with ordinance O-20-2 which was adopted by the Allegheny County Board of Supervisors on April 3, 2020 and amended on June 2, 2020 and August 4, 2020 in response to the COVID-19 pandemic. Masks were required and social distancing measures were in place.

PRESENT: Gerald E. Franson; Donnie T. Kern; John B. Littleton; Danielle I. Morgan, Vice Chairwoman; Richard A. Shull; and Jacob L. Wright, Chairman. Also present: Sherman B. Callahan, Acting Superintendent; and Lorie C. Bess, Clerk

Student Representative: Abby L. Martin (present)

ABSENT: Jennifer S. Seckner

Chairman Wright called the meeting to order at 6:00 p.m. The call to order was followed by a moment of silence and the recitation of the *Pledge of Allegiance*.

Chairman Wright announced the following addition to the agenda:

1. Agenda item #21-189 "Transfer of funds to County Government/Consolidation Committee" will be inserted after agenda item #21-180 and is an action item.

PUBLIC NOTICE: 15-day Notification of Superintendent Interviews

Chairman Wright made the following announcement:

The Allegheny County School Board will conduct interviews at an undisclosed location for the position of superintendent from February 16 to March 2. These interviews will be held in accordance with the Code of Virginia Section 2.2-3712, which states:

"The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter."

COMMUNITY PARTICIPATION

(21-172) SCHOOL BOARD COMMENDATIONS

Division Spelling Bee Winner - Drake Gibson, Grade 7, Clifton Middle School

Individual School Winners

Clifton Middle School:

A-Day Winners

6th grade: Chloe Franson

7th grade: Hayden Fridley

8th grade: Keegan Morris

B-Day Winners

6th grade: Kara Nicely
7th grade: Drake Gibson
8th grade: Amelia Ostling

Callaghan Elementary School:

A-Day Winner Kayden Gibson
B-Day Winner Christian Shurtleff

Mountain View Elementary School:

A-Day Winner Iris Kang
B-Day Winner Alexis May

Sharon Elementary School:

A-Day Winner Sophie Knighton
B-Day Winner Emma Burley-Smith

(21-173) RECOGNITION OF SCHOOL BOARD MEMBER APPRECIATION MONTH

Mr. Callahan presented each Board member with a certificate of appreciation. He noted the gift left at each member's seat was a collaborative effort from all of the schools. He thanked each Board member for their service and dedication to the students and staff.

(21-174) RECOGNITION OF SCHOOL BOARD CLERK AND DEPUTY CLERK APPRECIATION WEEK

Mr. Callahan recognized Lorie Bess, School Board Clerk, and Fred Vaughan, Jr., Deputy Clerk, and thanked them for their service to the students and staff of Allegheny County Public Schools. Mrs. Bess and Mr. Vaughan were presented with a certificate of appreciation.

(21-175) ONE-TO-ONE INITIATIVE UPDATE*

A video was shown as a tribute to the late Mr. Jeff Alleman. The video detailed the impact he had on those that worked closely with him. The video was titled, "Technology: Above and Beyond", featuring:
Mr. William Canter - TTRT Allegheny High School
Mrs. Lisa Hansford - TTRT Clifton Middle School
Mrs. Jennifer Taylor - TTRT Mountain View Elementary
Mrs. Angie Nicely - TTRT Callaghan Elementary School
Mrs. Lia Fisher-Janosz - TTRT Sharon Elementary School

(21-176) PUBLIC COMMENT

Tina Conner (13365 Douthat State Park Road) read the following statement: "My name is Tina Conner and I am a parent of a 3-sport high school senior. I am sure some of you have read the many emails that I have sent supporting the athletes, coaches and staff. Thank you to those that responded. I felt a little defeated after the last meeting, but I was angry at myself for not standing up to speak. I truly thought public comment was just about the budget so I hadn't prepared anything and I didn't think that I could share my thoughts in the right manner and I have felt I let the kids down every day since that meeting. I first want to say that I am so proud of a lot of these kids. They have been dealt a hand that is tough and they have come up against some opposition that has taught them to stand up for themselves, dig for facts and share their voice. Are there other people in this world fighting much bigger battles... well, of course there are, these kids are not making light of other people battles, they are simply standing up for themselves. To some, sports is just a game. To others, it's such a big part of their life, when it's taken away, everything changes. Think of something you feel like you can't live without, remove something from your life that's been your constant for over 13 years. As an adult, it's hard to lose something. As a teenager, it's devastating. I could sit here and retell you the stories that you have already heard about how sports have changed lives, how sports have kept kids in school, given kids their only sense of belonging, even their only sense of family. I can retell the stories of coaches going and sitting in

APPENDIX FF



MINUTES November 16, 2020

The Allegheny County School Board held a regular meeting on November 16, 2020, at 6:00 p.m. at the Central Office Complex, 100 Central Circle, Low Moor, Virginia. This meeting was held virtually via Zoom. This meeting was held pursuant to and in compliance with ordinance O-20-2 which was adopted by the Allegheny County Board of Supervisors on April 3, 2020 and amended on June 2, 2020 and August 4, 2020 in response to the COVID-19 pandemic.

PRESENT: Gerald E. Franson; Donnie T. Kern; John B. Littleton; Richard A. Shull; and Jacob L. Wright, Chairman. Also present: Sherman B. Callahan, Acting Superintendent; and Lorie C. Bess, Clerk

Student Representative: Abby L. Martin (present)

ABSENT: Danielle I. Morgan, Vice Chairwoman; Jennifer S. Seckner

Chairman Wright called the meeting to order at 6:00 p.m. The call to order was followed by a moment of silence and the recitation of the *Pledge of Allegiance*.

Chairman Wright announced the following addition to the agenda:

1. Agenda item #21-116, "Discuss guidance from Virginia High School League" will be an action item instead of an information item.

COMMUNITY PARTICIPATION **(21-110) COMMENDATIONS AND AWARDS** **ABCD Awards**

Ben Truett, Supervisor of Maintenance and Transportation, read the following statement:
"Chairman Wright, Ladies and Gentlemen of the Board, and Mr. Callahan. Often within an organization there are certain tasks and duties that can easily be taken for granted. There are tasks that are critical to the operation of the organization and often go unnoticed. When the job is done professionally and successfully it is seamless and quietly efficient. Most of us never see the job being done, but we absolutely see the result every single day. Tonight, I am here to call your attention to and recognize a very special group of employees. I am here tonight to recognize the custodians of Allegheny County Public Schools with the ABCD Award. Even before the Governor closed schools last Spring, this dedicated group of 23 employees was already ensuring all classrooms and buildings were clean and safe for our students and staff. As the pandemic grew, our custodians stepped up cleaning and disinfecting even further. This work continued throughout the summer. They added more steps to their cleaning regiment. They learned to use new disinfecting methods, equipment, and increased safety protocols to protect us all. With that being said, I would like to recognize the following custodians for the ABCD Award."

Allegheny High School - Darlene Brown, Paul Golden, Ronnie Humphries, Jayson Lowden, Marshall Puckett, John Romanello, and Eddie Smith

Bus Garage - Darla Wendling

Central Office Complex - Glenn P. "Chickenwing" Simmons

Callaghan Elementary School - Ricky Hartman and Darrel Tucker

Clifton Middle School - Jackie Brown, Steven Craft, Jeff Irvine, Debra Prior, Sheldon Shue, and Adam Sweet

Mountain View Elementary School - Bruce Green, Tim Lewis, Robert Long, and Debra Palmer

Sharon Elementary School - Ernest Jones and Tim Wenck

(21-111) PUBLIC COMMENT

There were no citizens wishing to address the Board.

(21-112) SCHOOL BOARD MEMBER AND ACTING SUPERINTENDENT COMMENTS

Mr. Franson congratulated the custodians on receiving the ABCD Award. He stated he appreciates their efforts and dedication in keeping the schools clean and disinfected.

Mr. Kern stated he hopes everyone has a happy Thanksgiving. He stated he hopes the Board will have an opportunity to recognize Craig Lane at a future meeting for his years of service as a former board member.

Mr. Littleton thanked the custodians, teachers, teacher aides, bus drivers, and all employees for their hard work. He welcomed Mr. Shull to the Board. He wished everyone happy holidays.

Mr. Shull congratulated the custodian on their awards. He stated they keep the schools clean so everyone else can do their job. He thanked Craig Lane for his years of service on the Board and stated he too hopes to help students, teachers, and staff and to promote the school division.

Mr. Wright welcomed Mr. Shull to the Board. He noted this was the first 100% virtual board meeting. He thanked the custodians and all staff for their hard work. He thanked Jeff Alleman, Sherman Callahan, and Lorie Bess for preparing for a virtual meeting on short notice.

Mr. Callahan stated it was good to see everyone. He stated he is hoping to get students back in person on November 30. He thanked the custodians for what they do to keep us all going.

Abby Martin thanked the custodians for what they do and for being so helpful and talking to students at school. She thanked the teachers for doing a great job with virtual classes. She expressed well wishes to everyone.

(21-113) CONSENT AGENDA*

The following items were included for approval.

A. Minutes of October 5 Called Meeting, October 20 Regular Meeting, and October 28 Called Meeting

B. Payment of bills

MOTION: That the Board approve the consent agenda, as presented.

MOTION: Mr. Franson

SECOND: Mr. Littleton

ROLL CALL VOTE:

Mr. Franson	- YES
Mr. Kern	- ABSTAIN
Mr. Littleton	- YES
Mrs. Morgan	- ABSENT
Mrs. Seckner	- ABSENT
Mr. Shull	- YES
Mr. Wright	- YES

(21-114) INFORMATIONAL ITEMS*

A. Cafeteria report

B. JRTC monthly report

C. Capital Improvement and operational maintenance update

D. Budget report



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Michelle Staley

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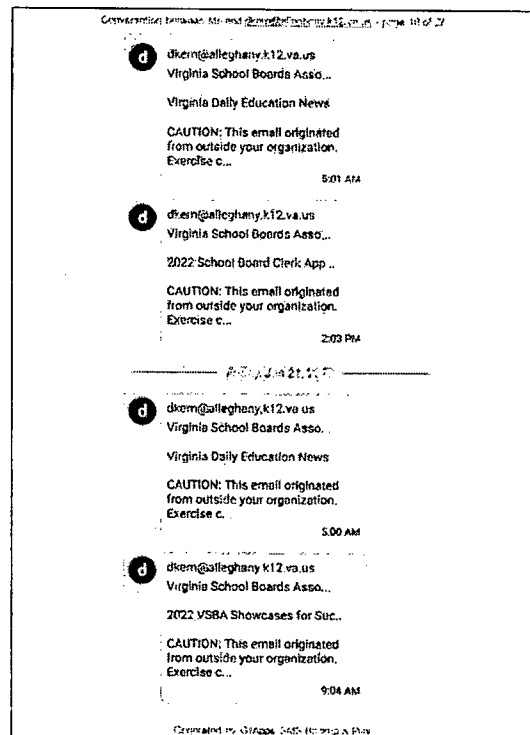
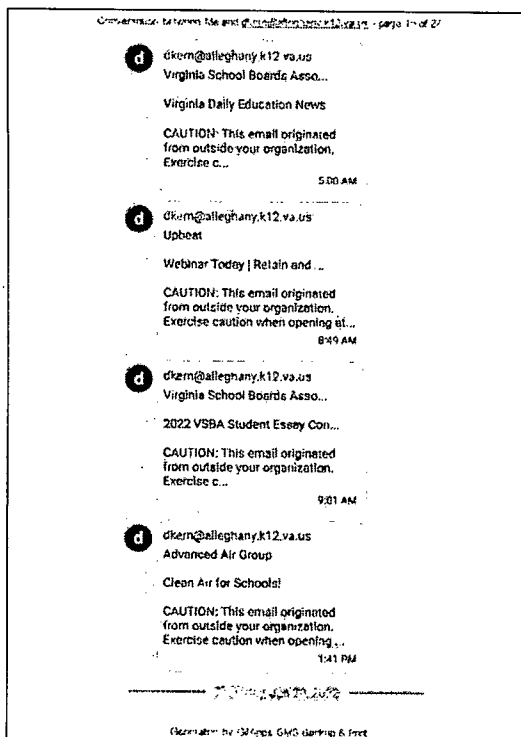
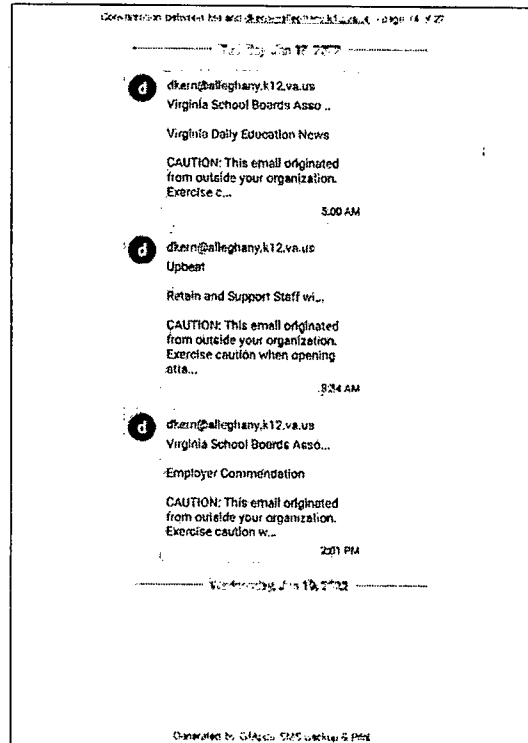
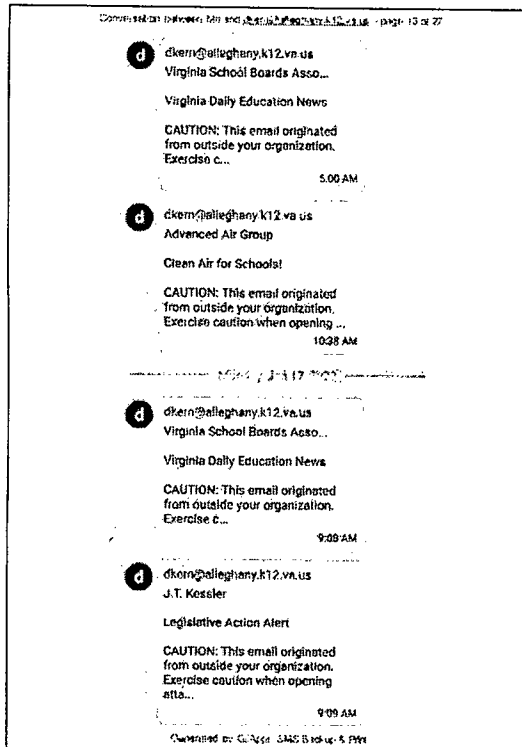
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Continued on page 3. 10/12/22 10:01 PM

Continued from the previous page. 10/12/22 10:01 PM

d dbern@allegheny.k12.pa.us
 Advanced Air Group
 Clean Air for Schools!
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 12:53 PM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 2022 VSBA Equity in Education...
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 2:00 PM

 10/12/22 12:01 PM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 Virginia Daily Education News
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 5:01 AM

 10/12/22 12:01 PM

Continued on page 3. 10/12/22 10:01 PM

Continued from the previous page. 10/12/22 10:01 PM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 Virginia Daily Education News
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 5:00 AM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 2022 School Board Clerk App...
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 9:04 AM

 10/12/22 12:01 PM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 Virginia Daily Education News
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 5:00 AM

d dbern@allegheny.k12.pa.us
 Riley, Kevin
 Health Insurance for School...
 Good Morning Board Members,
 On Monday I sent a message to all of you regarding your vote.
 10/12/22 9:01 AM

 10/12/22 12:01 PM

Continued on page 3. 10/12/22 10:01 PM

Continued from the previous page. 10/12/22 10:01 PM

d dbern@allegheny.k12.pa.us
 Heindricher, Jason
 RE: Health Insurance for Sc...
 That should qualify me for all expense paid trip to somewhere warm correct?
 10/12/22 9:22 AM

d dbern@allegheny.k12.pa.us
 Riley, Kevin
 RE: Health Insurance for Sc...
 The board has to vote on it?
 J. Kevin Riley
 Director of Finance
 Allegheny County Public Sc...
 10/12/22 12:09 PM

 10/12/22 12:01 PM

d dbern@allegheny.k12.pa.us
 Virginia School Boards Assoc.
 Virginia Daily Education News
 CAUTION: This email originated from outside your organization. Exercise caution when opening.
 10/12/22 5:01 AM

 10/12/22 12:01 PM

Continued on page 3. 10/12/22 10:01 PM

Conversation between dkern@alleghany.k12.va.us and dkern@alleghany.k12.va.us - page 21 of 27

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:01 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
February is School Board Ap...
CAUTION: This email originated from outside your organization. Exercise c...
6:05 AM

d dkern@alleghany.k12.va.us
Upbeat
What can we do now to keep ...
CAUTION: This email originated from outside your organization. Exercise caution when opening att...
6:53 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:00 AM

Generated by: G4App: SMS Backup & Print

Conversation between dkern@alleghany.k12.va.us and dkern@alleghany.k12.va.us - page 22 of 27

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
2022 VSBA Business Honor Roll
CAUTION: This email originated from outside your organization. Exercise c...
9:01 AM

d dkern@alleghany.k12.va.us
Talos IoT
HVAC Breakdowns and Supply ...
CAUTION: This email originated from outside your organization. Exercise caution when opening ...
11:29 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:00 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
2022 VSBA Equity in Educati...
CAUTION: This email originated from outside your organization. Exercise c...
2:03 PM

Generated by: G4App: SMS Backup & Print

Conversation between dkern@alleghany.k12.va.us and dkern@alleghany.k12.va.us - page 24 of 27

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:00 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:00 AM

d dkern@alleghany.k12.va.us
Upbeat
Webinar on Thursday, 2/10: ...
CAUTION: This email originated from outside your organization. Exercise caution when opening att...
6:52 AM

Generated by: G4App: SMS Backup & Print

Conversation between dkern@alleghany.k12.va.us and dkern@alleghany.k12.va.us - page 25 of 27

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:00 AM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
2022 VSBA Showcases for Suc...
CAUTION: This email originated from outside your organization. Exercise c...
9:25 AM

d dkern@alleghany.k12.va.us
J.T. Kessler
Legislative Action Alert!
CAUTION: This email originated from outside your organization. Exercise caution when opening att...
2:15 PM

d dkern@alleghany.k12.va.us
Virginia School Boards Asso...
Virginia Daily Education News
CAUTION: This email originated from outside your organization. Exercise c...
5:01 AM

Generated by: G4App: SMS Backup & Print

Continued from the previous page - Page 22 of 22

d dhen@allgheny.k12.va.us
Beck, Lorie

FW: Press Release - EO2

Board members,
See you'll be asked from Monica White
(parent). She is signed up to speak
during Public.

8:44 AM

d dhen@allgheny.k12.va.us
Upbeat

Webinar at 11AM EST | John ...

CAUTION: This email originated
from outside your organization.
Exercise caution when opening it...

8:44 AM

d dhen@allgheny.k12.va.us
National Student Safety and...

John In-Person: 6th National...

CAUTION: This email originated
from outside your organization.
Exercise c...

10:17 AM

Tuesday, Feb 18, 2020

Continued by C.A.S.G.S. - 2/18/20 8:44 AM

Continued from the previous page - Page 22 of 22

d dhen@allgheny.k12.va.us
Upbeat

Strangely to Support and R...

CAUTION: This email originated
from outside your organization.
Exercise caution when opening
it...

11:46 AM

d dhen@allgheny.k12.va.us
Upbeat

Addressing Teacher Needs in...

CAUTION: This email originated
from outside your organization.
Exercise caution when opening
it...

6:33 AM

Friday, Feb 18, 2020

d dhen@allgheny.k12.va.us
Upbeat

Join the National Working G...

CAUTION: This email originated
from outside your organization.
Exercise caution when opening
it...

6:33 AM

Continued by C.A.S.G.S. - 2/18/20 6:33 AM

Continued by C.A.S.G.S. - 2/18/20 6:33 AM

d dhen@allgheny.k12.va.us
Spouse, Amanda

The Little Mermaid Dinner T...

Hallel

I would like to invite you to AHS's
production of the Little Mermaid
Dinner...

10:23 AM

Tuesday, Feb 18, 2020

d dhen@allgheny.k12.va.us
Upbeat

Building Staff Belonging at...

CAUTION: This email originated
from outside your organization.
Exercise caution when opening
it...

2:21 PM

Wednesday, Feb 19, 2020

d dhen@allgheny.k12.va.us
Take 101

Using 101 to Reduce HVAC Costs

CAUTION: This email originated
from outside your organization.
Exercise caution when opening it...

6:48 PM

Continued by C.A.S.G.S. - 2/19/20 6:48 PM

APPENDIX RELIEF

RELIEF-IRREPARABLE HARM

The Petitioner seeks the following relief and repair due to the irreparable harm caused by the Suspension under Virginia Code §24.236 if granted by the Chief Justice and Circuit Justice John G. Roberts, Jr:

IRREPARABLE RELIEF

(I)-June 21 2022 School Board Meeting Attendance:

The Petitioner's last school board meeting will be June 21 2022.

(II)- Access to School Board Email Account:

The Petitioner requires access to the school board email account which contains volumes of documents and communication which may be of assistance to the Petitioner in this matter until the case at hand is resolved. Since September 28 2021 the Petitioner has not accessed this account.

IRREPARABLE HARM CAUSED-REPAIRED

(I)- Replacement of the Wooden Virginia

-The return of the original "wooden Virginia" however lawful under numerous property rights and laws which is divested to discuss in this writ, in addition to the asking of such would also be seen in perspective unfair of the person that did take ownership of it and would not align with the Petitioner's moral compass. Petitioner seeks that the "wooden Virginia" be replaced by the Respondent under the following conditions:

- Hand crafted by any Student current/previously enrolled at the Clifton Middle School, or Jackson River Technical School and crafted at the location of Clifton Middle School or Jackson River Technical School under the guidance and instruction of the individual who manufactured the "original"

-Wood-Dark Walnut Wood

-Dimension- 10" x 21" (at the longest points of the state)

-Varnished

-Must sit up in vertical position as the "original" on its own

-Engraved- on the (face side of the Wooden Virginia) inscribing the following:

In the Supreme Court of the United States

Honoring

Donnie T.A.M. Kern, School Board Member

Clifton Forge West District

*For Unwavering, Unabridged, & Unfettered Public Service to Children
Of The Alleghany County Public School Division*

July 1 2018 to June 30 2022

GRANTED & ORDERED

This (date of order) day of (month) 2022 by

The Honorable Chief Justice of the United States Supreme Court

John G. Roberts Jr.,

Crafted by: (Student's Name)

*Witnessed & Presented on this (day of presentation) day of (month) 2022 by
Judge Ed Stein, Steve Bennett, Patrick Jensen, Jim Guynn, Kim Halterman,
and (Student's Name) on behalf of all the children residing in the Alleghany
Highlands.*

(II)- Replacement Press Release and Photo Caption-“Wooden Virginia”

The Wooden Virginia will be Presented to the Petitioner by the following individuals: Steven Bennett, member of the Respondent, Kim Halterman, Honorable Judge Ed Stein, Patrick Jensen, Jim Guynn, and the (Student's Name) that Crafted the Wooden Virginia. The presentation will be done during a public meeting in July hosted by the Respondent.

(a). Photo Caption/Press Release a Photo Caption will be taken of all individuals responsible for presenting “Wooden Virginia” to the Petitioner and a Press Release will drafted by the Petitioner with the assistance of Ray Allen the local news editor of the Virginian Review and the Press Release will be issued to local news outlets.

(b). Photo Caption/Press Release will be submitted for publication to the Virginian Review, Alleghany Journal, and the Roanoke Times.

(c). The Photo Caption will be advertised in addition to the press release independently as a Public Service Announcement by the **(b).** designated news/media sources during each periodical run of its regularly public issued periodical for each month for the number of months equaling the number of school board meetings the Petitioner was unable to attend (currently 12 meetings) which will be 12 months that each designated media group under **(b).**, will issue the Photo Caption; all cost paid by the Respondent, Judge Stein, Patrick Jensen, Jim Guynn, Kim Halterman or in any other order or fashion deemed appropriate by the Chief Justice.

(III)- Reimbursement of the March Annual Dinner Ticket

The respondent will reimburse the Petitioner upon presentation of an invoice, receipt, or other substantiation demonstrating that a cost was incurred by the Petitioner to attend the March Annual Dinner in 2022.

(IV)- Release from Escrow of School Board Salary

Respondent will relinquish the Petitioner's school board salary from escrow and pay in advance any outstanding salary that may accrue not yet paid out to the Petitioner within 10 days of the ORDER

(V)- Lost Earnings of Board of Supervisors Salary due to Reputational Harm during the November 2022 election.

The Petitioner a candidate for the Board of Supervisors after being encouraged to run in the election by the Respondent had lost the November 2022 election due to the Petitioner's suspension under Virginia Code §24.236. The suspension derailed the Petitioner into a litigation battle which had a detrimental effect on campaign performance. The reputational harm alone was also significant to cause any likely chance of succeeding or having a free or fair election. There is no definite that this reputational harm can ever be repaired.

The Petitioner will be forty years old in 2022. Full retirement age is 67 based on Social Security. The January 1 2022 salary for a member of the Respondent is \$500 per month.

The Respondent will be required no later than the 31 of January to make a prepayment to the Petitioner of twelve months of current salary for the calendar year of January which will not be less than \$500 for each month within the calendar until the second year after the Petitioner reaches the age of 67 or full retirement age; whichever is greater.

The Respondent will be responsible for also providing and incurring all costs of all benefits associated with membership of the Respondent to the Petitioner as if the Petitioner had been duly elected on November 2022 with a term beginning January 1 2022.

In the event of death and the Petitioner has not reached the age of 67 or full retirement age; whichever is greater, the Respondent will pay in full and in the following order to the Petitioner's spouse, children, absent spouse and children the remuneration will be .33, .33, .34 to the following organizations Alleghany Highlands YMCA and Boy Scouts of America-Virginia Headwaters Council, and the Special Olympics.

Payment Deferral. The Respondent may defer payment to the Petitioner. Deferral of payment will be prorated per month in the following circumstances:

- (a). While the Petitioner is a member of the Respondent; appointed or elected;
- (b). While the Petitioner is a member of the local school board in which the Respondent has an interest via appointment, or through financial appropriations;
- (c). While the Petitioner is a member of the Special Education Advisor Committee (state mandated committee), holding the position of Chair, or Chairman that serves a local school board in which the Respondent has an interest via appointment, or through financial appropriations.

Payment deferral may be a full or a partial deferment based on the circumstances:

- (a) provides partial deferment up to the salary paid out
- (b) provides partial deferment up to the salary paid out
- (c) provides full deferment**

At anytime the Petitioner circumstance does not allow for deferment the Respondent will commence payment as required.