

**App. No:**

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**In The Supreme Court of the United States**

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

***v.***

***COMMONWEALTH OF VIRGINIA***

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**[EMERGENCY]-APPLICATION FOR AN EXTENSION OF TIME TO  
FILE A PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF VIRGINIA**

**Case Number 230138  
Supreme Court of Virginia**

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**Donnie T.A.M. Kern, MSA, EA  
School Board Member, Clifton Forge West District  
Petitioner, Pro Se  
115 Church Street  
Clifton Forge, VA 24422  
540-958-4958  
quilltaxation@gmail.com**

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**May 16 2023**

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## TABLE OF CONTENTS

	<b>PAGE</b>
<b>TABLE OF CONTENTS.....</b>	<b>1</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>2</b>
<b>CORPORATE DISCLOSURE.....</b>	<b>3</b>
<b>PARTIES TO THE PROCEEDING.....</b>	<b>3</b>
<b>HONORABLE CHIEF JUSTICE JOHN G. ROBERTS JR.....</b>	<b>3</b>
<b>PETITION ONE.....</b>	<b>4</b>
<b>PETITION TWO.....</b>	<b>5</b>
<b>BACKGROUND.....</b>	<b>8</b>
<b>EXTROARDINARY CIRCUMSTANCES ET AL.....</b>	<b>10</b>
<b>CONCLUSION.....</b>	<b>12</b>
<b>CERTIFICATE OF COMPLIANCE/CERTIFICATE.....</b>	<b>13</b>
<b>CERTIFICATE OF SERVICE.....</b>	<b>14</b>
<b>APPENDIX</b>	

## TABLE OF AUTHORITIES

	<b>PAGE</b>
<b>U.S. Supreme Court Cases</b>	
<i>BP P.L.C. v. Mayor &amp; City Council of Baltimore</i> , 141 S.Ct. 1532, 1538 (2021).....	2,3
<i>Georgia v. Rachel</i> , 384, U.S. 780 (1966).....	2,3
<i>King v. Burwell</i> , 576 U.S. II (2015).....	5
<b>Fourth Circuit Cases</b>	
<i>Vlaming v. West Point School Board</i> , No. 20-1940 (4th Cir. 2021).....	2
<b>Federal Statutes</b>	
Civil Rights Act of 1964.....	2,5,8,11
Rehabilitation Act of 1973.....	2,5,8,11
Americans with Disabilities Act of 1990.....	2
28 U.S.C. §1443.....	2,5
28 U.S.C. §1446.....	2
28 U.S.C. §1447(c), (d).....	2
U.S. Const. Amend V.....	6
<b>Virginia Statutes/Misc.</b>	
VA Supreme Court Rule 5:17(j)(1).....	4
VA Supreme Court Rule 5:14(a).....	4

## **CORPORATE DISCLOSURE STATEMENT**

The Petitioner is not a publicly held corporation

### **PARTIES TO THE PROCEEDING**

**A.** Petitioner is Donnie T.A.M. Kern, MSA, EA via Pro Se is past, former, and the last appointed member of the Alleghany County School Board representing the Clifton Forge West District prior to the merger between Alleghany County Schools and Covington City Schools which became effective July 1 2022.

**B.** Commonwealth of Virginia, led by the Honorable Jason Miyares, Attorney General for Virginia, Patrick Jensen, Chief Deputy Commonwealth Attorney for the Honorable Mary Pettit, Commonwealth Attorney for Montgomery County, Virginia, and lastly Mr. Jim Guynn, partner of Guynn Waddell Carroll & Lockaby, P.C. appointed Special Prosecutor by the Honorable Ed Stein, Circuit Court Judge, Alleghany County, Virginia and is the appointed Counsel for the Board of Supervisors for Alleghany County, Virginia.

### **HONORABLE CHIEF JUSTICE JOHN G. ROBERTS JR.**

To the wise, benevolent 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, reverently request that the time to file a Petition for a Writ of Certiorari be extended to and including October 30 2023. The extension request an approximately ninety (extra days). The Petitioner is in the process of submitting not one (1), but two (2) Petitions for Writ of Certiorari to the

Court simultaneously which both would need to be filed within a 90 day time frame. The deadline of October 30 2023 would include the filing of both Petitions: PETITION ONE and PETITION TWO.

### **PETITION ONE**

The United States Court of Appeals for the Fourth Circuit once again, issued an ORDER on March 30 2023 erroneously dismissing the appeal based on lack of jurisdiction. The Petitioner filed a petition for Rehearing and Rehearing *En Banc* shortly after. Whereas on April 25 2023 the United States Court of Appeals for the Fourth Circuit ORDERED denial of the petition for rehearing citing “The court denies the petition for rehearing and rehearing *en banc*. No judge requested a poll...on the petition for rehearing”. On May 3 2023 the United States Court of Appeals for the Fourth Circuit issued a mandate that the March 30 2023 ORDER take effect on May 3 2023.

The Petitioner has a, more likely than not chance of prevailing on the merits if the Petition is granted by the Court, as the Fourth Circuit has violated and disregarded this Court’s precedence in *Georgia v. Rachel*, 384 U.S. 780 (1966), and *BP p.l.c. v. Mayor and City Council of Baltimore*, 593 U.S. \_\_\_ (2021).

In addition, adding insult to injury the Fourth Circuit, wrongheaded even failed to follow its own Circuit precedence in *Vlaming v. West Point School Board*, No 20-1940 (4<sup>th</sup> Cir 2021), in which the Fourth Circuit held:

**But when a defendant removes a case to federal court pursuant to the civil rights removal statute, §1447(d) permits appellate review of the district court’s remand order-without any further qualification** (emphasis added)

The Petitioner's case is one in which has been perfected in filing and was removed from state jurisdiction pursuant the civil rights statute 28 U.S.C. §1443 aka "the civil rights removal statute" *Id.*, claiming violations of the Petitioner's protections furnished by the Civil Rights Act of 1964, the Rehabilitation Act of 1973 among other things for the Petitioner's honest, and unwavering love and advocacy for children; an African American student and children with disabilities. The Fourth Circuit has taken the stance to place blinders on while fictitiously creating qualification for appeal when qualification doesn't exist baring and disregarding the Petitioner's Constitutional rights to appeal. The Fourth Circuit was demanded by this Court in 2021 to grant the Petitioner an appeal by virtue of recent precedence and the rule of law established in *Georgia v. Rachel*, 384 U.S. 780 (1966), and *BP p.l.c. v. Mayor and City Council of Baltimore*, 593 U.S. \_\_\_\_ (2021), however the derelict of jurisprudence by the Fourth Circuit has barred the Petitioner from partaking in this precious judicial proceeding.

## **PETITION TWO**

In the above named caption, and case, the Virginia Supreme Court has denied the Petitioner's appeal, App. B, *infra*. The Petitioner in a simultaneous fashion due to no fault of the Petitioner has tried to vindicate the Petitioner's constitutional right of due process without exception prior to the taking of the Petitioner's property by the Commonwealth of Virginia on July 18 2022, App. D, *infra*.

U.S. Constitution Amendment V, an unalienable constitutional right has been bestowed upon the Petitioner, yet the Commonwealth of Virginia and its affiliated state courts have egregiously ignored this unalienable constitutional right, intentionally violating federal laws (28 U.S.C. §1446), state laws, and have deployed the use of trickery in-order-to place the Petitioner at a disadvantage in-order-to take advantage of the Petitioner's learning deficits, and absence of counsel to deny the Petitioner meaningful access to the courts in-order-to receive the unalienable right of due process mandated by the United States Constitution and the Virginia General Assembly.

On May 10 2023 the Virginia Supreme Court denied the Petitioner's Petition to set aside judgement of the Petition for appeal App. A, *infra.*, as the Virginia Supreme Court denied the Petitioner's Petition for appeal on March 14 2023 citing

“finding that the appeal was not perfected in the manner provided by law because the appellant failed to file the notice of appeal in the Court of Appeals, the Court dismisses the petition for appeal filed in the above –styled case. Rule 5:14(a)”

It should be first noted that the Virginia Supreme Court violated its own rules under Rule 5:17(j)(1) in issuing the order prematurely by not allowing the Petitioner to first present an oral rebuttal regarding the Commonwealth of Virginia's filed brief in opposition. The Virginia Supreme Court in violating its own rules should not hold the Petitioner to the same degree of compliance. The Virginia Supreme Court ORDER to the Petitioner on January 12 2023 did not in any way request that the Petitioner

perfect an appeal, it only requested that a Notice of Appeal be filed, App. C, *infra*. It is an undisputed fact, that a Notice of Appeal was filed with the Court of Appeals, the question at hand was it required to be filed pursuant Virginia Supreme Court Rule 5:14(a). Petitioner evoking the *Roberts Doctrine*<sup>1</sup> the answer is no, because the Virginia Supreme Court failed to ORDER that the Notice of Appeal be perfected in such a manner in its January 12 2023 ORDER, among other things.

Regardless of the trickery used by the Commonwealth of Virginia, the United States Constitution strictly prohibits the taking of property from any American citizen without first being provided due process or just compensation. The Petitioner has received neither. The Founders of the Constitution clearly without exception did not require a perfected appeal prior to receiving this unalienable right of due process, it only requires that property is not taken without first being furnished this unalienable right of due process and just compensation. The Constitution via the supremacy clause supersedes the ill-willed desires of the Commonwealth of Virginia and its judicial accomplices, a court where rule of law and constitutional rights go to die; a macabre death.

The Petitioner will prevail if the Petition is granted due to the unalienable rights furnished by the United States Constitution and statutory laws after applying the *Robert's Doctrine*<sup>2</sup>, and voluminous U.S. Supreme Court precedence which have

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<sup>1</sup> *Roberts Doctrine*: derived from the “context” or “plain language” doctrine(s) as delivered by the Chief Justice John G Roberts Jr., in the opinion by the US Supreme Court in *King v. Burwell*, 576 U.S. II (2015) in holding: “[B]ut oftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context’” and ‘[I]f the statutory language is plain, we must enforce it according to it’s terms’

<sup>2</sup> *Supra* Footnote 1



on numerous times set aside rigid rules to protect these precious unalienable rights bestowed upon every American citizen.

## **BACKGROUND**

In brevity, the Petitioner was appointed to the Alleghany County School Board for the Alleghany County Public School division with a term beginning on July 1 2018 ending June 30 2022. The Petitioner after being informed and after witnessing discrimination against children by the school division and in support of the United States Constitution as the Oath of Office required tried to remedy the situation. The Petitioner contacted members of the school board, administrators all having ignored the grievous acts. Thus the Petitioner filed complaints with other stakeholders including but not limited to the United States Office of Civil Rights. The Petitioner's efforts to secure racial equality for children had outraged the Board of Supervisors for Alleghany County and the Commonwealth of Virginia thus vindictively retaliated against the Petitioner, a violation of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990 among numerous other federal and state laws due to the gross provocation.

The Civil Rights Act of 1964, Title II Section 203 which states:

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202,

or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

In addition, the Civil Rights Act of 1964 Title II Section 202 states:

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

The Petitioner in an attempt to secure the rights of the disabled and an African American was heinously retaliated against, intimidated, threatened, coerced, and now is being punished through the taking of the Petitioner's property and robbing the Petitioner of due process and a federal forum to bring these disastrous and inexcusable actions to a halt. These facts cannot be disputed which support the continued deprivation of justice for the Petitioner.

The Petitioner seeks the wise and benevolent Honorable Chief Justice John G. Roberts Jr., grace by granting the Petitioner the extension of time to file the Petition(s) for Writ of Certiorari no later than October 30 2023.

## **EXTRAORDINARY CIRCUMSTANCES AND REASONS FOR GRANTING AN EXTENSION OF TIME**

The extraordinary circumstances for the total of 180 days needed to submit the Petition(s): PETITION ONE and PETITION TWO for Writ of Certiorari to this Court in both cases are as follows but not limited to:

- I. The Petitioner skills and expertise is in comprehension and constructing arguments regarding the law. The Petitioner is not a member of the Bar nor does the Petitioner have equivocal experience in drafting legal briefs effectively and efficiently and should not be expected to have the equal wherewithal to comply with the filing deadline.
- II. The Petitioner is an accountant for a Fortune 500 healthcare company, and a business owner of an accounting and tax business thus requires additional time to draft and file not one, but two Petitions.
- III. The Petitioner is a devoted husband to a beautiful wife and father of two very special children who demand their father's presence in their lives. Drafting the Petitions will require the dedication of time that is late in the evening, the extra time will help alleviate the burden of sleep deprivation.
- IV. It would be in the best interest of justice. If the Writ of Certiorari is filed sooner than requested it will be subject to rejection by the Clerk of Court which would then provide an extra sixty days for the Petitioner to correct and re-submit *see* Sup. Ct. R. 14.5. In totality the Petitioner seeks only an extra 30 days from what is legally allowed by statute.

- V. The multiple Petitions having needed to be filed is an extraordinary feat on its own by a lay person thus demonstrates the need for more time. The Petitions had they not been needed to be filed simultaneously it would have naturally given the Petitioner approximately 180 days to file each Petition, however this is not the case which exemplifies the necessity to allow the Petitioner more time.
- VI. The Petitioner needs extra time to secure financial resources to pay for the filing fees, as well as sort out the most cost effective way to print the Petitions for filing. The Petitioner is still paying on debt incurred for the filing of the previous petition(s).
- VII. The Petitioner would like to seek out assistance to help submit the Petition(s). Apparently due to no fault of the Petitioner, the last effort failed, and the Petitioner does not want to fail again. Any advice by the Chief Justice would be greatly appreciated at this time.
- VIII. The Petitioner is being treated for Attention Deficit Disorder (ADD) and request accommodations under Section 504 of the Rehabilitation Act of 1973, under the Other Health Impairment classification to gain access to the federal judicial system and the additional time as the Petitioner's ADD creates challenges in task completion, and delayed reading and writing comprehension.

- IX. It would ensure more effective filing of the Petition without the potential of rejection by the Clerk of Court therefore it would be in the best interest of justice.
- X. The Chief Justice's grace would serve as a reduction of the prejudice that has already been applied towards the Petitioner in this matter.

### CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended to and including for this above named captioned case to October 30 2023.

Respectfully submitted this 16 day of May 2023 via USPS



Donnie T.A.M. Kern, MSA, EA  
School Board Member, Clifton Forge West District  
Petitioner, Pro Se  
115 Church Street  
Clifton Forge, VA 24422  
540-958-4958  
quiltaxation@gmail.com