ORIGINAL

No. 23-0355

In the Supreme Court of the United States

DONNIE T.A.M. KERN, PETITIONER,

v.

BOARD OF SUPERVISORS, ALLEGHANY COUNTY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DONNIE T.A.M. KERN, MSA, EA
Petitioner, Pro Se
A PARENT &
ALLEGHANY COUNTY PUBLIC SCHOOLS
SCHOOL BOARD MEMBER
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QUESTION PRESENTED

Section 1447(d) of Title 28 of the United States Code expressly provides that an order remanding a case that was removed pursuant to 28 U.S.C. §1442 or 28 U.S.C. §1443 is reviewable by appeal or otherwise. This wise Court in *BP PLLC v. Mayor and City Council of Baltimore* a case involving removal under 28 U.S.C. §1442, affirmed: "The Fourth Circuit erred in holding that it was powerless to consider all of the defendants' grounds for removal under §1447(d)." (141 S. Ct. 1532, 1538 (2021).

The Fourth Circuit, shortly after having been corrected by the Court: subsequently in *Vlaming v. West Point School Board*, No 20-1940 (4th Cir 2021) 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The Fourth Circuit in the opinion below, has denied jurisdiction, in an unpublished opinion, citing the lack of jurisdiction, establishing jurisdictional qualification when further qualification is not required. Unfortunately, the Fourth Circuit after being corrected, and having previously demonstrated obedience to this Court's precedence; departed with its applied jurisprudence now beckoning further and continued realignment.

Whether the Fourth Circuit has appellate jurisdiction when a District Court remands a case

that was removed pursuant 28 U.S.C. §1443, whereas the Petitioner's grounds for removal was mass systemic violations of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 due to malicious and false prosecution for aiding and abetting an African American student, disabled students, and the Petitioner's own child in securing their civil rights in terms of racial equality as provided by the United States Congress and the American People.

PARTIES TO THE PROCEEDING

Petitioner is Donnie T.A.M. Kern, MSA, EA via *pro se* a parent and is the former, and the last appointed member of the Alleghany County School Board representing the Clifton Forge West District.

Respondent is the Board of Supervisors for Alleghany County, Virginia.

CORPORATE DISCLOSURE STATEMENT

The Petitioner is not a publicly held corporation nor is the Petitioner owned by a publicly held corporation. The Petitioner is a parent and a U.S. Citizen.

RELATED PROCEEDINGS

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) (order on

motion to suspend)

Commonwealth of Virginia v. Donnie T.A.M. Kern, CL20-827 (July 18 2022) (order on motion to nonsuit, Petitioner's property seized)

Virginia Court of Appeals

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (October 31 2022) (notice of appeal filed)

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (November 18 2022) (order dismissing, late notice of appeal)

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (December 21 2022) (order dismissing rehearing petition)

Virginia Supreme Court

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (January 12 2023) (order, granting extension, notice of appeal, petition of appeal)

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (March 14 2023) (order dismissing, not perfecting the petition for appeal)

Donnie T.A.M. Kern v. Commonwealth of Virginia, 1671-22-3 (May 10 2023) (order dismissing, petition to set aside judgement March 14 2023 order)

United States District Court (D. VA):

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

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, 7:21-cv-00471-TTC (September 10 2021) (order on notice of removal, remand)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, 7:22-cv-00424-JPJ-PMS (July 26 2022) (notice of removal filed)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, 7:22-cv-00424-JPJ-PMS (July 26 2022) (notice of constitutionality et al)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, 7:22-cv-00424-JPJ-PMS (October 25 2022) (order on notice of removal, remand)

United States Court of Appeals (4th Cir.):

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 21-2046 (September 22 2021)

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

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 21-2046 (January 24 2022) (order on notice of constitutionality and appeal)

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

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 21-2046 (February 7 2022) (ordered temporary stay pending rehearing)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 21-2046 (May 31 2022) (order granting voluntary dismissal of petition for rehearing and rehearing *en banc* in-order-to file application for writ of injunction with Chief Justice and Justice for Fourth Circuit)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (November 28 2022)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (March 30 2023) (order, dismissing lack of jurisdiction)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (April 3 2023) (rehearing, rehearing *en banc*)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (April 7 2023) (ordered, mandated stay)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (April 25 2023) (order, dismissing, no vote by Circuit Court)

Board of Supervisors of Alleghany County v. Donnie T.A.M. Kern, No. 22-2225 (May 03 2023) (order, mandated stay over, March 30 2023 order effective May 03 2023)

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

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, App. No. 21A634 to Chief Justice and Justice for the Fourth Circuit John G. Roberts Jr., (April 21 2022) (granted application

extension for time to petitioner for writ of certiorari)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, App. No. 21A840 to Chief Justice and Justice for the Fourth Circuit John G. Roberts Jr., (June 21 2022) (denied application for stay)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, App. No. 22A1007 to Chief Justice and Justice for the Fourth Circuit John G. Roberts Jr., (May 22 2023) (granted application extension for time to petitioner for writ of certiorari to September 22 2023)

Donnie T.A.M. Kern v. Virginia, App. No. 22A1008 to Chief Justice and Justice for the Fourth Circuit John G. Roberts Jr., (May 22 2023) (granted application extension for time to petitioner for writ of certiorari to October 7 2023)

United States Supreme Court:

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 petition for writ of certiorari to the United States Supreme Court (June 8, 2022) (filed)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 respondent's waiver (Rule 15) in opposition of the petition for writ of certiorari to the United States Supreme Court (June 20, 2022)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 petition for writ of certiorari to the United States Supreme Court

(June 8, 2022) (denied)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 petition for rehearing to the United States Supreme Court (October 26, 2022) (filed)

Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 petition for rehearing to the United States Supreme Court (November 21, 2022) (denied)

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

amicably petition for a writ of certiorari in seeking equal justice under the law as opined: "Every life is to be given the same degree of respect by the law...I am afraid in the era in which we live with the way things are being handled in the criminal courts we are going to see more and more incidents branded as vigilantism which are merely reflective of what people will turn to when they don't feel justice is done through the courts" Honorable Judge Bruce E. Schroeder, *Wisconsin v. Zachariah Anderson*, 2023[1]

1 Court TV, Zachariah Anderson Sentenced to Life in Prison for Murder, May 16 2023, https://www.youtube.com/watch?v=_wIk8VqPFjg

OPINION[S] BELOW

The Fourth Circuit entered an unpublished opinion on March 20 2023 citing:

> The district court remanded the case to state court after determining that it lacked subject matter jurisdiction. We therefore are without jurisdiction to review the remand order. See 28 U.S.C. §1447(c),(d). App. A *infra.*, at Pet. App. 1

JURISDICTION

The Fourth Circuit entered an unpublished opinion on March 20 2023. On May 22 2023 the wise and merciful Chief Justice and Justice for the Fourth Circuit John G. Roberts, Jr., granted an extension of time to file including and no later than September 22 2023. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1)

STATUTORY PROVISION[S] INVOLVED

28 U.S.C. Section 1443

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1)Against any person who is denied or

> cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> (2)For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

28 U.S.C. 1447(d)

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

STATEMENT

The case before you seeks judicial review and uncompromising justice. The Petitioner invoking protections under federal law and with specificity the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The Petitioner a victim of repugnant retaliatory attacks and unwarranted punishment by the Respondent in response to the Petitioners pure love and advocacy in exercising U.S. Constitution Amendment I to aid and abet the securing of civil rights and equal protections afforded to the disabled,

disabled students, an African American student, and the Petitioner's own child having been subjected to outlandish disparate treatment.

This case presents the Fourth Circuit's diabolical subversion to the U.S. Constitution and derelict of duty to the precedence of this Court and the will of the American people.

I. Facts

The Petitioner sought appointment to the Alleghany County School Board, the Petitioner's alma mater. The Petitioner was on a mission to bolster the educational obtainment for students and to establish a joint consolidated school system by and between the City of Covington and Alleghany County. During the appointment process, Richard Shull, a member of the Board of Supervisors for Alleghany County (the Respondent) communicated with the Petitioner; disclosing that the Petitioner was going to be appointed because of his financial expertise, and community involvement. Richard Shull on behalf of the Board of Supervisors requested that the Petitioner not push joint consolidation between the schools, and to "watch the money". The Petitioner was appointed to the Alleghany County School Board having sworn the Oath of Office and began his term on July 1 2018 and to end on June 30 2022.

The Petitioner in July 2018 and during the Petitioner's first board meeting discovered that the Alleghany County School Board was "cooking the

books" and misappropriating millions in educational funds to non-educational resources. The Petitioner questioned why approximately $400,000 in salaries were not spent, the Petitioner faced terse scrutiny by the Chairman. It was later revealed that the salaries were specific to providing Speech Language services to children who needed speech modality but were not being provided. In August of 2018 a school administrator confided candidly in the Petitioner disclosing that the school system did not have funds to carry out student accommodations under the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act of 1990. On August 20 2018 the Petitioner facing a predicament, decided it would be the best interest of his constituents to disclose the revelation and retract his approval of the 2018 year-end financials.

After the quandary in which the Petitioner publicly retracted his approval of the school board's financials, the school board retaliated against the Petitioner's child. The Petitioner's own child was enrolled in the school system having approximately fourteen (14) accommodations under the Section 504 of the Rehabilitation Act of 1973. The school board refused to provide the child an Individual Educational Plan under the Individuals with Disabilities Education Act of 1990. On August 30 2018 the Petitioner was informed **all but three** of the Section 504 accommodations under the Rehabilitation Act of 1973 were removed (emphasis added). The Petitioner's child was only able to use the fourteen (14) newly awarded Section 504 accommodations for approximately **four school**

days due to chronic illness (emphasis added). This situation was well documented in the Petition for Rehearing which was submitted to this Court at or around October 26 2022[2]. School Board administration also opined candidly to the Petitioner the following:

> "The school district does get more money for special education but I assure you the special education department doesn't see it and it sure as heck wouldn't trickle down to help [Name of Petitioner's Child]".

The school board's abusive intentional discrimination towards children garnished the attention of a famed child advocate named Amy Trail. Amy Trail was eager to aid the Alleghany Highlands with the assistance of other professionals including the Petitioner. Amy Trail decided to host an IEP and Section 504 review on November 17 2018 with local families' in-order to collect evidence to file a systemic complaint with the Virginia Department of Education with the goal to bring the heinous discrimination by the school board against the community's most vulnerable children to an end.

Amy Trail informed the Petitioner of the following regarding the discriminatory issues of the school board:

> "All of the above are your districts exact systemic issues and then some: positive

[2] Donnie T.A.M. Kern v. Board of Supervisors of Alleghany County, 21-1537 (October 26 2022).

behavioral supports and interventions not in place, no Functional Behavioral Assessment [sic] and Behavior Intervention Plans [sic], Response to Intervention [sic] delaying child find, systemic lack of child find, goals are not measurable, Prior Written Notice [sic] are not providing the information required, suspensions and picking up for behavior a huge issue, speech services appear to be delivered by teachers and not Speech Language Pathologist [sic]";

"Not one Individual Education Plan [sic] I reviewed had received comprehensive evaluations-zero...only one Individual Education Plan had Occupational Therapy [sic] when thirteen [sic] required it";

"There were things we uncovered which were horribly wrong";

"There is so much wrong here...I know why [sic] the little ones [sic] in [sic] your district are not receiving a [sic] Free and Appropriate Education [sic] and why their numbers are dirt low on as they are not doing comprehensive evaluations and they are leaving off social, emotional, and behavioral in these evaluations which is where many of the children's deficits are";

"[E]very Prior Written Notice I looked at over the last week from your area did not contain all the information that is required";

"I found out that a few of the parents cannot [sic] read and one even stated that they read on about a second-grade level. So, I am hugely concerned that these people have been so taken advantage of because of their disabilities which makes me sick!";

"I am considering a letter to the school board on this one asking one of them to read everything to these parents!";

"I know Dr. Heath herself had a meeting with the Superintendent on Tuesday morning and another one this morning before she talked to me...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/she[sic] is still in a closet somewhere. And I said it just like that";

"You can't stay uneducated or you will remain poor and they will take advantage of it and I think that Principle there might be doing an extra big job of taking advantage of people with disabilities";

"I really think they are going to need some more training. As crazy as that sounds";

"Listen, that is what I am going to do my friend. It took me a while to figure it out. But

> collaboratively the three of us are going to get this done. I will be rallying some of the parents to come as I come into town. And, yes she wants to work collaboratively. She said 'give me a couple things we can do'. Ok, I am going to give it to her. I've given her a chance to fix one situation specifically. I didn't give her everything. **She knows I still have enough evidence to file a systemic complaint if I need too** (emphasis added)";
>
> "Hey, I can file these systemics or you can write policy so it doesn't happen again, which one is easier";

It would be later revealed that Amy Trail's good intentions were just that. Amy Trail in her own admission obtained cataclysmic evidence of discrimination against the communities most vulnerable children with special needs and decided to abandon the filing of the systemic complaint with the Virginia Department of Education. Amy Trail was of the opinion that it would be in the best interest of the children and the families of the Alleghany Highlands to provide anti-discrimination training to the staff of the school board[3].

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[3] Note: As a side note Amy Trail was characterized as "trashy", "un-professional", along with having character deemed to be untrustworthy and of poor judgement" by Jacob Wright Chairman of the School Board in 2020. Jacob Wright yet concurred with the school boards desperate need for this anti-discrimination training by Amy Trail and hired her to perform training. The staff anti-discrimination trainings took place on January 23 2019 and most recently on August 16 2022

In November of 2018 the Petitioner received an email from another administrator requesting the Petitioner's aid to assist the end of discrimination against an African American student. The Administrator stated:

> "[T]he student is out of the classroom and not receiving instruction, placing the student further and further behind...I hope something can be done I am of the belief that none of this would be happening were the [sic] student [sic] not African American, someone needs to advocate for the student"

It was revealed that the student would be subjected to these conditions for approximately four months. The Petitioner now being placed in another dastardly plight, requested assistance from his colleagues on the school board to investigate the discriminatory actions against the African American student. The Petitioner received correspondence in return that no investigation would be conducted until the identification of person who notified the Petitioner was provided. The Petitioner refused to subject another person to retaliation and decided to reach out to Child Protective Services (CPS) for the Department of Social Services. During closed session of the school board meeting on November 19 2018 it was discussed that an investigation by CPS was being conducted. The school board never received a final report involving the investigation as required

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alongside the newly appointed Director of Special Education Jason Conway, PhD.

by Virginia law, but through relentless inquiry by the Petitioner, the Petitioner found out that the African American student's situation significantly improved due to the Petitioner report to CPS. The Petitioner after discovering systemic discrimination among other things against the disabled and an African American student by the Alleghany County School Board sought external assistance and would eventually file reports/complaints with external stakeholders.

On January 8 2019, during a public meeting, which had zero attendance by public citizens and decided to discuss the fiscal 2019-2020 budget. During this meeting the Petitioner realized the Virginia Department of Education had tipped off the school board and instructed it to end its current capital funding scheme, this was reflected as a change during the 2019-2020 budget. The discussion took a sideways turn, whereas members of the school board began to discuss eliminating the Nursing Coordinator due to the person's disability and being, as Superintendent Eugene Kotulka described, "[A]n ADA compliance issue here... a major one, major, major one". This infuriated the Petitioner, so the Petitioner sought legal advice from counsel during the meeting, Reed Smith LLP, who attended the meeting. The Petitioner posed a question regarding accommodating students, when a student needs the accommodations. The lawyer concurred the school board was obligated to provide. Randy Tucker, Chairman (at the time) had previously posited, on behalf of the school board:

"[O]ur school division under Special

> Education[sic] was doing a lot of things we should have never got into...we don't care if a kid needs a dog, we're not supplying the dog".

The Petitioner was perplexed by the rabid dialogue that took place. The Petitioner in a last ditch effort requested that the school board format its fiscal budget which is publicly distributed to meet requirements under Virginia Code §22.1-92 and to include prior year budgeted amounts. The simple but revealing request was denied and the current format of just providing changes to expenses; was what the school board wanted.

Later that evening the Petitioner called Richard Shull, member of the Respondent who had requested that the Petitioner "watch the money". The Petitioner wanted to discuss his findings along with the disparate treatment towards children with disabilities. The discussion also prompted the Petitioner to disclose the filing of a report to external stakeholders. The Petitioner was naïve and mistakenly sent a redacted version of the report to Richard Shull in order to gain an audience with the Respondent. Richard Shull stated that he had only shared it with Jon Lanford, County Administrator for the Respondent. At this point, it is believed that a few members of the Respondent were unaware of the backdoor dealings of other members and the non-public deal arrangements made by and between the Respondent and the school board. In addition, due to the climate of opposition for a joint school system, the Petitioner's report mysteriously went

public, appearing as an attempt to dissolve any chance of success with the joint school consolidation.

There are some things that can become invisible to the naked eye; money however is not one of them: you just have to follow the trail. The Petitioners reporting when known by the Respondent, infuriated the Respondent as well as the school board. Its difficult to hide $500,000 being transferred year after year to the board of supervisors from the school board which is clearly presented on vendor payment reports.

The Respondent and the school board's first attempt to remove the Petitioner and enact vengeance was on February 28 2019. It was decided it would hold a public bedlam, to intimidate, humiliate, and cause public opprobrium towards the Petitioner through gas lighting techniques which included a falsified letter drafted by the Petitioner's good friend and advocate-partner Amy Trail that was read aloud like a children's story book and the causation for the Respondent to issue its first request for the Petitioner to resign from his position on the school board. The school board had not published the circus infused masquerade in its agenda packet provided to the public, nor was anyone aware that News Channel 10 would also be invited to witness the ratings generator snafu. However, News Channel 10 WSLS and Lindsey Ward, an anchor having an intimate relationship with a school board employee promoted the public sequestered gangbang of the Petitioner's civil rights and constitutional freedoms. News Channel 7 WDBJ did not partake in the seditious festivities.

The only substantial missing pieces to successfully conclude the assimilated boondoggle were two school board members Daniele Morgan and Jacob Wright who were absent in-order-to personify a false trusting, friendship with the Petitioner. Lastly the star, the Petitioner himself, was absent as the Petitioner was medically ill and receiving treatment from a clinic during the unwrapping of the scholastic furor. This absence of the Petitioner was more likely than not, a saving grace for the school board because unbeknown to them the Petitioner had recorded many conversation, that the school board didn't want anyone to know about. One was the forty minute Amy Trail conversation unveiling the discriminatory actions of the school board, example the incident in which the African American had been placed in a "closet". Out of all the scholastic clowns involved in the February 28 bedlam the real winner was News Channel 10 anchor Lindsey Ward's husband who received a promotion shortly after by the school board, while the Petitioner was conveniently away on a leave of absence to secure legal representation. A week prior to the Petitioner return an emergency meeting was called to provide the promotion to Lindsey Ward's husband.

The February 28 2019 bedlam was an epic fail on the Respondent and school board's part in removing the Petitioner. The school board and the Respondent next plot was to create a fictitious complaint via the Finance Director and Special Education Director who both appeared publicly on May 7 2019, a

meeting of the Respondent to promote the reappointment of Craig Lane to the school board. The Finance Director and Special Education director groveled before the Respondent for stability due to the "unknown" referencing the Petitioner, the causation of "hot water" that the two were obviously drowning in as indicated during the meeting. Shortly after the two employees filed complaints alleging the Petitioner was creating a hostile work environment due to the Petitioner having advocated for the Petitioner's child, the disabled and an African American all the while questioning why millions of dollars were being misappropriated[4].

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[4] Note: as a side note, a simplistic review of financial documents including a capital plan which required approximately $10 million to invest in capital renovations. The money used to fund these investments were from operations. In order for a the school board to fund such massive expansion in capital it would have to use operating funds because the Respondent was broke and was already having to take approximately $500,000 to $1,000,000 each year from the school board to pay for its own expenses. On September 27 2021, during a dinner meeting, the last dinner before the Petitioner would be heinously suspended, Jacob Wright, Chairman, indicated to the school board it was and had a history of altering the operating budget to provide monetary benefits to the Respondent. These funds include a mix of state, federal, and local funding appropriated to provide for the operations of the school board's operating year and not to be used for capital investment. Included in this money that is appropriated are funds used to provide companion dogs for blind students so that blind students like non-blind students can have meaningful access to education programs in their local community. As you have already been told the school board's stance on providing a "dog" was that blind students would not receive a "dog" even if they needed it.

The Petitioner recruited the aid of the Honorable John P. Fishwick, former US Attorney for the Western District of Virginia to deal with the lopsided shenanigans of the school board and the Respondent. Soon after, the complaint filed in retaliatory hate due to the Petitioner's pure love and advocacy for disabled students and an African American by the Directors of Finance and Special Education against the Petitioner was destroyed. The Petitioner having had to deal with the complaint came with a financial cost the Petitioner the Petitioner should had never had to pay. The Superintendent Eugene Kotulka in his own admission, admitted that the complaint was filed against the Petitioner was indeed retaliatory due to the Petitioner discovering systemic discrimination among other things against the disabled and an African American student by the Alleghany County School Board having sought external assistance and filed reports/complaints.

Moving forward, the Petitioner in an effort to protect children was compelled to issue a public service announcement on September 5 2020 due to an upcoming vote on the school consolidation the Petitioner had to partake in. The public service announcement was for the public to understand the Petitioner's position on the vote. The Petitioner would have not had the available time or resources to provide this explanation during the meeting and opted to provide it via a locally distributed newspaper. The Respondent in retaliation responded with a public Memorandum of Understanding on September 9 2020 that it would

conduct an investigation.

October 27 2020 the Respondent held an "interrogation" as described by former United States District Attorney John Fishwick, the Petitioner's former counsel from August 2019 to August 2021 (approximate). Shortly after, and on November 24 2020 the Petitioner is contacted by counsel. The Petitioner is told that the Respondent threatened to file a petition to remove the Petitioner, if the Petitioner did not resign. December 2 2020 the Respondent files a petition under Virginia Code §24.2-234 in the Alleghany County Circuit Court alleging the Petitioner violated Virginia Code §24.2-233(1).

The Petitioner was shocked. The petition was completely false and fabricated. It contained numerous perjured statements. The most hurtful part was on October 27 2020 the Respondent had encouraged the Petitioner to run for the Board of Supervisors in the 2021 general election. The Petitioner agreed to do so. In an effort to appease the Respondent, the Petitioner did just that; to no satisfaction the Respondent continued the false prosecution.

Weeks prior to the scheduled quasi-criminal[5] trial on August 25 2021 the Petitioner was told a key witnesses skipped out on a deposition, and

[5] *Huffman v. Pursue, ltd.*, 420 U.S. 592 (1975)- "[c]ivil proceeding ...which is more akin to a criminal prosecution than are most civil cases"

catastrophic evidence proving the Petitioner's innocence would not be submitted into evidence during the trial. The Petitioner was instructed by counsel, John P. Fishwick to file a motion to continue, so on August 10 2021 the Petitioner filed an approximate fifty-page motion to continue in the Alleghany County Circuit Court. The motion to continue contained factual evidence of innocence and perjured statements by the Respondent. Petitioner in filing the fifty-page motion equipped the Commonwealth Attorney and Judge Ed Stein presiding judge of the Alleghany County Circuit Court (herein after Judge Stein) with enough evidence to drop the petition.

On August 24 2020 Petitioner timely filed with the district court an approx. 125-page Notice of Removal (7:21-cv-00448-TTC) effecting removal on August 25 8:30AM. September 10 2021 Petitioner timely filed approx. 145-page Notice of Removal (7:21-cv-00471-TTC) effected removal September 10 4:30PM. The Notice of Removal(s) filed by the Petitioner were filed pursuant 28 U.S.C. §1443 and subsequently was "erroneously" remanded by the district court due to lack of federal subject matter jurisdiction. No evidence or fact-finding hearing was conducted by the district court; this is a clear abuse of discretion and violation of this Court's precedence in *Georgia v. Rachel*, 384 U.S. 780 (1966) whereas this Court held that a defendant should be allowed the opportunity to present evidence[6] . September 22

[6] "[S]ince the federal district court remanded the present case without a hearing, the defendants as yet have had no opportunity to establish...if the federal district court finds that

2021 the Petitioner filed a notice of appeal and was docketed on September 24 2021 with the Fourth Circuit. On December 26 2021 the Petitioner filed a motion to expedite and question of constitutionality.

On January 24 2022 with the Fourth Circuit appellate court ordered dismissal based on lack of jurisdiction. The Petitioner petitioned this Court on June 8 2022 after having waited for the Fourth Circuit to deliberate on a petition for *en banc* hearing filed by the Petitioner on February 7 2022. Petitioner having waited approximately 180 days without a response from the Fourth Circuit sought to dismiss the *en banc* petition on May 31 2022 to petition this noble Court on June 8 2022. On July 1 2022 the Commonwealth of Virginia filed a motion to nonsuit the proceedings so that the Commonwealth of Virginia and the Respondent would not be liable for its false prosecution committed in perjury against the Petitioner.

II. Current Procedural History

The Commonwealth of Virginia on July 1 2022 among other things in its filing a nonsuit to the proceedings was **continued punishment** against the Petitioner for the Petitioners pure love and advocacy for the disabled and an African American student and his own child. The Commonwealth of Virginia argues that the nonsuit is not a favorable outcome for the Petitioner thus the nonsuit precludes the Petitioner from receiving the

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allegation true, the defendants' right to removal under § 1443(1) will be clear...". Id. at 781

Petitioner's personal, tangible property consisting of approximately $2,000, a block of wood, a dinner ticket, and the intangible right of repayment of legal expenses in dealing with the ordeal under Virginia Code §24.2-238. The fallacy in the Commonwealth of Virginia's nonsuit argument is that it sought to end the false prosecution with the pure aim to escape liability for the false prosecution.

Regardless, the Commonwealth of Virginia having been granted a nonsuit, *Roberts Doctrine*[7] must prevail. Therefore had the nonsuit been granted on June 30 2022 versus July 1 2022 the Petitioner would have been allowed to return to the Petitioner's duties as a school board member. Whether or not the nonsuit was granted on June 30 2022 or July 18 2022 does not change the favorable posture for the Petitioner. Honorable Judge Ed Stein, presiding over the state prosecution, a novice jurist cared no less to apply illogical reasoning to the Commonwealth of Virginia's proposition causing a grievous error thus violating the Petitioners constitutional rights under the U.S. Amend XIV[8]

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[7] *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'

[8] U.S. Constitution-Amendment XIV: 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

deeming the nonsuit by the Commonwealth of Virginia as a non favorable outcome to the Petitioner. Virginia Code §24.2-236, states: "[C]ompensation shall be withheld and kept in a separate account and paid to him if and when the judicial proceedings result in his favor...". In a typical sense a favorable outcome for the Petitioner would be "not guilty, and a dismissal", the nonsuit is a dismissal with a caveat to release the Respondent from liability for bringing the false prosecution. The Virginia Code does not require favor for the Respondent to be demonstrated, only favor for the Petitioner to have been determined; which in this case the nonsuit does provide a favorable outcome for the Petitioner, clearly the Petitioner would had been released to return to his duties as a School Board member had the Commonwealth of Virginia decided not to run the clock.

Due to the protections furnished by the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 the Petitioner was protected from having his U.S. Amend XIV rights violated as the Petitioner was being falsely prosecuted due to the Petitioner exercising U.S. Const. Amend I out of pure love and advocacy for the disabled and an African American and his own child. Due to the legal proceeding now encroaching upon federal law, the Petitioner sought once more to remove the case from state court to

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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.

federal court. On July 26 2022 the Petitioner removed the case into federal jurisdiction pursuant 28 U.S.C. §1443. On October 25 2022 the Honorable James P Jones remanded the case based on lack federal subject matter jurisdiction without first allowing the Petitioner an opportunity to present evidence. The order was the third time the Petitioner was denied this precious opportunity[9] of due process as this Court has held was required to be provided to the Petitioner when a case is removed pursuant 28 U.S.C. §1443[10]. The case was appealed once again to the Fourth Circuit on November 28 2022. On March 30 2023 to no avail or surprise the Fourth Circuit had established new qualifications outside of the Fourth Circuit's precedence and this Court's own precedence for an appeal under 28 U.S.C. §1443. The Fourth Circuit issued an unpublished opinion, the opinion below whereas an unpublished opinion protects the precedence of the Fourth Circuit and future litigation. The unpublished opinion by the Fourth Circuit was thus discriminatory and specific to the Petitioner's case. The Fourth Circuit held in this case and in summary that when a case is removed pursuant 28 U.S.C. §1443 it may only grant appeal jurisdiction if the district court did not remand based on lack of federal jurisdiction. The Fourth Circuit thus refused to take up jurisdiction denying the Petitioner's appeal.

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[9] *Georgia v. Rachel*, 384 U.S. 780 (1966) "[S]ince the federal district court remanded the present case without a hearing, the defendants as yet have had no opportunity to establish...if the federal district court finds that allegation true, the defendants' right to removal under § 1443(1) will be clear...". at 781

[10] *Id.*

Curiosity and persistence caused the Petitioner to file once again another petition for an *en banc* hearing. Previously the prior *en banc* hearing failed to deliberate after waiting approximately 180 days before the Petitioner dismissed the petition as to Petition this Court. On April 25 2023 the Fourth Circuit decided in a mater of approximately 21 days to not take a vote on the *en banc* hearing petition. It is opined that the Fourth Circuit in 2022 through collusion worked with the Respondent in running out the clock so that the Petitioner would not have time to resolve the case in state court as a last alternative. This is supported by the 180 delay in the 2022 appeal whereas the Fourth Circuit used only 21 days in the 2023 appeal involving the *en banc* Petition(s). The Petitioner now seeks once again this Court's precious time and mercy to resolve this litigation nightmare.

III. 28 U.S.C Section 1443 & 1447(d)

The Civil Rights Act of 1866 provided a means of vindication for races to "enjoy" rights and privileges by allowing a race to remove litigation into federal jurisdiction in-order-to restore those rights. *Id.* The removal provision provided by the Civil Rights Act of 1866 was subsequently revised in 1875 and is now codified at 28 U.S.C. §1443.[11] The quiescent removal provision embodied in 28 U.S.C. §1443 was rarely used for approximately six decades until an appellate review in 1966 during the landmark case

[11] *Georgia v. Rachel*, 384 U.S. 780 (1966)-"[T]he Court interpreted §641 of the Revised Statutes of 1874. That statute has come down to us, in modified form, as §1443"

Georgia v. Rachel, 384 U.S. 780 (1966) and the passage of the Civil Rights Act of 1964. The Civil Rights Act of 1964 led to the appealability of remand orders pursuant to 28 U.S.C. §1443 as codified in 28 U.S.C. §1447(d). *Id.* at 786. These two historic events provoked an appeal to the appellate court under 28 U.S.C. §1447(d) seeking a due process evidence hearing the causation leading to a writ of certiorari being granted by this Court. The Court in *Georgia v. Rachel* affirmed:

> "[S]ince the federal district court remanded the present case without a hearing, the defendants as yet have had no opportunity to establish...if the federal district court finds that allegation true, the defendants' right to removal under § 1443(1) will be clear...". *Id.* at 781

In *Georgia v. Rachel* the Court affirmed that if the statement of the facts, once fairly read provides sufficient allegations the defendant's rights under the Civil Rights Act of 1964 may be invoked. *Id.* The Court held:

> §1443 applies only to rights that are granted in terms of equality, and not to the whole gamut of constitutional rights...When the removal statute speaks of 'any law providing for equal rights,' it refers to those laws that are couched in terms of equality, such as the historic and the recent equal rights statutes, as distinguished from laws, of which the due process clause and 42 U.S.C. §1983 are

> sufficient examples, that confer equal rights in the sense, vital to our way of life, of bestowing them upon all...The Civil Rights Act of 1964...made clear, protects those who refuse to obey such an order not only from conviction in state courts, but from prosecution in those courts...§203(c) that prohibit any "attempt to punish" persons for exercising rights of equality conferred upon them by the Act...the burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964 (internal quotations omitted). *Id.* at 792.

In 2021, a landmark case *BP, P.L.C., et al., v. Mayor and City Council of Baltimore* this Court established settled law regarding 28 U.S.C. §1447(d) [12] and the appeal posture of cases after decades of squabbling between the court of appeals regarding cases removed pursuant U.S.C. 28 §1443. This court held the "[F]ourth Circuit erred in holding that it was powerless to consider all of the defendants' grounds for removal under §1447(d)"[13]. The Court expressly opined, held, and framed that §1447(d) would provide that:

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[12] *BP, P.L.C., et al., v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021)-"[A] court of appeals may review the merits of all theories for removal that a district court has rejected. Because the courts of appeals disagree over the scope of their appellate authority under §1447(d), we agreed to take this case to resolve the question"

[13] *Id.*

> ...when a district court's removal order rejects all of the defendants' grounds for removal, §1447(d) authorizes a court of appeals to review each and every one of them. After all, the statute allows courts of appeals to examine the whole of a district court's 'order,' not just some of its parts or pieces (*BP, P.L.C., et al., v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1538, A (2021)).

The Fourth Circuit's obedience would soon be tested in *Vlaming v. West Point School Board*, No 20-1940 (4th Cir 2021). To the world's surprise, the Fourth Circuit in a published opinion astonishingly concedes to this Court's dominance and holds:

> 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)

In summary the Fourth Circuit held that any appeal pursuant 28 U.S.C. §1443 would receive an appeal. However, in the unpublished opinion below the Fourth Circuit decided to stray away from it's own precedent and this Court's precedence and inflicted unwarranted punishment upon the Petitioner by refusing to grant the Petitioner an appeal, the same appeal that was provided to BP, and the West Point School Board.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit and the district court failed to provide the Petitioner due process, an unalienable right. The Fourth Circuit in its unpublished opinion amplifies the punishment already administered towards the Petitioner for his unwavering love and advocacy for the disabled and an African American and his own child. The decision below is a misapplication of federal law and a systemic operator error placing equal protections at risk of becoming extinct causing unfettered calamity, clearly demonstrating the unsettling interpretation of §1447(d) showcasing the Fourth Circuit's inability to review remand orders appropriately.

The Petitioner has been unconstitutionally prejudiced and is absent a federal forum having been equipped by the American people with equal protections. Whereas, the political weaponization of Virginia Code §24.2-233(1) is quasi-criminal,[14] unconstitutional, and violates the Petitioner's U.S. Const. Amend. VIII. as it has inflicted cruel and unusual punishment. Henceforth the Petitioner seeks asylum with this Court of last resort thus dehiscent the extraordinary opportunity for the Court to grant certiorari.

In adding insult to injury the U.S. District Court blatantly refused to allow the Petitioner an evidence hearing which this Court has a history of

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[14] *supra* note 5

admonishing[15]; how the U.S. District Court came to the argument that the case was lacking federal subject matter jurisdiction is preposterous when the Petitioner filed the longest, most comprehensive, short and simple Notice of Removal ever in a court case having identified the most gross malfeasance of federal law in existence standing as a mystery deserving investigation and most of all this Court's purview.

I. The Decision Below Does Not Adhere to Stare Decisis of the Court

This Court held without exception:

> [T]he only question before us is one of civil procedure: Does 28 U.S.C. §1447(d) permit a court of appeals to review any issue in a district court order remanding a case to state court where the defendant premised removal in part on the federal officer removal statue, §1442, or the civil rights removal, §1443...because the courts of appeals disagree over the scope of their appellate authority under §1447(d), we agreed to take this case to resolve the question...because it is the [district court's removal] order that is appealable, a court of appeals may address any issue fairly

[15] *Haines v. Kerner*, 404 U.S. 519 (1972)- "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"

> included within it (*BP, P.L.C., et al., v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021)

It is blatantly apparent that a jurisdictional quagmire in reviewing remand orders still exists as supported by the Fourth Circuit's decision below. The resolution this wise Court had set out to establish did not hold or at minimum to be considered settled. This Court in *BP P.L.C. v. Mayor and City Council of Baltimore* conceded that it granted certiorari to take the §1447(d) civil procedure case to resolve this linguistic interpretive nightmare.[16] The Court's public service is once more required.

Removal pursuant 28 U.S.C. §1443 allowed the appellate court jurisdiction to review the entire remand order, not just the district court's decision which the Fourth Circuit had placed reliance on. This is affirmed by the Court in *BP, P.L.C., et al., v. Mayor and City Council of Baltimore* held:

> To remove a case "pursuant to" §1442 or §1443, then, just means that a defendant's notice of removal must assert the case is removable "in accordance with or by reason of " one of those provisions.[2]...Once that

[16] *BP, P.L.C., et al., v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021)-"[A] court of appeals may review the merits of all theories for removal that a district court has rejected. Because the courts of appeals disagree over the scope of their appellate authority under §1447(d), we agreed to take this case to resolve the question"

happened and the district court ordered the case remanded to state court, the whole of its order became reviewable on appeal.[17]

II. The Decision Below is Wrong and Exceptionally Important, Imperative Public Concern, and Warrants Review in This Case

The Petitioner is a parent, and a public servant who attempted with an honest heart, and a pure love of children to assist the termination of discrimination towards our country's most vulnerable children. It is well settled that the Petitioner's actions if true, are protected under the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The false allegations levied by the Respondent are ones that bring these very important legislative works into question. The false accusations accuse the Petitioner for not helping the "black" student who was discriminated against due to being "black". The Respondent's own allegation admits that the school division discriminated against the "black" student. The Petitioner has yet to have an evidence hearing to prove that the Petitioner did in fact email Child Protective Services requesting assistance for the "black" child. The Petitioner is in possession of evidence that his own child was discriminated against and sought governmental redress. The Petitioner was accused of having a belief that the discrimination against his child was occurring. The Respondents accusations are racially motivated and bring this entire case under federal purview. The Petitioner requires not

[17] 141 S. Ct. 1532, 1538 (2021) at C

just and answer, but an explanation why making a report to Child Protective Services or any other government agency involving discrimination against children because they are "black" or disabled would not be a protected activity under the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

This answer is imperatively important to the American people and the American way of life in-order-to create a more perfect union.

CONCLUSION

The U.S. District Court of Virginia, Western District pursuant the order of Honorable James P. Jones having deemed this case as having a lack of federal jurisdiction tarnishes the impeccable armor of servitude worn by the Petitioner as furnished by the Civil Rights Act of 1964, and the Rehabilitation Act of 1973. Congress in passing the Civil Rights Act of 1964, and the Rehabilitation Act of 1973 birthed a mantle to protect any and every citizen of the United States from retaliation for attempting to secure the civil rights of eligible persons in terms of "racial equality". The Petitioner was equipped with this precious unalienable mantle as the Petitioner had exercised constitutional freedoms attempted to secure the civil rights in terms of "racial equality" for students: an African American, the disabled, and the Petitioner's own child, who was heinously discriminated against. The order by Honorable James P. Jones has dismantled this precious protection which was unequivocally given to the Petitioner by the American people and requires this

Court's dire intervention to restore America's promise to the Petitioner.

Honorable James P. Jones having deliberated this grievous order without first offering the Petitioner an evidence hearing violates this Court's settled precedence established in *Georgia v. Rachel,* 384 U.S. 780 (1966). The Petitioner having not been allowed to bring forth hundreds of emails, volumes of audio recordings, and other pertinent evidence was denied due process henceforth caused the Petitioner's personal property to be taken among other things subjecting the Petitioner to cataclysmic financial doom.

The Fourth Circuit in an unpublished opinion having relied on the order by Hon. James P. Jones as qualification to deny the Petitioner an appeal is no less than a boondoggle of injustice. The Fourth Circuit after being corrected by this Court in *BP, P.L.C., et al., v. Mayor and City Council of Baltimore,* 141 S. Ct. 1532, 1538 (2021) held and concurred in *Vlaming v. West Point School Board,* No. 20-1940 (4th Cir. 2021) that the only qualification that exist was that a case must be removed pursuant 28 U.S.C. §1443 to receive an appeal. This case was removed pursuant to 28 U.S.C. §1443. The Fourth Circuit knowing that this case was eligible for appeal chose to betray this Court's precedence and the U.S. Constitution.

The Petitioner, a victim of false prosecution in the commission of perjury by the Respondent has been subjected to having to mortgage his home, having to

choose between a good name, or providing for his family, a retirement, his daughter's future weeding, or his children's future educational endeavors. No individual should have to be placed in such a position. It is humbly requested that the Court take up the petition as not doing so would be a breach of the binding social contract by and between the Petitioner and the sovereign United States as expressed within the United States Constitution and federal law. The Court should not remain idle, to do so will create an unfathomable precedence that justice is not equal, but divergently assigned as already demonstrated by the Fourth Circuit in this case.

When a wrong is committed, the offender must take responsibility and repair the wrong. The Respondent has been in the position to do just that. It knew it was wrong when the nonsuit was filed by the Commonwealth of Virginia. In its waiver under this Courts rules it acknowledge that the prior Petition for Writ had no defects or misstatements. Hence the Respondent concedes the Petitioner's Petition was factual. All that was necessary was for the Respondent to repair the mistakes it made. That is the right thing to do. Lady justice demands it.

Respectfully submitted.

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September 2023