

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY SHAWN MERCER,

Petitioner,

versus

COMMONWEALTH OF VIRGINIA & COUNTY OF FAIRFAX

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA**

**PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA**

**SCOTUS RULE 29 CERTIFICATE OF SERVICE (at the End)
(28 U.S.C. §2403(b) MAY APPLY)**

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QUESTIONS PRESENTED FOR REVIEW

- 1) Whether or not the Circuit Court of Fairfax County (hereafter “FCCC”) Trial Court, the Court of Appeals of Virginia (hereafter “COAV”), and the Supreme Court of Virginia (hereafter “SCV”) erred by denying/refusing to enforce Petitioner’s invoked **U.S. Amendment V, VI, and/or XIV** Rights?
- 2) Whether or not the 1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7 are Unconstitutional because they violate the ***U.S. Supremacy Clause*** (U.S. Constitution, Article VI, Clause 2)?
- 3) Whether or not the ***Incorporation Doctrine*** ought to be extended to make **U.S. Amendment IX** and/or **U.S. Amendment X** applicable to the States through **U.S. Amendment XIV** or the ***Privileges and Immunities Clause*** (U.S. Constitution, Article IV, Section 2)?

LIST OF PARTIES

- 1) **Petitioner Gregory Shawn Mercer**, 3114 Borge Street, Oakton, Virginia, 22124, 202-431-9401, gregorysmercer@gmail.com.
- 2) **Respondents:**
 - a) **Prosecutor/Respondent Commonwealth of Virginia** represented by Katerine Q. Adelfio (VSB No. 77214), Assistant Attorney General, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia, 23219, Phone: 804-786-2071, Facsimile: 804-371-0151, e-mail: oagcriminallitigation@oag.state.va.us or kadelfio@oag.state.va.us; and
 - b) **Prosecutor/Respondent County of Fairfax** represented by Steve Descano, Fairfax Commonwealth's Attorney, 4110 Chain Bridge Road, Suite #114, Fairfax, Virginia, 22030, 703-246-2776.
 - c) **Respondent Attorney General of Virginia Jason Miyares**, Attorney General of Virginia, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia, 23219, 804-786-2071 because **28 U.S.C. §2403(b) MAY APPLY**;

CORPORATE DISCLOSURE STATEMENT

There is no parent corporation nor any publicly held company that owns 10% of anything associated with *pro se* Petitioner. However, Petitioner has a mortgage and three IRA accounts. Since Petitioner is not a corporation, he has no corporate disclosures to make.

TABLE OF CONTENTS WITH APPENDICES INDEX

Questions Presented for Review	i
List of Parties	ii
Corporate Disclosure Statement	ii

Tables of Contents with Appendices Index	ii
Appendices Index	v
Document Abbreviations	vi
Table of Authorities:	vii
A) Acts of Congress	vii
B) Cases	viii
C) Code and Ordinance Sections	viii
D) Constitutional Provisions	ix
E) Books & People	xi
F) Rules of the SCOTUS & Supreme Court of VA	xi
Opinions and Orders Below	1
<i>Res Judicata</i>	1
New Case	1
Jurisdiction	2
Constitutional Provisions Involved	2
Concise Statement of the Case	3
Statement of Facts (FCGDC, FCCC, COAV, SCV, SCOTUS):	7
<i>Res Judicata</i>	8

FCGDC	9
FCCC	10
COAV	13
SCV	19
SCOTUS	20
Virginia's Confederate History	21
Virginia Judges' Conflict of Interest to Deny All Rights	22
Non-Transparent Virginia Police Reports	24
Appellant's Question to the FCCC	24
Virginia Has Historically Had White Supremacy	24
Virginia Judges' Confederate Oath	27
Prosecutor Commonwealth of Virginia (Article V, Section 15) and Prosecutor County of Fairfax (Article VII, Section 2) Are Both Created from the Same Virginia Sovereign via the Constitution of Virginia	27
Reasons for Granting the Writ:	31
Relevant Federal Case Law	31
Sovereign Virginia Subjected Petitioner to Double Jeopardy	34
Thirteen Comments	35

Conclusion	40
28 U.S.C. §1746 Declarations with Signatures	40
SCOTUS Rule 29 Certificate of Service	40

APPENDICES INDEX

COAV Docket Entries for COAV Record No. 1193-21-4	B1
SCV Docket Entries for SCV Record No. 220746	B3
<i>Res Judicata</i> Documents [Apx 60-71, 79]	C1
FCGDC 9/21/2021 “Final Order” [R55]	D1
FCCC 11/4/2021 “Final Order” [R57-58]	D2
11/4/2021 “FCCC to COAV Notice of Appeal” [R59-62]	D4
7/26/2022-Filed COAV “<i>Pro Se</i> Appellant’s Objection and Motion”	D8
COAV 8/9/2022 “Order” (Remand for <i>nunc pro tunc</i> FCCC Orders)	D14
FCCC 8/12/2022 “Order” (Denying <i>nunc pro tunc</i> FCCC Orders)	D16
11/5/2022-Mailed COAV “Motion for Ruling”	D17
1/24/2023-Filed SCV “Petition for Writ of Certiorari to COAV”	D23
SCV 2/2/2023 “Order” (Denying Certiorari Petition treated as Motion)	D24
COAV 3/28/2023 “Memorandum Opinion Per Curiam”	D25

COAV 4/18/2023 “Final Order”	D35
2015/2019 Virginia Campaign Sign Senator Petersen [R120]	D36
5/8/2023 “COAV to SCV Notice of Appeal / ...”	D37
5/26/2022 COAV Deputy Clerk Tori J. Cotman E-Mail to Petitioner	D43
SCV 10/26/2023 “Order” (Refusing Petition for Appeal)	D44
11/1/2023-Filed SCV “SCV Petition for Rehearing”	D45
SCV 2/2/2024 “Final Order”	D54

DOCUMENT ABBREVIATIONS

- a) Doc. #1** – 11/4/2021 “FCCC to COAV Notice of Appeal” **[D4-7]**
- b) Doc. #2** – 5/25/2022 “Opening Brief of Appellant” and **Apx 1-78**
- c) Doc. #3** – 7/26/2022 “*Pro se* Appellant’s Objection and Motion” **[D8-13]**
- d) Doc. #4** – 7/14/2022 “Appellant’s Response to: Appellee Commonwealth of Virginia’s 7/12/2022 ‘Motion to Stay Briefing Schedule’”
- e) Doc. #5** – 7/29/2022 “Appellant’s Response to: Appellee Commonwealth of Virginia’s 7/21/2022 ‘Motion to Remand to Circuit Court to Resolve Ambiguity and to Suspend Briefing Schedule’” and **Apx 79**
- f) Doc. #6** – 8/10/2022-mailed “COAV to SCV Notice of Appeal”
- g) Doc. #7** – 8/27/2022-mailed “Motion to Withdraw ‘COAV to SCV Notice of Appeal’ / Objection”

h) Doc. #8 – 9/25/2022-mailed “Appellant’s Response to Appellee Commonwealth of Virginia’s 9/19/2022 ‘Motion to Amend Style of Case, to Suspend Briefing Schedule, and for Withdrawal of Counsel”

i) Doc. #9 – 11/5/2022-mailed “Motion for Ruling” [D17-22]

j) Doc. #10 – 2/24/2023-mailed “Supplement to 5/25/2022 Opening Brief of Appellant including a Sixth Assignment of Error”

k) Doc. #11 – 4/3/2023-mailed “Petition for Rehearing En Banc, Objection, and RSCV Rule 5A:4A Letter to COAV Clerk”

l) Doc. #12 – 5/8/2023 “COAV to SCV Notice of Appeal / Objection / Good Cause Motion for RSCV Rule 5:17(a)(2) Extension” [D37-42]

m) Doc. SCV – 5/23/2023 “SCV Corrected Petition for Appeal / ...”

TABLE OF AUTHORITIES

A) Acts of Congress:

1) Fugitive Slave Act of the 31st Congress, Session I, Chap. 60	17
2) Act of the 39th Congress, Session I, Resolution 73	6, 21, 25
3) Act of the 40th Congress, Session II, Chapter 69	6, 21, 25
4) Act of the 40th Congress, Session II, Chapter 70	6, 21, 25
5) Act of the 41st Congress, Session II, Chapter 10	6, 21, 25
6) Act of the 41st Congress, Session II, Chapter 12	6, 21, 25
7) Act of the 41st Congress, Session II, Chapter 19	6, 21, 25
8) Act of the 41st Congress, Session II, Chapter 39	6, 21, 25
9) Act of the 41st Congress, Session II, Chapter 299	6, 21, 25

B) Cases:

10) <i>Ableman v. Booth</i> , 62 U.S. (21 How.) 506 (1859)	16-17, 35
11) <i>Benton v. Maryland</i> , 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969)	32-33
12) <i>Brown v. Board of Education</i> , 347 U.S. 483 (1954)	17
13) <i>Cooper v. Aaron</i> , 358 U.S. 1 (1958)	16-17, 35
14) <i>Duncan v. McCall</i> , 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891)	7, 11, 23, 37-38
15) <i>Hardeman v. Downer</i> , 39 Ga. 425, 443 (1869)	25
16) <i>Klopfer v. North Carolina</i> , 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967)	31-32
17) <i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	36
18) <i>Palko v. Connecticut</i> , 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937)	32
19) <i>Reynolds v. Sims</i> , 377 U.S. 533, 575, 84 S.Ct. 1362, 1388 (1964)	33
20) <i>Waller v. Florida</i> , 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970)	33-34, 39

C) Code & Ordinance Sections:

21) Code of Virginia, §2.2-3706(B)(1)	24, 38
22) Code of Virginia, §15.2-301(A)	29-30, 34
23) Code of Virginia, §15.2-401	30, 34
24) Code of Virginia, §15.2-402(A)	30, 34
25) Code of Virginia, §15.2-408	30, 34

26) Code of Virginia, §16.1-69.17	27, 37
27) Code of Virginia, §17.1-410(A)(1) & (B)	9
28) Code of Virginia, §46.2-841	3-4, 9, 11, 35, D14
29) Code of Virginia, §49-1	27, 37
30) Ordinance of Fairfax County, §82-1-6	3, 9, 35, D14
31) Ordinance of Fairfax County, §82-4-24	11, D(2-3, 5, 14, 16)
32) Ordinance of Fairfax County, §82-5-43	8, C(2-4, 6)
33) United States Code, 28 U.S.C. §1257(a)	2
34) United States Code, 28 U.S.C. §1746	40
35) United States Code, 28 U.S.C. §2403(b)	ii, 40

D) Constitutional Provisions:

36) 1885 Constitution of Florida, Article V, Section 1	34
37) 1968 Constitution of Florida, Article VIII, Section 2	34
38) 1863 Constitution of West Virginia, Article I, Section 1	21, 25
39) 1870 Constitution of Virginia, Article I, Section 3	6, 21-22, 25
40) 1902 Constitution of Virginia, Article II, Sections 18-23 & 38	7, 25-27
41) 1902 Constitution of Virginia, Article VI, Section 88	6, 22, 26
42) 1971 Constitution of Virginia, Article I, Section 2	8, 12, 23-24, 37-38
43) 1971 Constitution of Virginia, Article I, Section 5	6, 12, 18, 23, 38

44) 1971 Constitution of Virginia, Article IV, Section 1	28, 34
45) 1971 Constitution of Virginia, Article IV, Section 11	28, 34
46) 1971 Constitution of Virginia, Article V, Section 15	27-28, 34
47) 1971 Constitution of Virginia, Article VI, Section 1 & 2	
	i, 6, 8, 12, 22, 24, 27, 38-39
48) 1971 Constitution of Virginia, Article VI, Section 7	
	i, 6, 11-12, 22-24, 27, 38-39
49) 1971 Constitution of Virginia, Article VII, Section 2	27, 29, 34
50) Barker-Doggett Four-Part Test	10
51) Incorporation Doctrine	i, 38
52) Principle of Res Judicata	1, 3-4, 8-9, 19-20, 35
53) U.S. Amendment V	i, 2, 4-6, 10-11, 13-14, 16-20, 31-32, 35-37
54) U.S. Amendment VI	i, 3-4, 10-11, 13, 31-32, 37-38
55) U.S. Amendment IX	i, 3, 7, 11, 13, 16, 23, 37-39
56) U.S. Amendment X	i, 3, 11, 13, 16-17, 36, 38-39
57) U.S. Amendment XIV	i, 3-7, 10-11, 13-14, 16-20, 31-32, 34-38
58) U.S. Amendment XV	25
59) U.S. Amendment XIX	25
60) U.S. Bill of Rights	7, 12, 22, 24, 27, 38
61) U.S. Civil War	6-7, 25, 36
62) U.S. Guarantee Clause (U.S.C., Art. IV, Sect. 4)	3, 6, 21, 23, 25, 38

63) U.S. Privileges & Immunities Clause (U.S.C., Art. IV, Sect. 2)
i, 2, 7, 11, 13, 16-17, 39

64) U.S. Supremacy Clause (U.S.C., Art. VI, Clause 2)
i, 2, 5-7, 9, 11-14, 16-19, 21-22, 24-26, 35-36, 38-40

E) Books & People:

65) Thomas E. Dewey	26, Apx – 15
66) John F. Kennedy	26, Apx - 15
67) Franklin D. Roosevelt	26, Apx –15
68) <u>The Two Reconstructions</u>, copyright 2004 by Richard M. Varely	25-26, Apx – 14-15
69) Harry S. Truman	26, Apx - 15

F) Rules of the SCOTUS & Supreme Court of Virginia:

70) RSCV Rule 5:17(a)(2) & (f)	19-20
71) RSCV Rule 5:18(a)	20
72) RSCV Rule 5A:20(c)	4-5, 13-16, 35-36
73) SCOTUS Rule 10(b)	39
74) SCOTUS Rule 13.1	21
75) SCOTUS Rule 20.1	20
76) SCOTUS Rule 22	20
77) SCOTUS Rule 29	40
88) SCOTUS Rule 33.2(b)	20, 40

OPINIONS AND ORDERS BELOW

In previous litigation concerning a Fairfax County Parking Ticket in the FCGDC, FCCC, COAV, SCV, & SCOTUS, it was decided and is *Res Judicata* in cases involving *Petitioner* that *Prosecutor Commonwealth of Virginia* is *not* substitutable for *Prosecutor County of Fairfax*. [Appendix Apx is in COAV Doc. #2; Appendix A is in Doc. SCV; Appendices B, C, & D are attached to this SCOTUS Petition].

Res Judicata:

- a) County of Fairfax v. Gregory Shawn Mercer,
FCGDC Case No. GT18216359-00 (11/13/2018 – C2) C1-2, Apx – 60-61
- b) Commonwealth of Virginia v. Gregory Shawn Mercer,
FCCC Case No. MI-2018-1766 (1/15/2019 – C3-4) C3-7, Apx – 62-66
- c) Gregory Shawn Mercer v. Commonwealth of Virginia,
COAV Record No. 0135-19-4 (1/27/2020 – C8-12) C8-12, Apx – 67-71
- d) Gregory Shawn Mercer v. Commonwealth of Virginia,
SCV Record No. 200331 (1/11/2021 – C13) C13, Apx – 79
- e) Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax,
SCOTUS Case No. 20-1827
(*certiorari denied* 10/4/2021; *rehearing denied* 12/6/2021)

New Case:

- f) County of Fairfax v. Gregory Shawn Mercer,
FCGDC Case No. GT20027665-00 (9/21/2021 – D1) R55, D1
- g) Commonwealth of Virginia v. Gregory Shawn Mercer,
FCCC Case No. MI-2021-776 (11/4/2021 – D2-3) R57-62, D2-7
- h) Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax,
COAV Record No. 1193-21-4 (4/18/2023 – D35)
B1-2, D14-15, D25-35, D37-43
- i) In Re: Gregory Shawn Mercer,
SCV Record No. 220746 (5/3/2023 – Moot after 4/18/2023) B3

JURISDICTION

The bases for jurisdiction in this SCOTUS for a Petition for Writ of Certiorari is **28 U.S.C. §1257(a)** (State courts; certiorari):

28 U.S.C. §1257(a) (State courts; certiorari) - “Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

The SCV Order to be reviewed is dated 10/26/2023 [D44] and Petitioner filed an 11/1/2023 “SCV Petition for Rehearing [D45-53]” before a SCV 2/2/2024 “Final Order [D54].”

CONSTITUTIONAL PROVISIONS INVOLVED*

U.S. Privileges and Immunities Clause (U.S. Constitution, Article IV, Section 2) – “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. ...”

U.S. Supremacy Clause (U.S. Constitution, Article VI, Clause 2) – “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

U.S. 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.”

U.S. Amendment VI – “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

U.S. Amendment IX – “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

U.S. Amendment X – “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

U.S. 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.”

* - The ***U.S. Guarantee Clause*** (Quoted on page 22-23 below) from the **U.S. Constitution** also appear, herein.

CONSICE STATEMENT OF THE CASE

Petitioner adopts and incorporates Appendix Pages **B1-3, C1-13, & D1-54** herein as if they were fully rewritten verbatim hereat. FCCC Record Pages **[R1, R56, R64-68, R78, R82-87, R90, & R110]** are referred to in this Section below.

By *Res Judicata* in a Parking Ticket case, it has been decided between **Petitioner, Prosecutor Commonwealth of Virginia, and Prosecutor County of Fairfax** that these Prosecutors are two separate, distinct, and not substitutable Prosecuting Authorities **[C1-13]**.

On 9/21/2021, **Prosecutor County of Fairfax** convicted **[D1]** Petitioner in *County of Fairfax v. Gregory Shawn Mercer*, FCGDC Case No. GT20027665-00 of “Unlawful Passing on Right” being the Code of Virginia §46.2-841 adopted into Fairfax County by Ordinance §82-1-6. Petitioner had invoked his U.S. **Amendment VI & XIV** Right to a “Speedy and Public Trial” because the

Prosecutor County of Fairfax had used five Continuances to Petitioner's one Continuance delaying the FCGDC Trial by 593 days. On 7/13/2021 (Day 523), the Arresting Officer failed to appear in the FCGDC for Trial. Petitioner's 7/13/2021 In-Court Motion to Dismiss was denied unreasonably and then the FCGDC Ordered a 70-day Continuance which actually prejudiced Petitioner. After conviction on 9/21/2021 [D1], Petitioner appealed *de novo* to the FCCC [R1].

Perhaps because Petitioner had complained about **Prosecutor County of Fairfax** using five Continuances in the FCGDC, the FCCC Trial unconstitutionally switched to **Prosecutor Commonwealth of Virginia** with Petitioner notified by mail on 10/7/2021 [R56, R110]. On 11/4/2021 in the FCCC, Petitioner testified that **Prosecutor County of Fairfax** had appeared in improper person as **Prosecutor Commonwealth of Virginia** to no avail [R64-68, R85]. On 11/4/2021, **Prosecutor Commonwealth of Virginia** convicted [D2-3] Petitioner in Commonwealth of Virginia v. Gregory Shawn Mercer, FCCC Case No. MI-2021-776 of "Unlawful Passing on Right" being the same Code of Virginia §46.2-841 as in the FCGDC [D2-3]. Petitioner had invoked in the FCCC his U.S. Amendment V, VI, & XIV Rights [R78, R82-87, R90] to a "Speedy and Public Trial" (593-day delay in the FCGDC) plus Protection from Double Jeopardy since these Prosecutors are two separate, distinct, and not substitutable Prosecuting Authorities by *Res Judicata* [C1-13]. Petitioner appealed to the COAV with a 11/4/2021 "FCCC to COAV Notice of Appeal [D4-7]" captioned Commonwealth of Virginia & County of Fairfax v. Gregory Shawn Mercer, FCCC Case No. MI-2021-776 [D4] based on his experience from 11/13/2018 to 10/4/2021 going through the FCGDC, FCCC, COAV, SCV, and SCOTUS in the Parking Ticket case [C1-13] where **Prosecutor Commonwealth of Virginia** had suddenly replaced **Prosecutor County of Fairfax** in a 1/15/2019 FCCC "Final Order [C1-3]" then dismissed in the COAV [C8-12].

Petitioner filed a timely COAV 5/25/2022 "Opening Brief of Appellant" after 23-day filing extension granted by the COAV [Doc. #2 – 48-49, Apx 78]. A COAV Deputy Clerk sent Petitioner a non-sensical 5/26/2023 e-mail Petitioner first read on 7/25/2022 about Assignments of Error could not be in Question Form but must be in Affirmative Statement Form according to RSCV Rule 5A:20(c) [D43]. After checking RSCV Rule 5A:20(c) which stated nothing about either Question Form or Affirmative Statement Form, Petitioner filed a 7/26/2022 "*Pro se* Appellant's Objection and Motion [D8-13, D25, D27, D30]." **Prosecutor County of Fairfax** impeded the Appellate Jurisdiction of the COAV, SCV, and SCOTUS by failing to appear in the COAV. **Prosecutor Commonwealth of Virginia** impeded the Appellate Jurisdiction of the COAV, SCV, and SCOTUS by failing to file a responsive "Brief of Appellee" to Petitioner's 5/25/2022 "Opening Brief of Appellant"

in the COAV and attempting to have the COAV nullify the 11/4/2021 violation of Petitioner's U.S. Amendment V & XIV Right in the FCCC as follows:

Prosecutor Commonwealth of Virginia by 7/21/2022 COAV Motion moved to remand back to the FCCC for *nunc pro tunc* Orders to change the 11/4/2021 FCCC Prosecutor from *Prosecutor Commonwealth of Virginia* to *Prosecutor County of Fairfax*. On 8/9/2022, the COAV remanded back to the FCCC after the fact that Petitioner's U.S. Amendment V & XIV Right to Protection from Double Jeopardy had already been violated [D14-15]. The COAV disregarded that it is "bound" to respect the Supreme Law of the Land according to the *U.S. Supremacy Clause*. The COAV actually tried to nullify Petitioner's already violated Federal U.S. Amendment V & XIV Right on 8/9/2022 with this remand for *nunc pro tunc* FCCC Orders. However, the FCCC did not issue any *nunc pro tunc* Orders on 8/12/2022 [D16]. This nullification attempt by the COAV furthers Petitioner's argument that Virginia is a Renewed Confederacy because it disrespects U.S. Amendment V & XIV and the *U.S. Supremacy Clause* [R91-92; Doc. #2 – 39-40; Doc. SCV – 37, 45, A(26, 33)].

Petitioner filed an 11/5/2022-mailed COAV "Motion for Ruling [D17-22]:” 1) to compel the appearance of *Appellee County of Fairfax* in the COAV; and 2) to compel *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* to file responsive "Briefs of Appellee" to Petitioner's 5/25/2022 "Opening Brief of Appellant" in the COAV (hereafter "the two compelling reasons that would have aided SCOTUS Appellate Jurisdiction now"). The COAV failed to rule [B2] on Petitioner's 7/26/2022 "Pro se Appellant's Objection and Motion [D8-13]," failed to rule [B2] on Petitioner's 11/5/2022 "Motion for Ruling [D17-22]," then issued a 3/28/2023 "Memorandum Opinion Per Curiam [D25-34]" which declined to consider Petitioner's Assignments of Error for reasons that were not the Supreme Law of the Land. Petitioner's 4/3/2023 "Petition for Rehearing *En Banc*" was DENIED on 4/18/2023 [D35]. The COAV violated the *U.S. Supremacy Clause* ignoring the fact that Virginia had violated Petitioner's U.S. Amendment V & XIV Right and Supreme Law of the Land. The COAV reason: Petitioner's Assignments of Error were in Question Form not Affirmative Statement Form. The COAV should clarify RSCV Rule 5A:20(c) in Plain English if they expect *pro se* litigants to understand missing words. The COAV in a neutral fashion ought to have let *Appellees Commonwealth of Virginia & County of Fairfax* raise this unclarified RSCV Rule which still ignores the fact that the *U.S. Supremacy Clause* binds the COAV to enforce Petitioner's U.S. Amendment V & XIV Right. Petitioner appealed with a 5/8/2023 "COAV to SCV Notice of Appeal / ... [D37-42]."

After the COAV's attempt to nullify Petitioner's U.S. Amendment V & XIV Right failed, the COAV granted "in effect" the *Prosecutor Commonwealth of Virginia's* Motion to Suspend the Briefing Schedule by not ruling on that Motion for 190 days. Petitioner sought a Writ of Mandamus from the SCV to the Chief Judge of the COAV then sought a Writ of Mandamus from the SCV Circuit Justice (SCOTUS Chief Justice John G. Roberts, Jr.) to the Chief Judge of the SCV: 1) to compel the appearance of *Appellee County of Fairfax* in the COAV; and 2) to compel *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* to file responsive "Briefs of Appellee" to Petitioner's 5/25/2022 "Opening Brief of Appellant" in the COAV. On 1/24/2023, Petitioner filed a "Petition for Writ of Certiorari to the COAV [D23]" in the SCV which the SCV treated as a "Motion for Certification" denying it nine days after Petitioner filed it and BEFORE either *Respondent Commonwealth of Virginia* or *Respondent County of Fairfax* filed Responses [D24]. Petitioner's 1/24/2023 "Petition for Writ of Certiorari to the COAV [D23]" treated as a Motion never received a SCV Record Number effectively hiding it from SCOTUS review. Petitioner believes this was indicative that the SCV working together with the COAV were attempting to impede the Appellate Jurisdiction of this SCOTUS. Petitioner appealed with a 5/8/2023 "COAV to SCV Notice of Appeal / ... [D37-42]."

Petitioner seeks Constitutional Changes in Virginia. The U.S. Congress eradicated State Confederate Governments between 1866 and 1870 by applying the *U.S. Guarantee Clause*. Virginia brought Confederate Government back to the United States starting in 1902 by abandoning the 1870 Constitution of Virginia, Article I, Section 3 restatement of *U.S. Supremacy Clause* and adopting the 1902 Constitution of Virginia, Article VI, Section 88 becoming *1971 Constitution of Virginia, Article VI, Sections 1 & 2* permitting Virginia's highest Court's interpretation of the U.S. Constitution with its U.S. Bill of Rights. Confederate Governments do not respect the *U.S. Supremacy Clause* nor do they enforce State or Federal Rights (See Pages 20-27 below). Virginia needs to have a Virginia Constitutional Convention to rewrite *1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7*. The *1971 Constitution of Virginia, Article VI, Section 7* empowers the Virginia General Assembly with choosing all Virginia State, County, and City Judges furthering a Virginia Dependent Judiciary in complete violation of *1971 Constitution of Virginia, Article I, Section 5* [See also D36]. The Citizens of Virginia need to elect all State, County, and City Judges so that these Judges have ALLEGIANCE to the PEOPLE not ALLEGIANCE to the *racially-inspired* 1971 Constitution of Virginia which continues without regard to race the 1902 discrimination against African American males by denying them Federal

Rights found in the U.S. Bill of Rights which are Constitutional Amendments. The current Virginia State, County, and City Judges ought to resign – they pre-judge every case where Defendants regardless of race invoke State or Federal Rights so as to deny those State or Federal Rights in a Confederate Manner. The Public Policy in Virginia – deny all invoked State and Federal Rights! Since this is Virginia Public Policy, all Virginia State, County, and City Judges are INCOMPETENT because they cannot be independent, fair, impartial, nor act with integrity. A Virginia Judge is the personification of a violation of Petitioner's **U.S. Amendment IX** Right as found in *Duncan v. McCall*, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891) which Petitioner expects SCOTUS will make applicable to the States via **U.S. Amendment XIV** and/or the **U.S. Privileges and Immunity Clause** (U.S. Constitution, Article IV, Section 2).

Since 1902 when Virginia again had a White Supremacist Government with Poll Taxes and Literacy Tests which denied initially African American males their Federal Rights, the Virginia State, County, and City Judges have added a seditious character to their rulings ignoring the **U.S. Supremacy Clause** as exhibited in this appeal. Virginia is a **Rogue State**.

Petitioner filed a 5/18/2023 "SCV Petition for Appeal" then a 5/23/2023 "SCV Corrected Petition for Appeal" which was REFUSED on 10/26/2023 [D44]. In order to allow the SCOTUS to complete its review of SCV Record No. 230354 and decide whether or not to issue a Writ of Mandamus to the Chief Judge of the SCV being S. Bernard Goodwyn in SCOTUS Case No. 23-5643, Petitioner filed an 11/1/2023 "SCV Petition for Rehearing" which petitioned the SCV to Stay its own 10/26/2023 "Order." [See D45-53]. This SCOTUS then DENIED the issuance of a Writ of Mandamus to the Chief Judge of the SCV being S. Bernard Goodwyn on 11/20/2023 then DENIED Petitioner's 12/15/2023 "SCOTUS Petition for Rehearing" on 1/16/2024 in SCOTUS Case No. 23-5643. Thereafter, the SCV DENIED Petitioner's 1/11/2023 "SCV Petition for Rehearing" on 2/2/2024 [D54] in SCV Record No. 230354.

STATEMENT OF FACTS (FCGDC, FCCC, COAV, SCV, SCOTUS)

In *Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax*, COAV Record No. 1193-21-4, no "Briefs of Appellee" were filed. On page one (1) of its 3/28/2023 "Memorandum Opinion Per Curiam," the COAV ruled, "... we decline to consider the assignments of error. ... [D25, D27, D30]." In the COAV, no FCCC issues were resolved and only COAV Assignments of Error were created. In

Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax, SCV Record No. 230354, no “Briefs in Opposition” were filed. Petitioner filed a 3/1/2023 SCOTUS “Petition for Extraordinary Writ of Mandamus to Chief Judge of the Supreme Court of Virginia, S. Bernard Goodwyn” petitioning this SCOTUS to order the SCV through its Chief Judge to compel **Prosecutor County of Fairfax** and **Prosecutor Commonwealth of Virginia** to both appear in the SCV then COAV on remand to the COAV and file “Briefs in Opposition” in the SCV then “Briefs of Appellee” on remand to the COAV, or vice versa. Petitioner argues that his Right to Appeal was denied by the COAV and the SCV which are Petitioner’s Governments that according to the **1971 Constitution of Virginia, Article I, Section 2** have as their source of power the PEOPLE. What a joke? For Statement of Facts, Petitioner adopts and incorporates the preceding “Concise Statement of the Case” Section, Appendix Pages **B1-3, C1-13, & D1-54** herein as if these pages were fully rewritten verbatim hereat.

RES JUDICATA:

In prior litigation between **Petitioner/Appellant Mercer** (herein “Petitioner”), **Prosecutor County of Fairfax**, and **Prosecutor Commonwealth of Virginia**, it was decided and is *Res Judicata* that these Prosecutors are two separate, distinct, and not substitutable Prosecutorial Authorities [**C1-13 / R64-68, R85; Doc #2 – 48-49, Apx 60-71; Doc. #5 – 8, Apx 79; Doc. #7 – 3, 6; Doc. #11 – 23; Doc. SCV – 29, 37, 39-45, 50, A(4-6, 56-68)**]. Petitioner was convicted in County of Fairfax v. Gregory Shawn Mercer, FCGDC Case No. GT18216359-00 of “Maintenance of Vehicle Parked on Street” (Fairfax County Ordinance §82-5-43) by **Prosecutor County of Fairfax** on 11/13/2018 [**C1-2 / R64-68, R85; Doc. #2 – 48-49, Apx 60-61; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 56-57)**]. Petitioner appealed *de novo* to the FCCC and was convicted of “Maintenance of a Vehicle Parked on Street” in the FCCC by **Prosecutor County of Fairfax** on 1/3/2019 [**C3 / R64-68, R85; Doc. #2 – 48-49, Apx 62 (First paragraph); Doc. SCV – 29, 37, 44-45, 50, A(4-6, 58(First Paragraph))**]. However, FCCC Judge Thomas P. Mann executed a 1/15/2019 “Final Order” captioned Commonwealth of Virginia v. Gregory Shawn Mercer, FCCC Case No. MI-2018-1766 changing the FCCC Prosecutor from **Prosecutor County of Fairfax** to **Prosecutor Commonwealth of Virginia** [**C3-4 / R64-68, R85; Doc. #2 – 48-49, Apx 62-63; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 58-59)**]. Petitioner filed a 1/23/2019 FCCC to COAV “Notice of Appeal” [**C5-7 / R64-68, R85; Doc. #2 – 48-49, Apx 64-66; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 60-62)**] likewise captioned Commonwealth of Virginia v. Gregory Shawn Mercer, FCCC Case No. MI-2018-1766 [**C5 / R64-68, R85; Doc. #2 – 48-49, Apx 64; Doc. SCV –**

29, 37, 44-45, 50, A(4-6, 60)] which attached Judge Mann's 1/15/2019 "Final Order" [C3-4 / R64-68, R85; Doc. #2 – 48-49, Apx 62-63; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 58-59)]. There was a 10/10/2019 "Opinion" in the COAV [C8-11 / R64-68, R85; Doc. #2 – 48-49, Apx 67-70; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 63-66)] then a 1/27/2020 "Final Order" in the COAV [C12 / R64-68, R85; Doc. #2 – 48-49, Apx 71; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 67)] faulting Petitioner for failing to name the necessary party "County of Fairfax" instead naming only "Commonwealth of Virginia" in the caption of his 1/23/2019 FCCC to COAV "Notice of Appeal" [C5 / R64-68, R85; Doc. #2 – 48-49, Apx 64; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 60)]. There was a 1/11/2021 "Final Order" in *Gregory Shawn Mercer v. Commonwealth of Virginia*, SCV Record No. 200331 where the SCV "dismissed" the appeal stating "lack of jurisdiction" citing "Code [of Virginia] §17.1-410(A)(1) and (B)" [C13 / R64-68, R85; Doc. #5 – 8, Apx 79; Doc. SCV – 29, 37, 44-45, 50, A(4-6, 68)] as a result of Petitioner's failure to name necessary party "County of Fairfax" in the COAV. Petitioner's "Petition for Writ of Certiorari to the SCV," SCOTUS Case No. 20-1827 was *certiorari denied* on 10/4/2021 and *rehearing denied* on 12/6/2021 [R64-68, R85; Doc. #2 – 48-49, Apx 3; Doc. SCV – 29, 37, 44-45, 50, A(5-6)]. By *Res Judicata*, this is now the Law of this new Case/Appeal concerning Petitioner's "Improper Passing on Right" alleged on 2/6/2020 that **Prosecutor Commonwealth of Virginia** is separate, distinct, and not substitutable for **Prosecutor County of Fairfax**. What is *Res Judicata* between the **Petitioner, Appellee County of Fairfax**, and **Appellee Commonwealth of Virginia** is precluded from being relitigated.

FCGDC:

On 2/6/2020, Petitioner received a Fairfax County Summons alleging "Unlawful Passing on Right" (Fairfax County Ordinance §82-1-6 adopting Code of Virginia §46.2-841) summoning Petitioner to appear in the FCGDC on 4/21/2020 for *County of Fairfax v. Gregory Shawn Mercer*, FCGDC Case No. GT20027665-00 [R73-75, R107; Doc. #2 – 32, 48-49, Apx 4; Doc. SCV – 37, 42-43, A6]. Beginning on 3/16/2020 and continuing through many SCV Judicial Emergency Orders while Petitioner was in the FCGDC and FCCC and which SCV Orders were not the Supreme Law of the Land according to the **U.S. Supremacy Clause** [R81-83; Doc. #2 – 34-35, 48-49, Apx 6-7; Doc. SCV – 37, A26], the SCV Declared a Judicial Emergency in Virginia due to COVID-19 [R81-83 R90, R101, R111-112; Doc. #2 – 34-35, 48-49, Apx 7; Doc. SCV – 37, A6]. **Prosecutor County of Fairfax** continued FCGDC Case No. GT20027665-00 five times (7/28/2020, 11/17/2020, 1/26/2021, 5/18/2021, and 6/29/2021) then Petitioner used his one allowed

continuance (7/13/2021) [R2, R55, R75-77, R80-81; Doc. #2 – 32, 48-49, Apx 4; Doc. SCV – 37, A(6-7)]. The Arresting Officer failed to appear in the FCGDC on 7/13/2021 but the FCGDC Judge denied Petitioner's In-Court Motion to Dismiss unreasonably [R80-81; Doc. #2 – 33, 48-49, Apx 4-5; Doc. SCV – 37, A7]. FCGDC Case No. GT20027665-00 was continued 70 days until 9/21/2021 [R64-67, R81; Doc. #2 – 33, 48-49, Apx 4-5; Doc. SCV – 37, A7]. In opposition to the SCV's Orders declaring a Judicial Emergency which were not the Supreme Law of the Land [R81-83; Doc. #2 – 35, 48-49, Apx 7; Doc. SCV – 37, A7], Petitioner invoked his U.S. Amendment VI & XIV "... right to a for a speedy and public trial, ... [R83, R86; Doc. #2 – 33, 48-49, Apx 4; Doc. SCV – 37, A7]" which is the Supreme Law of the Land [R81, R83-84; Doc. #2 – 34-35, 48-49, Apx 7; Doc. SCV – 37, A7] on his 593rd day (on 9/21/2021) after receiving his Summons to appear in the FCGDC [R86; Doc. #2 – 33-34, 48-49, Apx 4-5; Doc. SCV – 37, A7]. Petitioner was convicted [See attached 9/21/2021 FCGDC "Final Order" R55 at D1] by **Prosecutor County of Fairfax** in the FCGDC of "Improper Passing on Right" on 9/21/2021 [R1, R55; Doc. #2 – 33-34, 48-49, Apx 5; Doc. SCV – 37, A(7, 49)]. Petitioner filed a 9/21/2021 FCGDC to FCCC "Notice of Appeal – Criminal" for a *de novo* FCCC Trial of County of Fairfax v. Gregory Shawn Mercer, FCGDC Case No. GT20027665-00 to occur in FCCC on 11/4/2021 [R1, R82, R109; Doc. #2 – 34; Doc. SCV – 37, A(7-8)].

FCCC:

Petitioner received by mail a 10/7/2021 "Notice of Hearing Date" for Commonwealth of Virginia v. Gregory Shawn Mercer, FCCC Case No. MI-2021-776 scheduled for a FCCC Trial on 11/4/2021 [R56, R82, R110; Doc. #2 – 34; Doc. SCV – 37, A8]. Thereafter, Petitioner testified that **Prosecutor County of Fairfax** had appeared in "improper person" as **Prosecutor Commonwealth of Virginia** on 11/4/2021 to no avail [R64-68, R85; Doc. #2 – 35, 48-49, Apx 5; Doc. SCV – 37, A8]. Petitioner invoked his U.S. Amendment V, VI, & XIV Rights which are the Supreme Law of the Land [R81, R84-85; Doc. #2 – 34-35, 48-49, Apx 4-5; Doc. SCV – 37, A8] adding to his previous FCGDC "Speedy and Public Trial" Right a Protection from Double Jeopardy Right being "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; ... [R64-67, R78, R82-87, R90; Doc. #2 – 35; Doc. SCV – 37, A8]." Petitioner argued in the FCCC using the Barker-Doggett Four-Part Test [R64-68, R86-89, R115-119; Doc. #2 – 35-36, 48-49, Apx 4-5; Doc. SCV – 37, A8]. The 70-day delay [R75, R80-81; Doc. #2 – 36, 48-49, Apx 4; Doc. SCV – 37, A8] caused by the Arresting Officer's failure to appear in the FCGDC on 7/13/2021 and which appearance the Arresting

Officer was unaware prior to 7/13/2021 [R76-77, R80; Doc. #2 – 36, 48-49, Apx 4; Doc. SCV – 37, A(8-9)] had prejudiced the Petitioner [R86, R88-89; Doc. #2 – 36-38, 48-49, Apx 4; Doc. SCV – 37, A9]. Petitioner was unable to withdraw a tax-free, 60-day rollover from his Individual Retirement Account (IRA) for a year after 10/26/2021 as a result because the 593-day delay had necessitated Petitioner borrowing money for his mortgage from his IRA on 9/14/2021 [R88-89, R118-119; Doc. #2 – 38, 48-49, Apx 4-5; Doc. SCV – 37, A9]. The FCCC Trial Judge denied Petitioner's U.S. Amendment V, VI, and XIV Rights which is Public Policy in Virginia since Virginia has been a renewed Confederacy since 1902 which does not enforce State or Federal Rights [R64-69, R91-98; Doc. #2 – 39-49, Apx 4-15; Doc. SCV – 37, A9]. Petitioner was convicted [See attached 11/9/2021 FCCC "Final Order" R57-58 at D2-3] by *Prosecutor Commonwealth of Virginia* in the FCCC of "Improper Passing on Right" (Code of Virginia §46.2-841) on 11/4/2021 [R57-58, R102-103; Doc. #2 – 38, 48-49, Apx 5; Doc. SCV – 37, A(9, 50-51)]. After violating Petitioner's U.S. Amendment V, VI, & XIV Rights and Supreme Law of the Land, the FCCC Trial Judge amended the charge of conviction to "Failure to Pay Full Time and Attention" (Fairfax County Ordinance §82-4-24) suspending the \$20 fine [R57, R104; Doc. #2 – 38, 48-49, Apx 5; Doc. SCV – 37, A9]. Petitioner filed an 11/4/2021 "FCCC to COAV Notice of Appeal" this time captioned correctly as Commonwealth of Virginia & County of Fairfax v. Gregory Shawn Mercer, FCCC Case No. MI-2021-776 in the FCCC and COAV with his \$50 COAV fee [R59-62; Doc. #1 – 1-4, Doc. #2 – 38; Doc. SCV – 37, A(9-10, 52-55)].

Petitioner presented the fact that the method by which all Virginia State, County, and City Judges are chosen by Virginia General Assembly Representatives according to *1971 Constitution of Virginia, Article VI, Section 7* [R96; Doc. #2 – 44, 48-49, Apx 10-11; Doc. SCV – 37, A10] is contrary to the Supreme Law of the Land (*U.S. Supremacy Clause*) found in *Duncan v. McCall*, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891) [R98; Doc. #2 – 44-45, 48-49, Apx 6; Doc. SCV – 37, A10] in FCCC testimony on 11/4/2021 [R64-69, R96-97; Doc. #2 – 44-46, 48-49, Apx 6; Doc. SCV – 37, A10]. *Duncan* read in FCCC testimony on 11/4/2021 [R98 (See *Duncan* below)] makes it an **Unenumerated Right** protected by U.S. Amendment IX [R64-67, R69, R95-98, R102, R120; Doc. #2 – 24, 26, 30-31, 44, 48-49, 51, 66, 71, Apx 6, 8, 13; Doc. SCV – 37, A(10, 97); D36] that the Virginia Citizens have the Right to choose their own Virginia State, County, and City Judges [R98, R120; Doc. #2 – 44-45, 48-49, Apx 6; Doc. SCV – 37, A(10, 97); D36]. Petitioner expects that the SCOTUS will make U.S. Amendments IX & X applicable to the States via U.S. Amendment XIV and/or the *U.S. Privileges and Immunity Clause* (U.S. Constitution, Article IV, Section 2) [R64-69, R81, R91-92,

R95-98, R102, R120; Doc. #2 – 31, 64-65, 67, 71; Doc. SCV – 37, 53, A(18, 97); D36]. When the Virginia Police endorse for Office the Virginia General Assembly Representatives [**D36 / R95-96, R120; Doc. #2 – 45, 48-49, Apx 11; Doc. SCV – 37, A(10, 97)**] who choose all the Virginia State, County, and City Judges contrary to the **1971 Constitution of Virginia, Article I, Section 5** [**R64-69, R96-98; Doc. #2 – 44, 48-49, 69, Apx 10-12; Doc. SCV – 37, A(10-11)**], a CONFLICT OF INTEREST arises where these Virginia Judges stop enforcing State and Federal Rights ignoring the **1971 Constitution of Virginia, Article I, Section 2** [**R64-69, R96-98; Doc. #2 – 45-46, 48-49, 67, Apx 12, 14; Doc. SCV – 37, A11**].

1971 Constitution of Virginia, Article I, Section 2 - “That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them. [**R64-67, R69, R97; Doc. #2 – 45-46, 48-49, 67, Apx 12, 14; Doc. SCV – 37, A(11, 30)**]”

1971 Constitution of Virginia, Article I, Section 5 - “That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; ... [**R64-67, R69, R96-97; Doc. #2 – 48-49, 69, Apx 11-12, 14; Doc. SCV – 37, A(11, 30)**]”

These Virginia Judges fear that upsetting or angering the Police Witness for the Prosecution will cause that Officer to contact his/her Police Lobby which will interfere in that Judge's next Judicial Election in the Virginia General Assembly such that the Judge will not be allowed to keep his/her Bench nor move up to a higher Appellate Bench [**R64-69, R96-97; Doc. #2 – 45-46, 48-49, Apx 12-13; Doc. SCV – 37, A11**]. Since a Defendant's State Rights merely complicate the enforcement duties of the Police Witness for the Prosecution, these Virginia Rights are the first to be denied by the Virginia Judges [**R64-69, R97; Doc. #2 – 45-46, 48-49, Apx 12-13; Doc. SCV – 37, A(11-12)**] while a Defendant's Federal Rights are denied by interpretation of the U.S. Bill of Rights in the SCV in accordance with the **1971 Constitution of Virginia, Article VI, Sections 1 & 2** [**R98; Doc. #2 – 41-42, 46-49, Apx 13; Doc. SCV – 37, A12**] which is contrary to the **U.S. Supremacy Clause** [**R81; Doc. #2 – 34-35, 44-49, Apx 6-7; Doc. SCV – 37, A12**]. Virginia must have a Virginia Constitutional Convention to rewrite the **1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7** because Virginia has continued from 1902 as a renewed Confederate Police Government which does not enforce State or Federal Rights as Public Policy [**R64-69, R96-98; Doc. #2 – 41, 43-49, 69, Apx 8-11, 14; Doc. SCV – 37, A12**].

Petitioner presented the fact that despite what is stated in the **U.S. Supremacy Clause** read in FCCC testimony on 11/4/2021 [R81 (See **Supremacy Clause** below)], Virginia prioritizes SCV Orders including Declarations of Virginia Judicial Emergency [R64-67, R81-84, R101; Doc. #2 – 34-35, 48-49, Apx 6-8; Doc. SCV – 37, A12] over the Supreme Law of the Land and the enforcement of Federal Rights like Petitioner's U.S. Amendments V, VI, & XIV Rights herein [R64-69, R93-105; Doc. #2 – 45-49, Apx 10-13; Doc. SCV – 37, A12]. But State Judges are "bound" by the Supreme Law of the Land according to the **U.S. Supremacy Clause** [R81; Doc. #2 – 34-35, 48-49, Apx 6-7; Doc. SCV – 37, A(12-13)] meaning that U.S. Amendment X prohibits State Judges the POWER to impede the enforcement of Petitioner's U.S. Amendment V, VI, & XIV Rights [R64-68, R81-82, R91-92, R99-102; Doc. #2 – 24, 26, 29, 31, 48-49, 51, 57-58, 64-65, 71, Apx 6-8, 13; Doc. SCV – 37, A13]. Petitioner expects that the SCOTUS will make U.S. Amendments IX & X applicable to the States via U.S. Amendment XIV and/or the **U.S. Privileges and Immunity Clause** (U.S. Constitution, Article IV, Section 2) [R64-69, R81, R91-92, R95-98, R102, R120; Doc. #2 – 31, 64-65, 67, 71; Doc. SCV – 37, 53, A(18, 97); D36].

COAV:

Petitioner had filed a timely 11/4/2021 "FCCC to COAV Notice of Appeal [Doc. #1 – 1-4 / See attached Notice at D4-7 (Doc. SCV – 37, A(13, 52-55)]." Petitioner filed his timely-after-extension 5/25/2022 "Opening Brief of Appellant" with five Assignments of Error (Adding a Sixth Assignment of Error on 4/3/2023 [Doc. #11 – 29-30]) in the COAV [Doc. #2 – 1-74, Apx 1-78 emphasizing Apx 31 & 78; Doc. #5 – 8, Apx 79; Doc. SCV – 37, A13] in Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax, COAV Record No. 1193-21-4 [See attached COAV Docket Entries on Appendix pages B1-2]. COAV Deputy Clerk Tori J. Cotman (804-786-5661) sent Petitioner a 5/26/2022 e-mail stating "... submit an amended opening brief in compliance with the cited rule [RSCV Rule 5A:20(c)]. ... Failure to comply may result in dismissal of this appeal [D43 / Doc. #3 – 1-2; Doc. SCV – 37, A13]." The issue was "... Assignments of error cannot be stated in question form; they must be stated in the affirmative. ... [D43 / Doc. #3 – 2; Doc. SCV – 37, A(13-14)]." However, RSCV Rule 5A:20(c) states no such thing [Doc. #3 – 2; Doc. SCV – 37, A14]. Petitioner first saw the 5/26/2022 e-mail from Deputy Clerk Cotman on 7/25/2022. Petitioner filed a 7/26/2022 "*Pro se* Appellant's Objection and Motion [Doc. #3 – 1; Doc. SCV – 37, A14 / See attached "*Pro Se* Appellant's Objection and Motion (Doc. #3)" at D8-13 (Doc. SCV – 37, A(69-74))]" moving the COAV for:

“... a Waiver or Exception to his Assignments of Error [not] being submitted in Affirmative Statement [Form] for environmental reasons sparing the 154 pages times four of paper, the 2-mile round trip to the Fairfax County Courthouse collecting a Fairfax Commonwealth’s Attorney’s Office Stamp, and the 224-mile round trip to Richmond to file an ‘Amended Opening Brief of Appellant.’ ... This ‘Amended Opening Brief of Appellant’ is an overly burdensome and unnecessary requirement for a new father of his 16-month-old daughter struggling to get training in order to start a new job [D11 / Doc. #3 – 4; Doc. SCV – 37, A(14, 72)].”

RSCV Rule 5A:20(c) states nothing specifically about Assignments of Error being in Question Form nor requiring them to be in Affirmative Statement Form [Doc. SCV – 37, A14] (In COAV Deputy Clerk Tori J. Cotman’s 5/26/2022 e-mail [D43], it stated, “... it appears that the brief is not in compliance with the following Rules: 5A:20(c): The brief does not contain ‘assignments of error.’ ... Assignments of error cannot be stated in question form; they must be stated in the affirmative. ... Accordingly, you must submit an amended opening brief in compliance with the cited rules via VACES within 10 days of the date of this notification [this e-mail first seen by Petitioner 60 days later on 7/25/2022]. ... Failure to comply may [emphasized by Petitioner] result in dismissal of the appeal [emphasized by Petitioner]. ... [D43].” However, the COAV chose not to dismiss Petitioner’s COAV Appeal but rather failed to rule on Petitioner’s 7/26/2022 “*Pro Se* Appellant’s Objection and Motion [D8-13 / Doc. #3 – 1-6; Doc. SCV – 37, A(69-74)]” then opined in the COAV 3/28/2023 “Memorandum Opinion per Curium [D25-34 / Doc. SCV – 37, A(86-95)]” that the COAV “... decline[d] to consider the assignments of error [D25 / Doc. SCV – 37, A86] ...” also stating, “... Because the assignments of error in Mercer’s opening brief were stated as questions rather than in the affirmative, this Court’s clerk’s office advised Mercer by e-mail in May 2022 that he should file an amended brief within ten days. Mercer objected to this notice, several months later, arguing he had not read the prior email [D27 / Doc. SCV – 37, A88] ...” Meanwhile, Petitioner’s [Mercer’s] COAV Appeal concerned a violation of his **U.S. Amendments V and XIV** Right which is the Supreme Law of the Land contrary to RSCV Rule 5A:20(c) which is not the Supreme Law of the Land “... and the Judges of every State shall be bound thereby ...” in accordance with the **U.S. Supremacy Clause** [(See below) / R81, Doc. #2 – 34-35, Doc. SCV – 37, A26]. This denial of a Federal Right is happening while Petitioner is arguing that Virginia is a “Renewed Confederacy” since 1902 that has as Public Policy the denial of all State and Federal Rights with the hallmark that Virginia disrespects the **U.S. Supremacy Clause** in a Confederate Manner which is clearly illustrated in

Petitioner's COAV Appeal just recently concluding on 4/18/2023 [D35 / Doc. SCV – 37, A96]):

RSCV Rule 5A:20(c) – “(c) Under a heading entitled ‘Assignments of Error,’ the brief must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below-or the issue(s) on which the tribunal or court appealed from failed to rule-upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified or reversed. An exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(1) Effect of Failure to Assign Error. Only assignments of error listed in the brief will be noticed by this Court. If the brief does not contain assignments of error, the appeal will be dismissed.

(2) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the appeal will be dismissed.

(3) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the brief contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken-including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s)-a

rule to show cause will issue pursuant to Rule 5A:1A [Doc. #3 – 2; Doc. SCV – 37, A14-16].”

[D9; Doc. SCV – 37, A70 / The above is noted as specifically not stating anywhere, “... Assignments of error cannot be stated in question form; they must be stated in the affirmative ...” as alleged by COAV Deputy Clerk Tori Cotman Doc. #3 – 1-2; Doc. SCV – 37, A(69-70) – COAV ignored U.S. *Supremacy Clause*].

Appellee County of Fairfax never appeared in the COAV [Doc. #9 – 4-5; Doc. #11 – 27-28; Doc. SCV – 37, A16]. Petitioner continuously maintained service of all his COAV-filed documents in *Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax*, COAV Record No. 1193-21-4 on both *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* in the COAV and continuing to present [Doc. #1* – 3-4; Doc. #2* – 72-74 plus Process Server on 1/26/2023; Doc. #3* – 5-6; Doc. #4* - 10; Doc. #5* – 14-15; Doc. #6 – 3-4; Doc. #7 - 14; Doc. #8 - 11; Doc. #9 – 5-6; Doc. #10 - 6; Doc. #11 – 32-33; Doc. #12* - 5-6; Doc. SCV* – 62-63] where an asterisk after document number above signifies Petitioner hand-delivered that document to *Appellee County of Fairfax*.

Appellee Commonwealth of Virginia filed three Motions to Stay or Suspend the Briefing Schedule (on 7/12/2022, on 7/21/2022, & on 9/19/2022) including one Motion (on 7/21/2022) moving for remand back to the FCCC seeking *nunc pro tunc* FCCC Orders in order to nullify the fact that Petitioner’s U.S. Amendment V & XIV Rights had *already been violated* on 11/4/2021 [Petitioner Responses: Doc. #4, Doc. #5, & Doc. #8; Doc. SCV – 37, A(16-17)]. The *nunc pro tunc* FCCC Orders would have switched the 11/4/2021 FCCC Prosecutor from *Prosecutor Commonwealth of Virginia* to *Prosecutor County of Fairfax* which remand is a prohibited POWER of either the COAV or SCV by the U.S. *Supremacy Clause*’s prohibition on State Judges’ interference in the enforcement of the Supreme Law of the Land which is addressed in U.S. Amendment X [Doc. #2 – 29, 34-35; Doc. #5 – 4-6, 12-13; Doc. #6 – 2-3; Doc. #7 – 6-13; Doc. SCV – 37, A17]. Petitioner expects that the SCOTUS will make U.S. Amendments IX & X applicable to the States via U.S. Amendment XIV and/or the U.S. *Privileges and Immunity Clause* (U.S. Constitution, Article IV, Section 2) [R64-69, R81, R91-92, R95-98, R102, R120; Doc. #2 – 31, 64-65, 67, 71; Doc. SCV – 37, 53, A(18, 97); D36]:

Doc. #5 – 4-6; Doc. SCV – 37, A17-18 – “For the Court to ‘STAY’ or ‘REMAND TO THE FCCC’ would be contrary to Federal Case Law *Ableman v. Booth*, 62 U.S. 506 (1859) and *Cooper v. Aaron*, 358 U.S. 1 (1958)

because a State Court cannot nullify and/or render unenforceable Federal Laws or *already violated* Appellant Federal Rights which are the Supreme Law of the Land. The ***U.S. Supremacy Clause*** (United States Constitution, Article VI, Clause 2) states:

U.S. Supremacy Clause - 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be *the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.* [R81].'

... Because the ***U.S. Supremacy Clause*** prohibits any power over the Supreme Law of the Land to the States, by **U.S. Amendment X & XIV** and/or the **[U.S.] Privileges and Immunities Clause** (Constitution of the United States, Article IV, Section 2) no Judge on any State Court nor specifically on this [COAV] or on an FCCC Court or on [an] FCGDC Court may interpret **U.S. Amendment V & XIV** (Appellant's Federal Rights):

U.S. Amendment X – 'The powers not delegated to the United States by the Constitution, *nor prohibited by it to the States* [emphasis added], are reserved to the States respectively, or to the people."

Doc. #5 – 12-13; Doc. SCV – 37, A18 – "In ***Ableman v. Booth***, 62 U.S. 506 (1859), Sherman Booth was convicted of violating the Fugitive Slave Act of 1850 in the United States District Court for the District of Wisconsin. Booth petitioned the Supreme Court of Wisconsin for release from Federal jail via a writ of *habeas corpus*. The Supreme Court of Wisconsin released Booth. The Supreme Court of the United States reversed the Supreme Court of Wisconsin. In ***Cooper v. Aaron*** 358 U.S. 1 (1958), the Governor and Legislature of Arkansas openly resisted the U.S. Supreme Court's decision in ***Brown v. Board of Education***. The United States District Court for the Eastern District of Arkansas granted the school board's request to continue State segregated school/busing. The Supreme Court reversed the United States District Court."

Unconstitutionally, the COAV granted ***Appellee Commonwealth of Virginia's*** Motion that attempted to nullify Petitioner's U.S. Amendment V & XIV Right so the COAV remanded back to the FCCC for *nunc pro tunc* Orders on 8/9/2022 contrary to the ***U.S. Supremacy Clause*** and U.S. Amendment X [See attached 8/9/2022 COAV Order at D14-15; Doc. SCV – 37, A(18-19, 75-76)] (By

the way, this was the only COAV Order by its caption properly identifying that “County of Fairfax” was an Appellee). But the FCCC denied the issuance of any *nunc pro tunc* Orders on 8/12/2022 [See attached 8/12/2022 FCCC Order at D16; Doc. SCV – 37, A(19, 77)]. Thereafter, the COAV refused to rule on *Appellee Commonwealth of Virginia’s* third Motion to Suspend the Briefing Schedule for 190 days (9/19/2022 to 3/28/2023) creating an “In-Effect” Suspension of the Briefing Schedule. Petitioner filed a 11/5/2022 “Motion for Ruling” [See attached Motion (Doc. #9 – 1-6 at 4-5) being D17-22 at D20-21; Doc. SCV – 37, A(19, 78-83 at 81-82)] moving the COAV: 1) to compel the appearance *Appellee County of Fairfax* in the COAV; 2) to compel *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* to file “Briefs of Appellee” in the COAV; and 3) for a COAV Ruling on *Appellee Commonwealth of Virginia’s* Third Motion being its 9/19/2022 “Motion to Amend Style of Case, to Suspend Briefing Schedule, and for Withdrawal of Counsel.”

The COAV failed to rule on Petitioner’s 7/26/2022 “*Pro se* Appellant’s Objection and Motion [See attached Objection and Motion D8-13 / Doc. #3 – 1-6; Doc. SCV – 37, A(19. 69-74)]” about a Waiver or Exception to Petitioner’s Assignment of Errors being in Question Form, failed to rule on Petitioner’s 11/5/2022 “Motion for Ruling [See attached Motion (Doc. #9) at D17-22; Doc. SCV – 37, A(19-20, 78-83)],” then issued a 3/28/2022 “Memorandum Opinion Per Curium” stating, “Because Mercer does not identify any way that he preserved any of these issues for appellate review and because he otherwise ignores the rules of this Court, we decline to consider the assignments of error [See attached 3/28/2023 COAV “Memorandum Opinion Per Curium,” 1; Doc. SCV – 37, A(20, 86)].” The 3/28/2023 “Memorandum Opinion Per Curium [Doc. SCV – 37, A(86-95)]” violated the *U.S. Supremacy Clause* with State Judges ignoring the Supreme Law of the Land being the violation of Petitioner’s **U.S. Amendment V & XIV** Right. Petitioner filed a 4/3/2023 “Petition for Rehearing, Objection, and RSCV Rule 5A:4A Letter to COAV Clerk [Doc. #11 – 16-18; Doc. SCV – 37, A20]” identifying that all Virginia State, County, and City Judges were, in fact, INCOMPETENT due to the CONFLICT OF INTEREST to which Petitioner had testified in the FCCC on 11/4/2021 [R64-69, R95-98; Doc. #2 – 44-46, 48-49, 69, Apx 10-14; Doc. SCV – 37, A20] with the Police Endorsing for Office the Virginia General Assembly Representatives [D36 and R120] who choose all the State, County, and City Judges (violation of the *1971 Constitution of Virginia, Article I, Section 5* [R64-69, R95-98; Doc. #2 – 44-46, 48-49, 69, Apx 10-14; Doc. SCV – 37, A(20-21)]).

The COAV issued a “Final Order” on 4/18/2023 [**See attached 4/18/2023 COAV “Final Order” at D35; Doc. SCV – 37, A(21, 96)**] again totally ignoring the fact that the COAV had violated the *U.S. Supremacy Clause* by *refusing to be bound by the Supreme Law of the Land and addressing Petitioner’s U.S. Amendment V & XIV Right violation where Appellee County of Fairfax* tried and convicted Petitioner in the FCGDC on 9/21/2021 then *Appellee Commonwealth of Virginia* tried and convicted Petitioner in the FCCC on 11/4/2021 for the same charge. This was Double Jeopardy by *Res Judicata* since these Prosecutors are two separate, distinct, and not substitutable Prosecutorial Authorities [**Doc. SCV – 37, A21**]. Petitioner filed a 5/8/2023 “COAV to SCV Notice of Appeal / Objection / Good Cause Motion for RSCV Rule 5:17(a)(2) Extension” simultaneously in the COAV and SCV transferring Jurisdiction to the SCV which SCV Motion for Extension was denied by the SCV on 5/11/2023 [**See attached Notice and Objection D37-42 / Doc. #12 – 1-6; Doc. SCV – 37, A21**].

SCV:

Petitioner commenced *In Re: Gregory Shawn Mercer*, SCV Record No. 220746 [**See attached SCV Docket Entries on Appendix page B3**] by filing 11/15/2022-mailed “Corrected Petition for Writ of Mandamus to the Chief Judge of the COAV, Marla Decker.” **Respondent COAV Chief Judge Decker** through counsel Christopher P. Bernhardt responded on 1/9/2023 to which Petitioner replied on 1/16/2023 by mail to the COAV. Ultimately, this case became moot when the COAV issued its 4/18/2023 “Final Order.” The COAV never ruled on whether: 1) to compel the appearance *Appellee County of Fairfax* in the COAV; nor 2) to compel *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* to file “Briefs of Appellee” in the COAV which were the point of Petitioner’s 11/5/2022 “Motion for Ruling [**Doc. #9**]” in *Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax*, COAV Record No. 1193-21-4 [**Doc. SCV – 37, A22**].

Petitioner filed a 1/24/2023 “Petition for Writ of Certiorari to the COAV [**D23 / Doc. SCV – 37, A(22, 84)**]” in the SCV paying a \$50 fee which fee was finally returned to Petitioner. The SCV treated this Petition for Writ of Certiorari as a “Motion for Certification” without giving it a case number then denied the Motion on 2/2/2023 [**D24 / Doc. SCV – 37, A(22, 85)**] being nine days after it was filed and **BEFORE Respondents Commonwealth of Virginia or Respondent County of Fairfax** responded. This is indicative that the SCV was acting together with the COAV to impede the Appellate Jurisdiction of the SCOTUS by preventing any **Prosecutor Commonwealth of Virginia or Prosecutor County of Fairfax**

Response to Petitioner's 5/25/2022 "Opening Brief of Appellant" which argued that Petitioner's **U.S. Amendment V & XIV** Right had been violated in Virginia through trials in the FCGDC on 9/21/2021 then in the FCCC on 11/4/2021 for the same charge using different Prosecutorial Authorities which were **not** substitutable by *Res Judicata* [Doc. SCV – 37, A(22-23)].

Despite Petitioner having filed a 5/8/2023 "COAV to SCV Notice of Appeal / Objection / Good Cause Motion for RSCV Rule 5:17(a)(2) Extension" simultaneously in the SCV and COAV which SCV Motion for Extension was denied by the SCV on 5/11/2023, Petitioner mailed and hand-delivered a 5/18/2023 "SCV Petition for Appeal / ..." to the SCV which had too many words violating RSCV Rule 5:17(f) then filed a 5/23/2023 "SCV Corrected Petition for Appeal / SCOTUS Petition for Extraordinary Writ of Mandamus to the Chief Judge of the SCV, S. Bernard Goodwyn" Joint Petition which was hand-delivered to **Prosecutor County of Fairfax** on 5/23/2023 and received via USPS by **Prosecutor Commonwealth of Virginia** on 5/25/2023. A SCV Clerk docketed Gregory Shawn Mercer v. Commonwealth of Virginia & Fairfax County as SCV Record No. 230354. SCOTUS Deputy Clerk Redmond K. Barnes did not docket the SCV/SCOTUS Joint Petition in the SCOTUS on either 5/26/2023 nor 6/16/2023. In accordance with RSCV Rule 5:18(a), **Prosecutor County of Fairfax** had until 6/13/2023 and **Prosecutor Commonwealth of Virginia** had until 6/15/2023 to file electronically any "Brief in Opposition." Petitioner filed a 6/13/2023 "SCV Motion to Compel **Respondent Commonwealth of Virginia** and **Respondent County of Fairfax** to Appear in the SCV and File Responsive SCV 'Briefs in Opposition' in Accordance with RSCV Rule 5:18(a)." Neither **Prosecutor County of Fairfax** nor **Prosecutor Commonwealth of Virginia** filed Briefs in Opposition in SCV Record No. 230354 and the SCV failed to rule on Petitioner's 6/13/2023 Motion. The SCV REFUSED Petitioner's "SCV Corrected Petition for Appeal / ..." on 10/26/2023 [D44].

SCOTUS:

On 9/22/2023, Chief Justice John G. Roberts, Jr. GRANTED an 8/30/2023 Application No. 23A257 for a 44-page "Petition for Extraordinary Writ of Mandamus to the Chief Judge of the Supreme Court of Virginia, S. Bernard Goodwyn" which was considered filed on 3/19/2023. In order to allow the SCOTUS to complete its review of SCV Record No. 230354 and decide whether or not to issue a Writ of Mandamus to the Chief Judge of the SCV being S. Bernard Goodwyn in SCOTUS Case No. 23-5643 to compel **Prosecutor Commonwealth of Virginia** and **Prosecutor County of Fairfax** to both appear and file "Briefs in Opposition"

in the SCV, Petitioner filed an 11/1/2023 “SCV Petition for Rehearing” which petitioned the SCV to Stay its own 10/26/2023 “Order.” [See D45-53]. This SCOTUS then DENIED the issuance of a Writ of Mandamus to the Chief Judge of the SCV being S. Bernard Goodwyn on 11/20/2023 then DENIED Petitioner’s 12/15/2023 “SCOTUS Petition for Rehearing” on 1/16/2024 in SCOTUS Case No. 23-5643. Thereafter, the SCV DENIED Petitioner’s 1/11/2023 “SCV Petition for Rehearing” on 2/2/2024 [D54] in SCV Record No. 230354. Petitioner’s 90-day deadline to file a Petition for Writ of Certiorari in the SCOTUS is 5/2/2024.

VIRGINIA’S CONFEDERATE HISTORY:

U.S. Supremacy Clause (U.S. Constitution, Article VI, Clause 2) – “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding [R81, R84; Doc. #2 – 34-35, Apx 7; Doc. SCV – 37, A26].”

1863 Constitution of West Virginia, Article I, Section 1 – “The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land [R64-68, R91-92; Doc. #2 – 39-40, Apx 8-9; Doc. SCV – 37, A26].”

Petitioner testified in the FCCC about the history of Virginia and that it has become a renewed Confederacy since 1902 after the U.S. Congress had eradicated all Confederacies from the Union [Doc. #2 – 48-49, Apx 9] between 1866 and 1870 [R64-69, R91-98; Doc. #2 – 39-49, Apx 4-15; Doc. SCV – 37, A26]. A Confederacy is defined by the 1863 Constitution of West Virginia, Article I, Section 1 (a restatement of the **U.S. Supremacy Clause**) as West Virginia broke away from Confederate Virginia and tried to remain in the Union [R64-68, R91-92; Doc. #2 – 39-40, 48-49, Apx 8-9; Doc. SCV – 37, A26]. A Confederacy simply did not respect the **U.S. Supremacy Clause** (U.S. Constitution, Article VI, Clause 2) and was not a Republican Form of Government in accordance with the **U.S. Guarantee Clause** (U.S. Constitution, Article IV, Section 4) [R92; Doc. #2 – 40, 48-49, Apx 9; Doc. SCV – 37, A26-27]. When Virginia was readmitted back to representation in the U.S. Congress after Congressional application of the **U.S. Guarantee Clause**, the 1870 Constitution of Virginia, Article I, Section 3 was a restatement of the **U.S. Supremacy Clause** [R92; Doc. #2 – 40-41, 48-49, Apx 9-10; Doc. SCV – 37, A27]:

1870 Constitution of Virginia, Article I, Section 3 - "That the Constitution of the United States, and the laws of Congress passed in pursuance thereof, constitute the supreme law of the land, to which paramount allegiance and obedience are due from every citizen, anything in the constitution, ordinances, or laws of any State to the contrary notwithstanding [R92; Doc. #2 – 40-41, 48-49, Apx 10; Doc. SCV – 37, A27]."

However, Virginia abandoned the 1870 Constitution of Virginia Article I, Section 3 restatement of the ***U.S. Supremacy Clause*** when it adopted the 1902 Constitution of Virginia, Article VI, Section 88 empowering the Supreme Court [of Appeals] of Virginia with the ability to interpret the U.S. Constitution with its U.S. Bill of Rights contrary to the ***U.S. Supremacy Clause*** [R64-69, R93; Doc. #2 – 41, 48-49, Apx 10; Doc. SCV – 37, A27]. Since SCOTUS only grants certiorari to the State Courts of Last-Resort less than 1% of the time, when the SCV denies a Federal Right it is FINAL making the SCV the Gatekeeper of Federal Rights in Virginia [R64-68, R93; Doc. #2 – 41-42, 48-49, Apx 13; Doc. SCV – 37, A27]. The 1902 Constitution of Virginia, Article VI, Section 88 became the current **1971 Constitution of Virginia, Article VI, Sections 1 & 2** empowering the now Supreme Court of Virginia with the ability to interpret the U.S. Constitution with its U.S. Bill of Rights contrary to the ***U.S. Supremacy Clause*** [R95; Doc. #2 – 43, 48-49, Apx 13; Doc. SCV – 37, A(27-28)]. Virginia has a Public Policy to not enforce State or Federal Rights because it became a renewed Confederacy in and after 1902.

VIRGINIA JUDGES' CONFLICT OF INTEREST TO DENY ALL RIGHTS:

In a Democracy, PEOPLE are protected from Government with ***Rights***. If One does not respect Another's Rights, Another can sue One where a Judge decides whether or not to enforce Another's Rights. So in a Democracy or Constitutional Republic, the connection between the PEOPLE and their Judges is paramount to protecting the Rights of the PEOPLE [R96-97; Doc. #2 – 44, 48-49, Apx 10; Doc. SCV – 37, A28].

In a Confederacy, Government is protected from the PEOPLE by ***Denying Rights***. Government selects its own Judges in a Confederacy [R96; Doc. #2 – 44, 48-49, Apx 10; Doc. SCV – 37, A28] to be able to ensure State and Federal Rights are denied. Currently, the Virginia General Assembly selects all Virginia State, County, and City Judges through the unconstitutional-with-respect-to-the-U.S.-

Supremacy-Clause-method, **1971 Constitution of Virginia, Article VI, Section 7** [R96-97; Doc. #2 – 44, 48-49, Apx 10; Doc. SCV – 37, A(28-29)].

However, having the Virginia General Assembly choosing all Virginia's State, County, and City Judges is contrary to the Supreme law of the Land found in **Duncan v. McCall**, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891) [R98; Doc. #2 – 44-45, 48-49, Apx 6; Doc. SCV – 37, A29] which makes it an **Unenumerated Right** protected by **U.S. Amendment IX** for the **PEOPLE** to choose their own Judges and which **Unenumerated Right** Petitioner read to the FCCC Judge during his testimony on 11/4/2021 [R98]:

U.S. Guarantee Clause (U.S. Constitution, Article IV, Section 4) - “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence [“domestic Violence” historically means Civil War – R98; Doc. #2 – 44-45, 48-49, 65-66, Apx 9; Doc. SCV – 37, A29].”

Duncan v. McCall

, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891) - “By the constitution, a republican form of government is garantied [sic. – ‘guaranteed’] to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, ... [R98; Doc. #2 – 44-45, 48-49, 65-66, Apx 6; Doc. SCV – 37, A29].”

Contrary to the **1971 Constitution of Virginia, Article I, Section 5** (See Page 12 above), the Virginia “Police Endorse” for Office the Virginia General Assembly Representatives who choose all the Virginia State, County, and City Judges [D36 / R95-96, R120; Doc. #2 – 45, 48-49, Apx 11; Doc. SCV – 37, A(30, 97)]. This creates a CONFLICT OF INTEREST for Virginia State, County, and City Judges [R96-97; Doc. #2 – 46, 48-49, Apx 11-13; Doc. SCV – 37, A30]. This CONFLICT OF INTEREST makes laughable the **1971 Constitution of Virginia, Article I, Section 2** (See Pages 11-12 above).

In a Virginia Courtroom, there are the County or City Judge, the Defendant, the Prosecutor, and the Police Witness for the Prosecution. The County or City Judge is worried that upsetting or angering the Police Witness for the Prosecution might cause that Police Witness to go to the Police Lobby which, in turn, would lobby the Virginia General Assembly Representatives interfering in that County or City Judge’s next Judicial Election [R97; Doc. #2 – 45, 48-49, Apx 12-13; Doc.

SCV – 37, A(30-31)]. The County or City Judge is no longer interested in enforcing the Defendant's State Rights [R97; Doc. #2 – 45-46, 48-49, Apx 12; Doc. SCV – 37, A31]. The County or City Judge wants to please the Police Witness so that the County or City Judge can continue on his or her Bench or move up to an Appellate Bench [R97; Doc. #2 – 46, 48-49, Apx 12-13; Doc. SCV – 37, A31]. The Police Witness for his or her part does not like a Defendant's State Rights which merely complicate that Police Witness' job of enforcement [R97; Doc. #2 – 46, 48-49, Apx 13; Doc. SCV – 37, A31]. The Police Witness wants to go into a Defendant's house to figure out what crimes that Defendant is doing so that the Police Witness could put that Defendant in jail [R97; Doc. #2 – 46, 48-49, Apx 13; Doc. SCV – 37, A31].

NON-TRANSPARENT VIRGINIA POLICE REPORTS:

This Injustice is compounded by the fact that Virginia practices non-transparency concerning Virginia Police Reports. The Code of Virginia, §2.2-3706(B)(1) makes the disclosure of Virginia Police Reports to the PEOPLE and/or the Accused at the Discretion of the Police Custodian of Records [Doc. #2 – 48-49, Apx 12; Doc. SCV – 37, A31]. Allegations of Virginia Police Misconduct are met with non-transparency so that no Virginia Police Report can be reviewed by the PEOPLE and/or the Accused again making the *1971 Constitution of Virginia, Article I, Section 2* laughable (See Pages 11-12 above).

APPELLANT'S QUESTION TO THE FCCC:

Petitioner asked the Trial Court the following legal question [R97-98]: "Whether or not the *1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7* are unconstitutional because they violate the *U.S. Supremacy Clause* [D36 / R64-69, R91-99, R120; Doc. #2 – 31, 39-47, 48-49, Apx 8; Doc. SCV – 37, A(32, 97)]."

The 1971 Constitution of Virginia is a *racially-inspired* document based on White Supremacy which denies any person passing through or in Virginia his or her Federal Rights found in the U.S. Bill of Rights now without regard to race but which initially targeted African Americans' and/or Blacks' Federal Rights between 1902 to 1971 [Doc. #2 – 31, 16-59, 72-77, Apx 8, 16-59, 72-77; Doc. #11 – 29-31; Doc. SCV – 37, A32].

VIRGINIA HAS HISTORICALLY HAD WHITE SUPREMACY:

After the Confederacy lost the U.S. Civil War on 4/9/1865, Congress applied the **U.S. Guarantee Clause** (U.S. Constitution, Article IV, Section 4) against the 11 previously Confederate States to make them ratify new State Constitutions which agreed with **U.S. Amendment XV** where “white male” voters had to change to “male” voters (Women got suffrage through the 1920-ratified **U.S. Amendment XIX**) [R92; Doc. #2 – 40, 48-49, Apx 9; Doc. SCV – 37, A(32-33)]. An Act or Acts of Congress readmitted each of these 11 previously Confederate States back to representation in the Congress (*Hardeman v. Downer*, 39 Ga. 425, 443 (1869)) : TN (Act of the 39th Congress, Session I, Resolution 73, 7/24/1866); AR (Act of the 40th Congress, Session II, Chapter 69, 6/22/1868); NC, SC, LA, GA, AL, & FL (Act of the 40th Congress, Session II, Chapter 70, 6/25/1868); VA (Act of the 41st Congress, Session II, Chapters 10 & 12, 1/26/1870 & 2/1/1870); MS (Act of the 41st Congress, Session II, Chapter 19, 2/23/1870); TX (Act of the 41st Congress, Session II, Chapter 39, 3/30/1870); and GA for a 2nd time (Act of the 41st Congress, Session II, Chapter 299, 7/15/1870). The 1870 Constitution of Virginia, Article I, Section 3 ADOPTED a restatement of the **U.S. Supremacy Clause** within the State of Virginia Constitution like West Virginia had in 1863 making this 1870 Constitution of Virginia Non-Confederate [Doc. #2 – 40, 48-49, Apx 9-10; Doc. SCV – 37, A33].

According to the Two Reconstructions by Richard M. Valelly, Copyright 2004, between 1885 and 1908 the previously Confederate States re-disenfranchised the African-American male [R64-68, R92-93; Doc. #2 – 41, 48-49, Apx 14; Doc. SCV – 37, A34]. Southern African American males joined Lincoln’s Republican Party after 1865 [R94; Doc. #2 – 42, 48-49, Apx 14; Doc. SCV – 37, A34]. Hundreds of newspapers companies sprang up to educate the new Southern African American male voters and each of these companies fought for circulation most going out of business [R94; Doc. #2 – 42, 48-49, Apx 14; Doc. SCV – 37, A34]. There were many lynchings in the South [R94; Doc. #2 – 42, 48-49, Apx 14; Doc. SCV – 37, A34]. The Northern Republican Party worked with the growing Western Republican Party to elect National Republican Leaders but did not help the Southern Republican Party due to the chaos in the South [R64-69, R94; Doc. #2 – 42, 48-49, Apx 14; Doc. SCV – 37, A34]. Many previously Confederate States adopted Constitutions with Poll Taxes and Literacy Tests to prevent African-American males from voting including the 1902 Constitution of Virginia, Article II, Sections 18-23 & 38 (this 1902 Virginia Constitution like the 1964 Constitution of Virginia was not ratified by the PEOPLE) [R64-68, R93; Doc. #2 – 41, 43, 48-49, Apx 10, 14-16; Doc. SCV – 37, A34]. However, this 1902 Constitution disenfranchised in a third way by ABANDONING the 1870 Article I, Section 3 restatement of the **U.S. Supremacy Clause** [R64-69, R93; Doc. #2 – 41; Doc.

SCV – 37, A(34-35)] while ADOPTING the 1902 Constitution of Virginia, Article VI, Section 88 to become a Renewed Confederacy which empowered the 1902 to 1971 Supreme Court [of Appeals] of Virginia with the ability to interpret the U.S. Constitution with its U.S. Bill of Rights contrary to the ***U.S. Supremacy Clause*** [R93; Doc. #2 – 41, 48-49, Apx 13, 15; Doc. SCV – 37, A35]. While the intent of this Constitutional Section together with the newly-added Poll Taxes and Literacy Tests was designed to deprive the African-American and/or the Black male of any of his Federal Rights, 1902 Constitution of Virginia, Article VI, Section 88 was not restricted to any specified race [R64-68, R93; Doc. #2 – 41, 48-49, Apx 15; Doc. SCV – 37, A35].

On 2/12/1909, the NAACP was founded [R94; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A35]. On page 144 of The Two Reconstructions by Richard M. Valely [R64-69, R93-94; Doc. #2 – 42, 48-49, Apx 15; Doc. SCV – 37, A35]:

The Two Reconstructions by Richard M. Valely, P. 144 – ‘The national rate of lynchings dropped as the disenfranchisement process rolled to a finish. But as late as 1922 a lynching occurred, on average, every week. Lynchings indeed became legitimate popular entertainment for whites, with railroads running excursions to a ‘lynching bee,’ hotels advertising rooms with a good view, photographers printing postcards for spectators, children being let out of school, and body parts actually offered for sale. The North had its boardwalks; the South had its lynchings. Prominent national, state, and local politicians from the South proudly noted their direct involvement (See endnote 49 on page 289) [R64-69, R94; Doc. #2 – 42, 48-49, Apx 15; Doc. SCV – 37, A(35-36)].’

On 4/12/1945, Vice-President Harry S. Truman became the U.S. President after Franklin D. Roosevelt died in office [R94; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36]. President Truman’s first Presidential Election victory (49.6%) over Thomas E. Dewey (45.1%) in 1948 was attributed to African-American voters [R95; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36]. A majority of African-American’s now both men and women had transitioned from Lincoln’s Republican Party to the Democratic Party [Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36]. During President John F. Kennedy’s Presidency, Southern Racial Violence was countered with a large-scale voter registration project in 1962 [R64-69, R95; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36]. Poll Taxes and Literacy Tests in the States that had them were identified as counter-productive to Kennedy’s voter registration project [R64-69, R95; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36]. Therefore, the 1971 Constitution of Virginia abandoned Poll Taxes and

Literacy Tests [R95; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A36] but continued the 1971 to present Supreme Court of Virginia's empowerment to interpret the U.S. Constitution with its U.S. Bill of Rights contrary to the **U.S. Supremacy Clause** in *1971 Constitution of Virginia, Article VI, Sections 1 & 2* [R64-69, R95-98; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A(36-37)]. The 1971 Constitution of Virginia is **RACIALLY-INSPIRED** without specifying a race [R95; Doc. #2 – 43, 48-49, Apx 15; Doc. SCV – 37, A37]. All the Constitutions of Virginia in and after 1864 (this 1864 Virginia Constitution was also not ratified by the PEOPLE) empowered the Virginia General Assembly with choosing all Virginia State, County, and City Judges which is now *1971 Constitution of Virginia, Article VI, Section 7* [D36 / R96, R120; Doc. #2 – 39, 48-49, Apx 15; Doc. SCV – 37, A(37, 97)].

VIRGINIA JUDGES' CONFEDERATE OATH:

The Virginia Judge's CONFLICT OF INTEREST where Virginia's Confederate Police Government denies State and Federal Rights as Public Policy is additionally compounded by the fact that all Virginia State, County, and City Judges take an Oath to support this Confederate, *racially-inspired* 1971 Constitution of Virginia. All Virginia State, County, and City Judges' ALLEGIANCE is to the Government ***not the PEOPLE***. Code of Virginia, §16.1-69.17 requires Judges to take such an oath [R64-69, R96; Doc. #2 – 66; Doc. SCV – 37, A(37-38)]:

Code of Virginia, §49-1 (Form of General Oath Required of Officers) – “Every person before entering upon the discharge of any function as an officer of this Commonwealth shall take and subscribe the following oath: ‘I do solemnly swear (or affirm) that I will **support** the Constitution of the United States, and **the Constitution of the Commonwealth of Virginia**, and that I will faithfully and impartially discharge all the duties incumbent upon me as _____ according to the best of my ability, (so help me God) [R64-69, R96; Doc. #2 – 66; Doc. SCV – 37, A(37-38)].’”

PROSECUTOR COMMONWEALTH OF VIRGINIA (ARTICLE V, SECTION 15) AND PROSECUTOR COUNTY OF FAIRFAX (ARTICLE VII, SECTION 2) ARE BOTH CREATED FROM THE SAME VIRGINIA SOVEREIGN VIA THE CONSTITUTION OF VIRGINIA:

The Party **Prosecutor Commonwealth of Virginia** is overseen by the Attorney General of Virginia in the State of Virginia Government created by the 1971 Constitution of Virginia. The 1971 Constitution of Virginia creates the Virginia General Assembly as the Legislature of Virginia to make the “Code of Virginia.” The Party **Prosecutor County of Fairfax** is a Board Form of Local Government with a Fairfax County Board of Supervisors making the “Ordinances of Fairfax County.” The “Code of Virginia” is more authoritative than the “Ordinances of Fairfax County.” The Party **Prosecutor County of Fairfax** is overseen by the Fairfax [County] Commonwealth’s Attorney or the Fairfax County Attorney for the Commonwealth [Doc. SCV – 37, A43].

Starting with the 1971 Constitution of Virginia, Article V (“Executive”), Section 15 (“Attorney General”) creates Party **Prosecutor Commonwealth of Virginia** overseen by the Attorney General of Virginia and states [Doc. SCV – 37, A43]:

1971 Constitution of Virginia, Article V, Section 15 - “An Attorney General shall be elected by the qualified voters of the Commonwealth at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. No person shall be eligible for election or appointment to the office of Attorney General unless he is a citizen of the United States, has attained the age of thirty years, and has the qualifications required for a judge of a court of record. He shall perform such duties and receive such compensation as may be prescribed by law, which compensation shall neither be increased nor diminished during the period for which he shall have been elected. There shall be no limit on the terms of the Attorney General [Doc. SCV – 37, A44].”

The 1971 Constitution of Virginia, Article IV (“Legislature”), Section 1 (“Legislative power”) states [Doc. SCV – 37, A44]:

1971 Constitution of Virginia, Article IV, Section 1 - “The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates [Doc. SCV – 37, A44].”

The two Houses of the Virginia General Assembly make the laws of Virginia in the 1971 Constitution of Virginia, Article IV (“Legislature”), Section 11 (“Enactment of laws”) which states in relevant part [Doc. SCV – 37, A44]:

1971 Constitution of Virginia, Article IV, Section 11 - “No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence

of the other. No bill shall become law unless, prior to passage: (a) ...; (b) ...; (c) ...; and (d) upon its final passage a vote has been taken thereon in each house, ... [Doc. SCV – 37, A(44-45)]”

“Justia US Law” has a web site (law.justia.com) which defines “Code of Virginia” as [Doc. SCV – 37, A45]:

Code of Virginia - “The laws in the Code of Virginia are passed by the Virginia General Assembly, which consists of the Virginia House of Delegates and the Virginia Senate. The House of Delegates contains 100 members, while the Senate contains 40 members. The members of the House of Delegates serve two-year terms, while the members of the Senate serve four-year terms. The members of each chamber are not subject to any term limits [Doc. SCV – 37, A45].”

The 1971 Constitution of Virginia, Article VII (“Local Government”), Section 2 (“Organization and government”) in relevant part states [Doc. SCV – 37, A45]:

1971 Constitution of Virginia, Article VII, Section 2 - “The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments. The General Assembly may also provide by general law optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters voting on any such plan in any such county, city, or town. ... [Doc. SCV – 37, A45]”

Then the “Code of Virginia,” Title 15.2 (Counties, Cities, and Towns) creates Party ***Prosecutor County of Fairfax*** overseen by the ***Fairfax County Attorney for the Commonwealth*** and states [Doc. SCV – 37, A46]:

Code of Virginia, Title 15.2, §301(A) (Counties, Cities, and Towns; Petition or resolution asking for referendum; notice; conduct of election): “A county may adopt one of the optional forms of government provided for in Chapters 4 through 8 of this title only after approval by voter referendum. The referendum shall be initiated by (i) a petition filed with the circuit court for the county signed by at least ten percent of the voters of the county, asking that a referendum be held on the question of adopting one of the forms of government or (ii) a resolution passed by the board of supervisors and filed with the circuit court asking for a referendum. The petition or resolution shall specify which of the forms of government provided for in Chapters 4

through 8 is to be placed on the ballot for consideration. Only one form may be placed on the ballot for consideration [Doc. SCV – 37, A46].”

Code of Virginia, Title 15.2, §401 (Counties, Cities, and Towns; Adoption of county board form): “Any county may adopt the county board form of government in accordance with the provisions of Chapter 3 (§ 15.2-300 et seq.) of this title [Doc. SCV – 37, A46].”

Code of Virginia, Title 15.2, §402(A) (Counties, Cities, and Towns; Board of county supervisors; election; terms; chairman; vacancies): “The powers and duties of the county as a body politic and corporate shall be vested in a board of county supervisors (“the board”) [Doc. SCV – 37, A46].”

Code of Virginia, Title 15.2, §408 (Counties, Cities, and Towns;): “A. The *attorney for the Commonwealth*, the county clerk, the sheriff, the commissioner of the revenue and the treasurer of the county in office immediately prior to the day upon which the county board form becomes effective in the county shall continue, unless sooner removed, as attorney for the Commonwealth, county clerk, sheriff, commissioner of the revenue and treasurer, respectively, of the county until the expiration of their respective terms of office and until their successors have qualified. Thereafter, such officers shall be elected in such manner and for such terms as provided by general law.

B. When any vacancy occurs in any office named in subsection A, the vacancy shall be filled as provided by general law.

C. Each officer named in subsection A of this section may appoint such deputies, assistants and employees as he may require in the exercise of the powers conferred and in the performance of the duties imposed upon him by law.

D. Each officer, except the attorney for the Commonwealth, named in subsection A shall, except as otherwise provided in this chapter, exercise all the powers conferred and perform all the duties imposed upon such officer by general law. He shall be accountable to the board in all matters affecting the county and shall perform such duties, not inconsistent with his office, as the board directs [Doc. SCV – 37, A47].”

Finally, the Fairfax County Courts (FCGDC and FCCC) are created by the Virginia General Assembly in the 1971 Constitution of Virginia, Article VI

(“Judiciary”), Section 1 (“Judicial power; jurisdiction”) which in relevant part states [Doc. SCV – 37, A47]:

1971 Constitution of Virginia, Article VI, Section 1 - “The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record. [Doc. SCV – 37, A48]”

U.S. Amendment XIV establishes that there are two Sovereigns for every citizen which includes Petitioner and the above is the method by which the two Parties who unconstitutionally prosecuted Petitioner violating **U.S. Amendments V & XIV** were created out of the same Virginia Sovereign. However (by *Res Judicata* involving Petitioner), **Prosecutor Commonwealth of Virginia** and **Prosecutor County of Fairfax** are two separate, distinct, and not substitutable Prosecutorial Authorities [Doc #2 – 48-49, Apx 60-71; Doc. #5 – 8, Apx 79; Doc. #7 – 3, 6; Doc. #11 – 23; Doc. SCV – 37, A48]:

U.S. 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 [Doc. SCV – 37, A48].”

REASONS FOR GRANTING THE WRIT

Petitioner adopts and incorporates all previous Petition Sections herein including Appendix Pages **B1-3, C1-13, & D1-54** as if these previous Petition Sections were fully rewritten verbatim hereat.

Relevant Federal Case Law:

In *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967), SCOTUS decided that the State of North Carolina cannot “nolle prosequi with leave” a charge indefinitely for a possible future trial. It violated Peter Klopfer’s right to a speedy trial. The Due Process Clause of **U.S. Amendment XIV** made

U.S. Amendment VI applicable to all the States. (There is an error in Petitioner's COAV 5/25/2022 "Opening Brief of Appellant" on page "54 of 74" where Petitioner erroneously stated that Klopfer (supra) overturned Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937) which leads into the next paragraphs):

In Palko (supra), Frank Palko was tried for murder in the first degree in Fairfield County, Connecticut but a jury found him guilty of murder in the second degree. The State of Connecticut appealed and won a new trial in the Connecticut Supreme Court of Errors. Upon retrial, Palko argued he was being subjected to Double Jeopardy in violation of **U.S. Amendment XIV**. He was subsequently convicted of murder in the first degree and sentenced to death. The Connecticut Supreme Court of Errors and SCOTUS affirmed the conviction.

In Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), John Dalmer Benton was tried for burglary and larceny by grand and petit juries who were required to swear their belief in the existence of God. He was acquitted of larceny, found guilty of burglary, and sentenced to ten years. He filed a notice of appeal in the Court of Appeals of Maryland shortly before that Court struck down a section of the State Constitution requiring jurors to swear their belief in the existence of God. Benton was given the option of re-indictment and retrial. This Benton chose. At the second trial, he objected to the larceny count based on Double Jeopardy but was convicted of both burglary and larceny. He was sentenced to 15 years for burglary and five years for larceny with the sentences concurrent. The SCOTUS heard Oral Arguments but because of the "concurrent sentence doctrine" SCOTUS had to add an issue for a second Oral Argument. It was decided that the Double Jeopardy Clause of the **Fifth Amendment** is applicable to the States through the **Fourteenth Amendment**. Palko was overruled and Benton's larceny conviction was reversed:

"[395 U.S. 794] ... Only last Term, we found that the right to trial by jury in criminal cases was 'fundamental to the American scheme of justice,' *Duncan v. Louisiana*, 391 U.S. 145, 391 U.S. 149 (1968), and held the Sixth Amendment right to a jury trial was applicable to the States through the Fourteenth Amendment. [Footnote 13] For the same reason, we today find that the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment. Insofar as it is inconsistent with this holding, *Palko v. Connecticut* is overruled."

"[395 U.S. 795] The fundamental nature of the guarantee against double jeopardy can hardly be doubted. Its origins can be traced to Greek and

Roman times, and it became established in the common law of England long before this Nation's Independence. [Footnote 14] *See Bartkus v. Illinois*, 359 U.S. 121, 359 U.S. 151-155 (1959) (BLACK, J., dissenting). As with many other elements of the common law, it was carried into the jurisprudence of this Country through the medium of Blackstone, who codified the doctrine in his Commentaries. '[T]he plea of autrefois acquit, or a formal acquittal,' he wrote,

‘is grounded on the universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offence. [Footnote 15]’

In *Waller v. Florida*, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970), Joseph Waller, Jr. removed a canvas mural from the wall inside the City Hall of Saint Petersburg, Florida and carried the mural through the city streets causing it to be damaged. He was charged with destruction of city property and disorderly breach of the peace in Saint Petersburg Municipal Court. Saint Petersburg Municipal Court convicted him of these charges and sentenced him to 180 days in jail. Based on the “same transactions of occurrences,” Waller was charged with grand larceny by the State of Florida. Waller’s Petition for Writ of Prohibition to the Supreme Court of Florida to prevent the second trial based on Double Jeopardy was denied. Waller was tried and convicted of the felony Grand Larceny and sentenced to six months to five years less 170 days previously served. The District Court of Appeal (Second District) affirmed the second conviction acknowledging that the charge on which the state court action rested “was based on the same acts of the appellant as were involved in the violation of the two city ordinances.” The District Court of Appeal held there would be no bar to the prosecution in the state court “even if a person has been tried in a municipal court for the identical offense with which he is charged in the state court.” Waller’s Petition for Writ of Certiorari filed in the Supreme Court of Florida was denied. The SCOTUS granted certiorari based on the District Courts of Appeals’ ruling, “even if a person has been tried in a municipal court for the identical offense with which he is charged in the state court.”

“Political subdivisions of State counties, cities, or whatever – never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state government functions.” *Reynolds v. Sims*, 377 U.S. 533, 575, 84 S.Ct. 1362, 1388 (1964).

The Constitution of Florida, Article VIII, Section 2 (1968 revision) stated: “(a) *Establishment*. Municipalities may be established or abolished and their charters amended pursuant to general or special law ... (b) *Powers*. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services. ...” The Constitution of Florida, Article V, Section 1 (1885 which was not changed in the 1968 revision) stated: “[T]he judicial power of the State of Florida is vested in a supreme court ... and such other courts, *including municipal courts* ... as the legislature may from time to time ordain and establish.” The organic law which created the Saint Petersburg Municipal Court where Waller was tried and convicted on the first two charges is the same organic law that created the state court where Waller was tried and convicted of the second felony charge which “was based on the same acts of the appellant as were involved in the violation of the two city ordinances.”

The State of Florida and its municipalities are not separate sovereign entities each entitled to impose punishment for the same alleged crime, as the judicial power of the municipal courts and the state courts of general jurisdiction springs from the same organic law. The SCOTUS vacated and remanded to the District Court of Appeals.

Sovereign Virginia Subjected Petitioner to Double Jeopardy:

U.S. Amendment XIV clarifies that Petitioner was under two Sovereigns when he was tried in the FCGDC on 9/21/2021 and the FCCC on 11/4/2021, namely Virginia and the United States: “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. ... [B24-25].”

As in *Waller* where the Constitution of Florida, Article VIII, Section 2 established the municipalities and the Constitution of Florida, Article V, Section 1 created the Municipal Courts, both the County of Fairfax Commonwealth’s Attorney (**Prosecutor County of Fairfax**) and Fairfax County Courts (FCGDC & FCCC) are created out of the 1971 Constitution of Virginia which also creates the Attorney General of Virginia (**Prosecutor Commonwealth of Virginia**). **Prosecutor County of Fairfax** is created from the 1971 Constitution of Virginia, Article IV (Sections 1 & 11) and Article VII (Section 2) with Code of Virginia, Title 15.2 (Sections 301(A), 401, 402(A), & 408). The Fairfax County Courts (**FCGDC & FCCC**) are created from the 1971 Constitution of Virginia, Article VI (Section 1).

Prosecutor Commonwealth of Virginia is created from the 1971 Constitution of Virginia, Article V (Section 15).

Therefore, when Petitioner was tried in the FCGDC by **Prosecutor County of Fairfax** on 9/21/2021 for violation of the Code of Virginia §46.2-841 adopted into Fairfax County by Ordinance §82-1-6 then tried in the FCCC by **Prosecutor Commonwealth of Virginia** on 11/4/2021 for violation of the same Code of Virginia §46.2-841, these two trials were for the same charge by the same Sovereign being Petitioner's Virginia Sovereign. But by *Res Judicata* [C1-13] these two Prosecutors were not the same but were separate, distinct, and not substitutable. Virginia violated Petitioner's U.S. Amendment V & XIV Right, "...; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb [by the same Sovereign]; ..." What is *Res Judicata* between the Petitioner, **Prosecutor County of Fairfax**, and **Prosecutor Commonwealth of Virginia** is precluded from being relitigated.

Thirteen Comments:

(1) Having clarified that Petitioner's U.S. Amendment V & XIV Right was violated by **Prosecutor Commonwealth of Virginia** on 11/4/2021 in the FCCC because Petitioner had already been tried by **Prosecutor County of Fairfax** on 9/21/2021 in the FCGDC, how respectful of the **U.S. Supremacy Clause** was the COAV when it remanded back for *nunc pro tunc* FCCC Orders which would have nullified Petitioner's already violated Federal Right? Clearly, the Judges of the COAV do not respect that they are "bound" by the **U.S. Supremacy Clause** where Petitioner's Federal Rights are concerned which is the hallmark of a Renewed Confederacy.

(2) For the COAV to make such a small issue as the Assignments of Error being in Question Form not Affirmative Statement Form where RSCV Rule 5A:20(c) is not clear and then for the COAV to totally ignore the clear Virginia violation of U.S. Amendment V & XIV (the Supreme Law of the Land) having subjected Petitioner to Double Jeopardy is outrageous! This again exemplifies "bound" COAV Judges not respecting the **U.S. Supremacy Clause**. In *Ableman v. Booth*, 62 U.S. 506 (1859) and *Cooper v. Aaron*, 358 U.S. 1 (1958), the Supreme Court of Wisconsin and the United States District Court for the Eastern District of Arkansas (respectively) failed to appreciate the supreme nature of the Supreme Law of the Land decided by SCOTUS. The decisions of these two lower Courts were reversed by the SCOTUS (a Federal Court and the highest Federal Court). The COAV

should likewise be reversed for using unconstitutional reasoning in their 3/28/2023 “Memorandum Opinion Per Curiam.” RSCV Rule 5A:20(c) is not the Supreme Law of the Land like the ***U.S. Supremacy Clause*** and ***U.S. Amendments V & XIV*** are even if COAV Assignments of Error cannot be in Question Form but must be in Affirmative Statement Form. However, this fact is not clear from a Good Faith and Fair reading of RSCV Rule 5A:20(c). Virginia is a Renewed Confederacy and Confederacies do not enforce State or Federal Rights, period. A great example that the ***U.S. Supremacy Clause*** is still respected in the United States would be the right of same-sex couples to marry in the United States after *Obergefell v. Hodges*, 576 U.S. 644 (2015) despite pockets of ensuing resistance that received media coverage even if SCOTUS Justices Roberts, Scalia, Thomas, Alito dissented to *Obergefell*.

(3) The fact that only one (on 8/9/2022) of eight COAV Orders was captioned *Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax*, Record No. 1193-21-4 where Petitioner filed a 11/4/2021 “FCCC to COAV Notice of Appeal ...” so captioned is indicative that the COAV was and is ***DELIBERATELY DEFYING*** the ***U.S. Supremacy Clause***. These COAV Judges need muskets with bayonets and need to be relocated to await the next Union Offensive in Chancellorsville, Virginia.

(4) The COAV and SCV defiance to honor the supreme nature of Petitioner’s ***U.S. Amendment V & XIV*** Right and both: 1) compel *Appellee County of Fairfax* to appear in the COAV and SCV; and 2) compel *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* to file responsive “Briefs of Appellee” in the COAV and “Briefs in Opposition” in the SCV needs to be recognized by the SCOTUS. The SCV denial of Petitioner’s 1/24/2023 “Petition for Writ of Certiorari to the COAV” without the benefit of *Respondent Commonwealth of Virginia’s* or *Respondent County of Fairfax’s* Responses had the same effect. In fact, by treating Petitioner’s 1/24/2023 “Petition for Writ of Certiorari to the COAV” as a “Motion for Certification,” the SCV did not give Petitioner’s Petition a SCV Record Number further impeding the Appellate Jurisdiction of the SCOTUS. This reveals how the SCV stands on the issue of enforcing Petitioner’s ***U.S. Amendment V & XIV*** Right giving justification for the need of a “SCOTUS Writ of Certiorari to the SCV.”

(5) There is a very good reason why the SCOTUS should make ***U.S. Amendment X*** applicable to the States. The Appellate Judges of a ROGUE State like Virginia are using POWERS they do not possess to hurt the Public. These POWERS are prohibited to State Judges by the ***U.S. Supremacy Clause***. These

Appellate Judges in Virginia have no boundaries of their misuse of POWER. Of course, the COAV should not have remanded to the FCCC for *nunc pro tunc* Orders that would nullify a violation of Petitioner's **U.S. Amendment V & XIV** Right which is the Supreme Law of the Land! Of course, the *Appellee County of Fairfax* should have been compelled to appear in the COAV! Of course, both *Appellee Commonwealth of Virginia* and *Appellee County of Fairfax* should have been compelled to file "Briefs of Appellee" in the COAV and Briefs in Opposition" in the SCV! The COAV & SCV Judges are not neutral when they protect State and County Governmental Prosecutors from being transparent and simply explaining their actions to a Citizen of these two Governments. This leads into COMPETENCE.

(6) With COMPETENCE defined using (Independence, Impartiality, Acting with Propriety, Fairness, and Acting with Integrity), what grade can a Virginia Citizen expect a Virginia State, County, or City Judge to receive? The Virginia Citizen or a person simply passing through Virginias will not have State or Federal Rights enforced in Virginia which is not Fair and shows Partiality of the Virginia Judge to the Governmental Prosecutors. These Virginia Judges cannot have Integrity where it is defined as the quality of being honest and having strong moral principles; moral uprightness. All Virginia State, County, and City Judges are INCOMPETENT!

(7) Here again is a very good reason why the SCOTUS should make **U.S. Amendment IX** applicable to the States because Judges need to have ALLEGIANCE to the PEOPLE, not the Government. The INCOMPETENCE of all Virginia State, County, and City Judges who take an Oath to Support the *racially-inspired* Constitution of Virginia and who are selected by the Virginia General Assembly (Government) make them partial to Governmental Prosecutors. In accordance with *Duncan v. McCall*, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891), Petitioner has an Unenumerated Right to choose his own Virginia Judges for Governmental Administration. And Petitioner never had any opportunity to choose these COAV or SCV Judges. Virginia State, County, and City Judges personify a violation of Petitioner's **U.S. Amendment IX Right** as found in *Duncan* (supra). Virginia Judges ignore Petitioner's *1971 Constitution of Virginia, Article I, Section 2* Right stating, "That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them."

(8) Clearly, the FCCC, COAV, and SCV erred by not enforcing Petitioner's invoked **U.S. Amendment V, VI, & XIV** Rights. Petitioner's **U.S. Amendment VI**

& XIV Right about a Speedy Trial is a matter of Judicial Discretion. However, this is not the case in Virginia. In Virginia, invoked State and Federal Rights are denied as a Public Policy. It is not FAIR to Virginia Citizens or PEOPLE passing through Virginia to lead them on into believing that Rights written in the **1971 Constitution of Virginia, Article I** and/or the U.S. Bill of Rights are enforceable in Virginia when all State and Federal Rights are always denied as Public Policy in Virginia.

(9) The Citizens of Virginia should be able to choose their own State, County, and City Judges according to *Duncan v. McCall*, 139 U.S. 449, 461, 11 S.Ct. 573, 577 (1891) contrary to the **Constitution of Virginia, Article VI, Section 7** so that the ALLEGIANCE of these Judges is to the PEOPLE and not to the Government. If the **U.S. Supremacy Clause** binds the Judges in every State to respect the Supreme Law of the Land, **U.S. Amendment X** prohibits State Judges the POWER to impede the enforcement of the Supreme Law of the Land. **U.S. Amendment X** echoes the **U.S. Supremacy Clause** and **prohibits** States Judges the POWER to impede the Appellate Jurisdiction of the SCOTUS as these COAV & SCV Judges have done herein. All Virginia State, County, and City Judges are INCOMPETENT!

(10) Supreme Court of Virginia Judges do not have the POWER to interpret the Constitution of the United State nor the U.S. Bill of Rights as allowed in the **1971 Constitution of Virginia, Article VI, Sections 1 & 2**. The PEOPLE and **not** the Virginia General Assembly need to choose all Virginia State, County, and City Judges contrary to the **1971 Constitution of Virginia, Article VI, Section 7** so the ALLEGIANCE of Virginia Judges is to the PEOPLE not to Government. Virginia needs to have a Virginia Constitutional Convention [Please study D36] to rewrite the Unconstitutional **1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7 adding a Restatement of the U.S. Supremacy Clause to the Constitution of Virginia** and to force the production of Virginia Police Reports on the demand of Citizens and/or of the Accused. In this way, the Virginia Confederate Police Government will be abolished as the U.S. Congress intended when it made Acts of Congress between 1866 and 1870 in accordance with the **U.S. Guarantee Clause** (U.S. Constitution, Article IV, Section 4).

(11) The Forefathers who created the U.S. Bill of Rights considered all ten of the **U.S. Amendments** in the U.S. Bill of Rights very important. Petitioner understands why **U.S. Amendments IX & X** are in the U.S. Bill of Rights and has explained this above. The **Incorporation Doctrine** should to be expanded to include **U.S. Amendments IX & X** so the Judges of all States have ALLEGIANCE

to the PEOPLE and State Judges are forced to respect the ***U.S. Supremacy Clause***. Either U.S. Amendment XIV or the ***U.S. Privileges and Immunity Clause*** (Constitution of the United States, Article IV, Section 2) is the way to make U.S. Amendments IX and/or X applicable to the States.

(12) The concept of an appeal is for two opposing sides to present their arguments to Appellate Judges who decides if the lower Court(s) made any errors then for the Appellate Judges to correct errors that have occurred in the lower Court(s). In Gregory Shawn Mercer v. Commonwealth of Virginia & County of Fairfax, COAV Record No. 1193-21-4, Petitioner presented alleged FCGDC & FCCC errors from County of Fairfax v. Gregory Shawn Mercer, FCGDC Case No. GT20027665-00 which unconstitutionally became Commonwealth of Virginia v. Gregory Shawn Mercer, FCCC Case No. MI-2021-776. ***Appellee County of Fairfax*** did not appear in the COAV nor file a “Brief of Appellee.” Appellee Commonwealth of Virginia did appear in the COAV but did not present its side of the argument by filing a “Brief of Appellee.” This was repeated in the SCV where ***Appellee County of Fairfax*** failed to appear and like ***Appellee Commonwealth of Virginia*** failed to file “Briefs in Opposition.” These are Petitioner’s Governments where the ***Constitution of Virginia, Article I, Section 2*** states, “That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.” Petitioner was unopposed in the COAV ***AND LOST!*** Petitioner alleges Virginia and both the COAV & SCV herein specifically disrespects the ***U.S. Supremacy Clause***. The Originalists on the SCOTUS ought to be interested in this case because one State (Virginia) is unequal and clearly disrespects the ***U.S. Supremacy Clause*** while the other 49 States apparently do respect the ***U.S. Supremacy Clause*** (South Carolina’s General Assembly chooses all the South Carolina State, County, and City Judges – Petitioner is unfamiliar with South Carolina). The Liberals on the SCOTUS ought to be interested in this case because it involves unreasonable denial of Federal Rights to anyone in Virginia. In any event, Virginia has decided this case about Double Jeopardy involving a County in a State and that State differently than this SCOTUS decided about Florida in Waller v. Florida, 397 U.S. 387, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970) so SCOTUS Rule 10(b) applies.

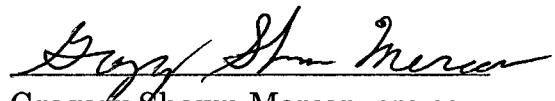
(13) Virginia is a ROGUE State that needs to respect the ***U.S. Supremacy Clause*** equally to the other 49 States. Virginia needs to have a Virginia Constitutional Convention to rewrite the Unconstitutional ***1971 Constitution of Virginia, Article VI, Sections 1, 2, & 7*** because this SCOTUS creates Opinions inside a building stating boldly “Equal Justice Under Law.”

CONCLUSION

Petitioner petitions this SCOTUS to issue a Writ of Certiorari to the SCV. Virginia needs to respect the ***U.S. Supremacy Clause*** which it does not currently and all Virginia State, County, and City Judges need to be chosen by the Virginia Citizens so that these Virginia Judges have ALLEGIANCE to the PEOPLE and not a ***racially-inspired*** Constitution of Virginia!

28 U.S.C. §1746 DECLARATIONS WITH SIGNATURES

I DECLARE under penalty of perjury that the foregoing “Petition for Writ of Certiorari to the SCV” is within 40 pages (SCOTUS Rule 33.2(b)) and is true and correct. Executed on May 2, 2024.



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SCOTUS RULE 29 CERTIFICATE OF SERVICE (28 U.S.C. §2403(b) MAY APPLY)

I CERTIFY that I mailed (served in the case of the Attorney General of Virginia Jason Miyares) certified true copies of the foregoing “Petition for Writ of Mandamus to the SCV / SCOTUS Rule 29 Certificate of Service” to counsel for: 1) the Commonwealth of Virginia being Katherine Q. Adelfio; 2) the County of Fairfax being Fairfax Commonwealth’s Attorney Steve Descano; and 3) the Attorney General of Virginia being Jason Miyares “because 28 U.S.C. §2403(b) may apply” at the following addresses:

Katherine Q. Adelfio (VSB No. 77214)
Assistant Attorney General
Office of the Attorney General