No. 24-5839

In the Supreme Court of the United States

JBG SMITH PROPERTIES, LP FIRST RESIDENCES,
PLAINTIFF RESPONDENT

v.

JORDAN POWELL,
PETITIONER

v.

UNITED STATES SMALL BUSINESS ADMINISTRATION,
THIRD PARTY DEFENDANT RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

JORDAN POWELL
1263 1ST STREET, SE, 523
WASHINGTON, D.C. 20003
(202) 503-5284
JTTP@PM.ME

QUESTION PRESENTED

The Civil Rights Act of April 9, 1866, was reenacted on May 31, 1870. The 1866 Act was enacted by Congress using power established by the Thirteenth Amendment of the United States Constitution. The reenactment exercised the powers of Congress established by the Thirteenth and Fourteenth Amendments. Section One of the reenacted 1866 Act and Section Sixteen of the 1870 Act are the current bases for the United States Code Title 42 Section 1981 of Civil Rights Chapter 21. Pursuant to the United States Code Title 28 Section 1443, Subpart 1, of Removal Chapter 89, cases with civil rights matters are removable to United States District Courts when a defendant's civil rights have been denied or are unenforceable *in* State or Territorial courts or *within* the United States. Pursuant to Subsection 1447(d) of the removal chapter, appellate review of a United States District Court remand order for lack of subject matter jurisdiction is limited to matters removed pursuant to Sections 1442 or 1443. The question presented is as follows:

Whether the civil rights removal statute 28 U.S.C. Section 1443 permits removal remand review according to the text thereof where Subsection 1447(d) doctrine limits removal remand review of civil rights matters to cases removed regarding racial equality.

RELATED PROCEEDINGS

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA:

JBG Residential Management, Inc. TA F1rst Residences v. Jordan Powell, 2022-LTB-008590 (March 10, 2023) (dismissed) (continuance moot)

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, 2023-LTB-007524 (July 31, 2024) (status hearing rescheduled to October 25, 2024)

UNITED STATES DISTRICT COURT (D.D.C.):

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, Civ. No. 23-3663 (December 14, 2023) (remand order)

Jordan Powell v. United States Small Business Administration, Civ. No. 24-207 (April 5, 2024)

Jordan Powell v. United States Small Business Administration, Civ. No. 24-207 (May 8, 2024) (order on motion for reconsideration)

UNITED STATES COURT OF APPEALS (D.C. CIR.):

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, No. 24-5023 (June 5, 2024)

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, No. 24-5023 (July 29, 2024) (order on petition for rehearing and motion for a stay)

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, No. 24-5023 (July 29, 2024) (order on petition for rehearing en banc)

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, No. 24-5167 (October 2, 2024)

UNITED STATES SUPREME COURT:

JBG Smith Properties LP, First Residences v. Jordan Powell v. United States Small Business Administration, No. 24A-107 (August 5, 2024) (order on application for a stay) (order on resubmitted application for a stay with updates) (October 7, 2024).

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JUDGMENT AND ORDERS BELOW

The judgment and orders of the court of appeals (App., *infra*, 1a-2a, 5a-6a) in No. 24-5023 are not reported. The order of the district court (App., *infra*, 7a-9a) in 23-cv-3663 is not reported.

JURISDICTION

The judgment of the court of appeals was June 5, 2024. The petition for rehearing and rehearing en banc was denied on June 29, 2024. This petition for certiorari is made timely under Rule 13.3. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code Title 28 Section 1443 provides:

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

United States Code Title 28 Subsection 1447(d) provides:

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

STATEMENT OF THE CASE

This case presents a fundamental question of national importance because every year people nationwide are denied or cannot enforce their civil rights in State courts but are exempted from the protection seen in the clear text of the civil rights removal statute, which is also found reflected in the original statutes and notes as the intent and full purpose of Congress. Currently, removal pursuant to 28 U.S.C. 1443 under §1447(d) doctrine limits remand review to racial equality matters. However, not only does Section 1443's text speak to civil rights removal expansively but a fair original statutory interpretation does so as well. In an opinion by Judge Quattlebaum in 2021, the Fourth Circuit agreed Section 1443's text is broader than the doctrine allows but that reconsideration is a matter for the Supreme Court.

Since 1966, *Georgia v. Rachel*, 384 U.S. 780 has largely defined Section 1443. There, the Court reviewed Section 1443's origins in the Civil Rights Act of 1866 to interpret its text. Importantly presented here is an acknowledgment consistent with recent scholarship and evident through circuit opinion where original statutory language identifies reasoning for pivotal statutory interpretation. For instance, a Fifth Circuit concurrence by Judge Willet in 2023 recognizes outcome-determinative language as missing from a reviser's codification (in *nonpositive law*[1] Title 42) regarding the Civil Rights Act of 1871, however, he notes the question as one of Supreme Court jurisprudence.

In addition to statutory references in the Civil Rights Act of 1866 and the Revised Statutes of 1874, Congress sought to be doubly clear by citing cases interpreting those references where the holdings prescribe precisely how they wanted those statutes interpreted. For Section 1443 (in *positive law*[2] Title 28), this Court's review accordingly could change much for many in a way that not only restores the full purpose of Congress but also reveals their wisdom through added efficiency intended for the judiciary by statute.

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1 See NEVERS, SHAWN G. AND KRISHNASWAMI, JULIE GRAVES, THE SHADOW CODE: STATUTORY NOTES IN THE UNITED STATES CODE, 112 LAW LIBRARY JOURNAL 213 (2020) at 217 (""Positive law," ... means that a title of the Code has itself been enacted as a statute and is legal evidence of the law. Nonpositive law titles, on the other hand, are merely compilations of statutes and are only prima facie evidence of the law.")
2 *Id.*

Petitioner in this case is a tenant defendant and business owner with standing as a third-party plaintiff in an APA matter within the zone of interests Congress sought to protect; respondents are the SBA which Congress charged with the duty of loaning economically injured businesses funds to cover expenses including rent where Petitioner signed a loan agreement as an officer of a Delaware corporation with SBA in the State of Maryland, and First Residences is a D.C. residential landlord. First Residences filed this case in Superior Court twice; initially having notice of the SBA claims through correspondence with Petitioner before the initial suit, and second, having those claims made of record in the first suit, and subject to judicial notice.

Petitioner removed the case by asserting exclusive jurisdiction in federal court here (particularly in D.C.) over SBA, a required party, thereby effectively stating the removal reason being an inability to enforce the right to join SBA in the superior court case where, like several States, joinder is a civil right here by law. See 84 Stat. 487, Pub. L. 91-358; D.C. Code § 11–946; title I, § 111; Super. Ct. Civ. R. 19, 20. Therefore, provided Petitioner's notice to First Residences of the SBA claims beforehand then made of record in superior court before the second suit, a federal question concerning SBA also necessarily arose in their second complaint because SBA gave rise to the cause of action and was, therefore, a necessary party therein. Removal was made pursuant to 28 U.S.C. 1443 according to the text thereof, particularly by reason of the inability to enforce an equal civil right in local judicial proceedings. Since the superior court rules require assignment to the same judge upon refiling dismissed disputes; whether intentionally or not, First Residences (with removal intent of notice) artfully pleaded their second complaint by using a different entity which, inadvertently or not, disguised required joinder of the completely preempted SBA matter on the face of their second complaint.

The district court remanded the case and the circuit court dismissed the appeal on the judgment that removal was not pursuant to Section 1442 or 1443. SBA failed to appear at a superior court hearing upon remand despite notice from the superior court including a warning of default; another clear sign no judicial power over SBA exists there. The district court's remand order under Subsection 1447(c) and the

appellate court's dismissal under §1447(d) doctrine concerns civil rights that Petitioner sought to enforce and that Congress sought to protect. Unfortunately, the language revealing their original statutory intent has long been overlooked. The essential statutory text and notes overlooked here are how Congress intended to protect these civil rights that the Thirteenth and Fourteenth Amendments empowered them to secure. Moreover, 20th-century codifications made no meaningful changes to their original intent. Furthermore, the Court may wish to call for a response from the Solicitor General, especially regarding the whole text canon concerning §1447(d) where Petitioner would contend that canon applies to Removal Chapter 89 and not to the Civil Rights Act of 1964 here because Section 901 of the 64' Act quotes the text to be inserted into Chapter 89 for interpretation there with Section 1443.

Accordingly, this is an ideal case for resolving an important and frequently recurring federal question concerning the reasoning and workability of a precedent where some circuit courts have recognized removal remand review doctrine as a clear departure from the text of Section 1443. The petition for a writ of certiorari should be granted.

A. BACKGROUND

Diversity removal from state court to federal court began with the Judiciary Act of 1789. See ch. 20, §12, 1 Stat. 79-80. Certain habeas and officer removal during the Civil War began with the Habeas Act of 1863. See ch. 81, §5, 12 Stat. 756-757. In 1865, the Bureau for the Relief of Freedmen and Refugees (FRB) Act included land awards to displaced citizens of every race and their protection. See ch. 90, §4, 13 Stat. 508-509. The Civil Rights Act of 1866 (April 9th), cites the 1865 FRB Act and provides removal for any act done by virtue of these Acts, by any defendant in any case, and derived procedure from the 1863 Habeas Act and its May 11, 1866 amendment thereafter. See ch. 31, §3, 14 Stat. 27; also ch. 80, §3, §4, §5, 14 Stat. 46.

The July 27, 1866 Act further defined terms and procedure for the right of removal to U.S. circuit court in State civil suit prejudice or local influence cases (i.e. the diversity of citizenship of civil rights cases), as amended March 2, 1867. See ch. 288, 14 Stat. 306; and 14 Stat. 558; cf. *In re Pennsylvania Company*, 137 U.S. 451, 456 (1890) ("act of

1867, which first gave the right of removal for cause of prejudice and local influence"). The Civil Rights Act of 1866's reenactment on May 31, 1870, expanded the civil rights of citizens of the United States and extended them to "all persons within the jurisdiction of the United States." See ch. 114, §16, §18, 16 Stat. 144. The Revised Statutes of 1874 consolidated this using statutory notes, and showed circuit and district courts both had original removal jurisdiction. See Rev. Stat. §641; also 14 Stat. 27. Jurisdictional provisions from §3 of the Civil Rights Act of 1866 were written into §563(12) and §629(16), although, U.S. district cases could be remitted to U.S. circuit courts with concurrent jurisdiction at the time. See Rev. Stat. §563, §629; cf. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 630 fn. 10 (1979). Meanwhile, removal remand review was not limited to racial equality matters. See *Barclay v. Levee Commissioners*, 1 Woods, 254 (1872) (diversity of citizenship removal from prejudice or local influence by the plaintiff) affd., 98 U.S. 258 (1876); and *Texas v. Gaines*, 2 Woods, 342, Circuit Court, W. D. Texas (1874) (the Civil Rights Act of 1866 "is intended to protect against legal disabilities and legal impediments"); see *Barclay* and *Gaines* cited in Rev. Stat. §641 notes (1874).

Furthermore, regarding remand review, the 1863 Habeas Act as referenced in the Civil Rights Act (1866) established Supreme Court review by writ of error. See ch. 81, §6, 12 Stat. 757. The March 3, 1875 Act, refined complete diversity jurisdiction removal procedure terms and permitted Supreme Court review by writ of error[3] or appeal. See ch. 137, 18 Stat. 470-473. The 1887 Act amended terms ($2,000 min.) and procedure then disallowing removal remand review of any diversity of citizenship matters of complete diversity (those on par terms with original jurisdiction) and diversity removals from prejudice or local influence; however, with a savings clause including remand review for other civil rights removal cases. See ch. 373, §1 (§2 int.), §5, 24 Stat. 553, 555. The 1888 correction thereof also includes a civil rights case savings clause (Rev. Stat. 641 etc.). See ch. 866, §5, 25 Stat. 436; also *Tennessee v. Union & Planters' Bank*, 152 U.S. 454, 463 (1894) ("nothing in this act is to

3 See *In Re Neagle*, 135 U.S. 1, 42 (1890) ("a writ of error only questions of law are brought up for review, ... by an appeal ... the entire case on both law and facts is to be reconsidered.")

repeal or affect any jurisdiction or right mentioned in sections 641, [etc.]"). Accordingly, remand order appeal, writ of error, and mandamus review jurisdiction over the diversity of citizenship removal cases (Rev. Stat. §639) ended once determined by circuits as "improperly removed." See 25 Stat. 436; *In re Pennsylvania Co.*, 137 U.S. 451, 453-457 (1890); and *Missouri Pacific R. Co. v. Fitzgerald*, 160 U.S. 556, 575, 580-582 (1896). However, appellate review continued for Rev. Stat. §641 matters asserted by defendants, not limited to race and also covering civil rights derived from the Fourteenth Amendment. See *Barney v. City of New York*, 193 U.S. 430, 437, 441 (1904). Appellate review also continued for plaintiffs contending removal jurisdiction. See *Tennessee v. Union & Planters' Bank,* 152 U.S. 454, 463 (1894).

The 1911 Act abolished the U.S. circuit courts' original jurisdiction and left only U.S. district courts with State court removal jurisdiction; both complete diversity of citizenship and citizenship prejudice or local influence removal cases were not reviewable once determined "improperly removed" by district courts, but continued for other matters by appeal and writ of error to circuit courts and the Supreme Court. See ch. 231, §28, §31, §37, §240, §241, §294, 36 Stat. 1094, 1096, 1098, 1157, 1159, 1167. Also, the Supreme Court could require by certiorari, or otherwise, certification of the record from the circuit court of appeals for its review upon petition "with the same power and authority" as "appeal or writ of error." See *Id.* at §240, §250, §251; See also *Chicago, B. & QR Co. v. Willard*, 220 U.S. 413 (1911); and *Gay v. Ruff,* 292 U.S. 25, 30-31 (1934) (*Willard* "decided under the Act of 1891"); cf. *Rachel* at 787, fn. 6.

From the early to mid-20th century, Congress began codifying statutes at large into the United States Code. See note 1, *supra* at 219-222. The codified 1940 edition of the civil rights removal statute, 28 U.S.C. §74, contained detailed language, later replaced with comprehensive words like "all" and "any" in the current 1948 edition, §1443. See *Steele v. Superior Court of California*, 164 F. 2d 781, 781 (9th Cir. 1947) (9th Circuit reviewed district remand order of removal petition "claiming to come within the provisions of § 31 of the Judicial Code, 28 U.S.C.A. § 74 [*i.e.* Section 1443]"). Prejudice or local influence diversity removal was "discarded" in the 1948 edition of Section 1441. See 28 U.S.C.

1441 (current edition) historical and revision notes; cf. 28 U.S.C. 1940 ed., §71 and 28 U.S.C. 1948 ed., §1441. The Civil Rights Act of 1964 placed a civil rights and federal officer savings clause, like §5 of the 1887 and 1888 Acts, under §1447(d) for removal pursuant to §1443. See Pub. L. No. 88-352, §901, 78 Stat. 266 where 63 Stat. 102 (§1447) is amended regarding 62 Stat. 938 (§1443); also ch. 373, §5, 24 Stat. 555; and ch. 866, §5, 25 Stat. 436.

B. FACTS AND PROCEDURAL HISTORY

First Residences initially filed the complaint as *JBG Residential Management, Inc. TA F1rst Residences* on November 28, 2022, in the Superior Court of the District of Columbia. Petitioner filed a continuance application there on January 31, 2023, notifying the court and First Residences of removal intent. App. 21a. The application included assertions of SBA liability with an attached working copy of a petition for writ of mandamus to this Court. App. 22a. At the initial hearing held without continuance on March 10, 2023, Petitioner argued for dismissal. App. 20a. The case was dismissed and sealed under D.C. Code §42-3505.09(a)(l). *Id.* Also, the continuance application was dismissed as moot. *Id.*

On July 26, 2023, First Residences filed a second complaint. App. 7a, 16a. Typically, a dismissed case refiled must be reassigned to the same judge. Super. Ct. Civ. R. 40-I(g). However, First Residences had the case refiled using new counsel, and as a different entity: *JBG Smith Properties LP, First Residences*. ECF Nos. 1-2, 5. An initial hearing was scheduled for December 4, 2023. cf. App. 16a, 20a.

On December 3, 2023, Petitioner filed a motion for joinder (ECF No. 1-2 at 34) including a third-party complaint[4] against SBA for removal to the United States District Court for the District of Columbia. App. 17a. Petitioner asserted SBA was an essential party to First Residences' cause of action (ECF No. 2-1, at 24). Petitioner also asserted First Residences was notified. App. 21a. The third-party complaint in the superior court included incorporation by reference of facts and statements regarding SBA's liability. ECF No. 1-2 at 2, App. 17a. The filings were docketed there on December 4, 2023. *Id.* A remote initial hearing was held on December 4, 2023, where Petitioner denied consent to a

4 See note on ECF No. 7 at 8 and 15, regarding a clerical error.

magistrate. App. 17a. The case was immediately certified and transferred to a Civil II Associate Judge and a remote status hearing was scheduled for January 19, 2024. App. 18a.

On December 8, 2023, the superior court also docketed a notice of remote status hearing for the SBA. *Id.* Petitioner filed a notice of removal in the district court asserting exclusive federal jurisdiction over SBA in D.C. (concerning effectively the unenforceable joinder right there) and a third-party complaint along with the superior court record. ECF Nos. 1, 2, 7; App. 10a-13a. Petitioner asserted federal removal jurisdiction on multiple bases, including by reason of an inability to enforce joinder rights in the jurisdiction. See 28 U.S.C. 1443 ("denied or cannot enforce ... equal civil rights ... of all persons within the jurisdiction"); also *BP plc v. Mayor and City Council of Baltimore*, 593 U.S. 230, 238 (2021) ("[t]o remove a case "pursuant to" § 1442 or § 1443, then, just means that a defendant's notice of removal must assert the case is removable "in accordance with or by reason of" one of those provisions"). Federal question jurisdiction was also asserted in accordance with §1441 and §1331, and by reason of §1343. *Id.*

Later the same day, Petitioner notified the superior court of removal to the district court. ECF. No. 1. The superior court immediately closed the case. On December 12, 2023, the district court entered the case record showing only "Received on 12/07/2023" for weeks. ECF. No. 7.

By December 14, 2023, the district judge had already ordered a remand of the matter *First Residences v. Powell* and termination of the entire case (including SBA) forthwith. ECF. No. 5; App. 7a-9a. On December 26, 2023, the district court opened the docket view, entered the order, revealed the earlier entries, and scheduled the remand for January 3, 2024. ECF. No. 7. Once public, the district court docket also revealed entry errors where the superior court record entry apparently discarded the third-party complaint from there and; also misplaced 56 exhibit pages (Ex. A and Ex. 1-7, int.) and two hearing notice pages from there, instead as attachments to the "amended third party complaint" filed in district court for local U.S. district filing format compliance while referencing preexisting exhibits. ECF. Nos. 1-2, 2-1 at 1-58, 7 at 15. App. 17a.

On December 27, 2023, instead of January 3, 2024, the district court docketed further: "Case Remanded." ECF. No.

7 at 2. On January 2, 2024, the district court entered that day as the *date terminated.* ECF. No. 7. Around January 10, 2024, the superior court canceled and vacated the remote status hearing for all parties. ECF No. 7 at 8, App. 18a. On January 19, 2024, Petitioner timely filed a notice of appeal. ECF. No. 6.

On January 31, 2024, the circuit court scheduled briefings. Petitioner's timely filed brief and appendix argued removal pursuant to §1443 on multiple bases including according to the text thereof, relying on *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 654 where "[a]fter all, only the words on the page constitute the law adopted by Congress and approved by the President." Regarding arising under jurisdiction, Petitioner contended that First Residence's complaint was completely preempted, relying on *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987) where "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character;" and *Boyle v. United Technologies Corp.*, 487 U.S. 500, 507 (1988) regarding "an area of uniquely federal interest" in conflict with "the [operation] of [local] law." Note also "[a]n exception to [the well-pleaded-complaint] rule is 28 U.S.C. § 1443, which allows removal to address the violation of a [civil] right ... that is unenforceable in state court." See *Hunt v. Lamb*, 427 F. 3d 725, 727 (10th Cir. 2005).

First Residences did not reply, neither did SBA. On June 5, 2024, the circuit court dismissed the case on the judgment that it lacks jurisdiction under §1447(d) because Petitioner did not remove the case pursuant to §1442 or §1443.

On June 12, 2024, First Residences filed a status hearing request in superior court. App. 18a. On June 13, 2024, the superior court scheduled a remote status hearing for all parties including SBA for July 31, 2024. App. 3a-4a, 18a. On July 9, 2024, Petitioner also petitioned the circuit court for rehearing and rehearing en banc. On July 18, 2024, Petitioner filed a motion for a stay. On July 26, 2024, Petitioner also submitted an emergency application here for a stay of the district remand order. On July 29, 2024, the circuit court denied the petition for rehearing and rehearing en banc and dismissed the stay motion as moot. App. 1a-2a. On July 31, 2024, in the superior court, Petitioner denied consent to a hearing by a magistrate, and the hearing was

rescheduled to October 25, 2024. App. 19a. On August 5, 2024, the emergency stay application submitted here was denied. On August 6, 2024, Petitioner resubmitted the emergency application citing new instances of deprived rights at the July 31, 2024 hearing and presented emergent circumstances of certain irreparable harm surrounding First Residences' consent request for a protective order before the disposition of this then-forthcoming petition for a writ of certiorari. See *Jordan Powell, Applicant v. JBG Smith Properties*, et al., No. 24A107.

REASONS FOR GRANTING THE PETITION

This case presents a repressed conflict among the courts of appeals regarding an appellate jurisdiction doctrine having an impact on individual rights and access to justice nationwide. In the judgment below, the D.C. Circuit held back from expressing anything as to whether the removal pursuant to 28 U.S.C. 1443 may be determined according to the text thereof other than the few words of their limited jurisdiction under Subsection 1447(d) doctrine and coinciding circuit precedent.

Every circuit court of general jurisdiction frequently encounters this refrain. At times of more substantive jurisdictional analysis, there appears to be a dormant circuit split. For instance, the Fourth Circuit expressly agreed that Section 1443's text is broader than precedent permits but only the Supreme Court could change that. See *Vlaming v. West Point School Bd.*, 10 F. 4th 300, 310 (4th Cir. 2021). In contrast, the Third Circuit considered an unsupported claim that the holding in *Rachel* was wrong just based on Section 1443's text, to be frivolous. See *State v. Aristeo*, No. 15-1096 (3rd Cir. 2015). Although, the *Aristeo* decision in contrast to *Vlaming* does come after this Court's holding in *Bostock*, 590 U.S. 644, 654 (2020) where "only the words on the page constitute the law adopted by Congress."

Moreover, the reasonably expected results of this Court's holding in *BP plc v. Mayor of Baltimore* (2021) regarding the "by reason of" option for removal pursuant to Section 1443 have already begun to take hold. For example, a defendant recently alleged in his notice of removal from a Pennsylvania state court that "the justice system [there] was driven by "racial prejudice" and "blatant racism"" thereby the Third

Circuit recognized the removal as pursuant to Section 1443 citing this Court's decision following a writ of certiorari to the Fourth Circuit in *BP plc* (2021). See *Pennsylvania v. Smith*, No. 24-1499, (3rd Cir. 2024). While that defendant failed to prove he was denied or could not enforce an equal civil right under State law or federal law as applied there, the great concern of Congress appears in cases where defendants do allege actual denial or unenforceability of civil rights, "in" state courts or "within" the United States, but are denied remand review for lack of racial discrimination.

For instance, the Tenth Circuit held that because a defendant did not meet the race-based element of removal remand review doctrine under §1447(d) "we need not assess" whether he was prevented from "vindicating his rights in state court." See *Miller v. Lambeth*, 443 F. 3d 757, 762 (10th Cir. 2006). While there is evidence that this does not reflect the full purpose of Congress, this remains the law of the land for now 58 years because it appears that evidence was misinterpreted. See *Infra.*

More workable reason suggests reenactment of the 1866 Act in 1870 was for squaring the powers of the Thirteenth and Fourteenth Amendments together into a single Act of Congress more completely covering civil rights. See ch. 114, §16, §18, 16 Stat. 144. Accordingly, Chief Justice Brennan and two associates dissent in *Greenwood* concurring "[t]he Court defeats that purpose by giving a narrow, cramped meaning to § 1443 (1)." *City of Greenwood v. Peacock*, 384 U.S. 808, 854 (1966). This rightfully concerns the precedent's reasoning and workability especially where mere months earlier a majority of the Court agreed these civil rights statutes covered "rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments, and not merely under part of it." *United States v. Price*, 383 U.S. 787, 805 (1966). Accordingly, *Greenwood*'s companion case *Rachel* also appears to overlook the significance of the 1870 Act which meant for civil rights laws to be read together, thereby reflecting a severe departure from the text of 19th-century civil rights statutes with one part being their related 28 U.S.C. 1443(1) progeny in which positive law codifiers made no meaningful changes. See *Georgia v. Rachel*, 384 U.S. 780, 790 (1966).

Today, the effect is an often awkward circuit revisitation of the clear language of Section 1443 because while it is

derived from the "every citizen" and "all persons" focus of the Civil Rights Act of 1866 and its 1870 Reenactment, it gets filtered through a strained explanation of *stare decisis* that is so far from its language and origin that it raises concerns for "the quality of [the precedent's] reasoning" and "the workability of the rule it established." See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2270 (2024). For more circuit perspective on the connected Subsection 1447(d) context here consider Eleventh Circuit Judge Anderson, echoing Seventh Circuit Judge Easterbrook, writing: "Consequently, "'straightforward' is about the last word judges attach to § 1447(d) these days...." *In re Amoco Petroleum Additives Co.*, 964 F.2d 706, 708 (7th Cir. 1992)." See *Hernandez v. Seminole County, Fla.*, 334 F. 3d 1233 (11th Cir. 2003).

Currently, the reasoning and workability of precedent regarding the question presented remains wanted and clearly exhibits a repressed issue for courts of appeals that warrants revisitation by the Court. The question is also of national importance due to frequent impacts on individual rights where district precedent upon remand must be upheld through state supreme courts and by this Court as a matter of comity even where the Court may wish to correct a substantial error of law. See *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 31 (1943) (on the controlling "considerations of comity between state and federal courts"). This places the burden Congress sought reasonably rested on the now ninety-nine district courts and 12 circuit courts of general jurisdiction as being unworkably weighted upon the shoulders of nine justices instead, thereby exemplifying the redeemable inefficiency and unworkability of this "non-inexorable command"[5] of precedent. Therefore, this case is a prime mechanism for remodeling the answer to this important question. The criteria for certiorari are very well satisfied here, and the petition should be granted.

A. Prior Decisions Overlook Essential Text and Notes

The Court's decisions interpreting 28 U.S.C. 1443 in *Rachel* and *Greenwood* are grievously or egregiously wrong primarily because the Civil Rights Act of 1866 comprises

5 See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2270 (2024).

text, and notes referencing statutes with further specific reference to statutes and cases, that altogether clearly establish removal causes beyond just racial equality. Essentially "for any cause whatsoever," thus vindicating a civil right denied or unenforceable under state law by removal appears not so limited. See ch. 31, §3, 14 Stat. 27. The original intent there is most apparent from the text of Section 1443. Unfortunately, the severe departure of precedent from there has very serious, and very frequent impacts on individual rights. These decisions also make plain errors found relevant further below that show the addition of Subsection 1447(d) by the Civil Rights Act of 1964 merely reflects the law as it stood before the 1948 edition of the civil rights removal section of the United States Code.

For instance, in *Rachel*, the Court determined that "an order remanding a case sought to be removed under Section 1443 was not appealable after the year 1887" *Georgia v. Rachel*, 384 U.S. 780, 786 (1966). This appears in error because while that legislation was amendatory in 1887 and then corrective in 1888 both Acts include a savings clause for civil rights cases in §5:

> "That nothing in this act shall be held, deemed, or construed to repeal or affect any jurisdiction or right mentioned either in sections six hundred and forty-one, or in six hundred and forty-two, or in six hundred and forty-three, or in seven hundred and twenty-two, or in title twenty-four of the Revised Statutes of the United States, or mentioned in section eight of the act of Congress of which this act is an amendment, or in the act of Congress approved March first, eighteen hundred and seventy-five, entitled "An act to protect all citizens in their civil or legal rights." See ch. 373, §5, 24 Stat. 555; ch. 866, §5, 25 Stat. 436.[6]

Essentially, §5 above preserved review for all civil rights cases whereas Title 24 of the Revised Statutes of 1874 preserved there is present-day Title 42 Chapter 21. For example, as to "Section 5 of the act of March 3, 1875, 18 Stat. 470, c. 137 ... [t]he last paragraph of this section was in terms repealed by the act of March 3, 1887, 24 Stat. 552, c. 373, reenacted August 13, 1888, 25 Stat. 433, c. 866, (the part

6 §1 of the 1887 Act inserts full-length revisions (§§1-3) within §1, moreover, the corrective 1888 Act is similarly styled and places several revised sections in §1 there.

repealed not being material here) [Fourteenth Amendment, civil rights]." *Barney v. City of New York*, 193 U.S. 430, 441 (1904). Accordingly, Rev. Stat. 641 review and all civil rights denied or unenforceable retained jurisdiction: "subject to the same right of appeal, review upon error, and other remedies in like cases provided under the act of April 9, 1866, and other remedial laws in their nature applicable in such cases." *Illinois v. Chicago & A. R. Co.*, 6 Biss. 107, Circuit Court, S.D. Illinois (1874) noted in Rev. Stat. 641 (1874).

Additionally, while the 1911 Act (Judicial Code) restricts removal remand review in Section 28 by proviso for prejudice or local influence diversity jurisdiction cases it does not speak to a limit on review in Section 31 regarding removal of civil rights cases. Moreover, because, if so interpreted, Section 37 there would be redundant. See ch. 231, §28, §31, §37, 36 Stat. 1094-1097. Furthermore, Section 294 of the general provisions chapter there provides laws revised "shall be construed as continuations" with "no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest." *Id.*, §294 at 1167. Meanwhile, no change of intent from the §§5 savings clauses of the 1887 and 1888 Acts is clearly manifest.

1. Equality was in Terms of Race, Citizenship, or Both

In *Rachel*, the Court held 28 U.S.C. 1443 "must be construed to mean any law providing for specific civil rights stated in terms of racial equality." 384 U.S. 780, 792. The holding was based on indications from legislative history that "Congress intended to protect a limited category of rights, specifically defined in terms of racial equality." *Id.* at 791. It turned on a §1 revision replacing the intended anti-discrimination language "civil rights" with a baseline measure of equality being the same rights for all U.S. citizens as afforded those who are both "white" and "citizens" of each respective State or Territory. *Id.* at 791-792 fn. 15-19. Although, the holding appears to conflate U.S. citizens for State citizens alongside the adjective "white" here because this dual baseline measure must be applied in each respect when federal courts extend the application of State law required in §3. *Id.* Therefore U.S. citizens are granted two baseline measures of equality in the application of State law: Essentially, applicable State law must be applied the same as it is applied to those who are both; (1)

white and, (2) citizens, of the Jurisdiction from which the case was removed.

As to (1): "It must be remembered that the privilege of removal is thus guaranteed to every citizen of the United States, as well white as black. ....It is intended to protect against legal disabilities and legal impediments to the free exercise of the rights secured." See *Texas v. Gaines*, 2 Woods, 342 (1874); and Rev. Stat. 641 (1874) note citing *Gaines*. Regarding (2): "A State cannot, by its legislature, confer a substantive right or remedy ... upon its own citizens, that will not be available to the citizens of other States; nor can it restrict the right to enforce [it]... in Federal courts .... *Bigelow v. Nickerson*, 70 Fed. Rep. 113 (1895)." *Second Supplement to Notes on the Revised Statutes* (1904);[7] see also *Security Mut. Life Ins. Co. v. Prewitt*, 202 U.S. 246, 248 (1906).

The final text of §1 of the Civil Rights Act of 1866 secures U.S. citizens "the same right" in contract, legal proceedings, real and personal property, and, the "full and equal benefit" of "laws and proceedings" regardless of consequence and, with any contrary provision of any jurisdiction (State, Territory, or U.S.) notwithstanding. See ch. 31, §1, 14 Stat. 27; ch. 31, §3, 14 Stat. 27 ("jurisdiction ... hereby conferred ... shall be exercised and enforced in conformity with the laws of the United States so far as such laws are suitable to carry the same into effect"); and 28 U.S.C. 1988. Therefore §1 is not defined only by racial equality even though it includes those terms as one of two parts of its baseline measure for equal rights. *Id.* Accordingly, either lack of protection based on race or based on citizenship (State or Territory) was sufficient but only one basis was necessary.

As to the 1870 Act, the Court in *Rachel* states:

> "Congress had not significantly enlarged the opportunity for removal available to private persons beyond the relatively narrow category of rights specified in the 1866 Act, even though the Fourteenth and Fifteenth Amendments had been adopted. ... The note in the margin of § 641 pointed specifically to the removal provision of the Civil Rights Act of 1866 and

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7 GOULD, JOHN M., TUCKER, GEORGE F., SECOND SUPPLEMENT TO NOTES ON THE REVISED STATUTES OF THE UNITED STATES, AND THE SUBSEQUENT LEGISLATION OF CONGRESS, TITLE XXIV, CIVIL RIGHTS, JANUARY 1, 1898 - MARCH 1, 1904 (1904) at 396.

> to §§ 16 and 18 of the Civil Rights Act of 1870.[14] The latter sections were concerned solely with the re-enactment, in somewhat expanded form, of the 1866 Act. ... We conclude, therefore, that the model for the phrase "any law providing for . . . equal civil rights" in § 641 was the Civil Rights Act of 1866." *Rachel*, at 790.

Footnote 14 above pin-cites Justice Field's dissent in *Slaughter-House Cases* where he reasons reenactment of the 1866 Act concerned "whatever doubts may have previously existed of its validity, they were removed by the amendment." 83 U.S. 36, 96-97 (1873). The air of the conflicting presuppositions there was between United States citizen classification as one of State accedence upon ratification of the Constitution to give Congress the power to create a uniform rule of naturalization versus citizenship determinations by the several States under their constitutions and laws in light of the Eleventh Amendment. *Id.* With emancipation ratified and the 1866 Act derived therefrom being lawfully passed over a presidential veto by override, it hardly seems of any concern for the validity of the Act upon establishing a uniform rule of naturalization in §1.

The Court nevertheless relied on Justice Field's dissent notion in *Slaughter-house Cases* that the 1870 Act was a mere legislative authority assurance. *Rachel*, at 790 fn. 14. However, in order to give more reasonable effect to the reenactment without breaking the rule against redundancy, it appears that the 1870 Act in fact was passed under the Thirteenth and Fourteenth Amendments in order to square the power of the two together in a single Act of Congress to completely cover equal rights in each jurisdiction, for "all persons within the jurisdiction of the United States." See ch. 114, §16, §18, 16 Stat. 144. Accordingly Congress exercised its law-making power derived from both amendments to truly establish equal civil rights by removing their separation.

This hand-in-hand enactment appears to be a legislative formula where, first considering baseline (1) white: (A) *every person of every race* is afforded the same rights as *white persons* secured by the right of removal for those denied or unable to enforce those rights (1866); and (B) "all persons within the jurisdiction of the United States" are afforded the

same rights as *white persons* (1870). Enactment A separates persons by race for baseline equalization but by nature of the separation it technically gives (1866 §3 removal) rights only to non-white persons because duplication of the racial sub-categorical term *white person* into *every person of every race* would be incapable of comparison to the baseline because of the nature of this category (every person of every race) is a series of singularities where duplicity would be contradictory. Enactment B reenacts A thereby unifying the series into a whole (all persons) that is synonymous with the baseline (white persons), making the baseline also part of the group afforded equal rights. This way any right a non-white person would have concerning removal for instance a white person would have as well, synergistically, in completion of the equal rights law-making formula.

In *Greenwood*, Justice Douglas, Justice Fortas, and Chief Justice Brennan join in dissent and cite *U.S. v. Price*, 383 U.S. 787 (1966) where Justice Fortas wrote the majority opinion three months earlier stating:

> "[I]t is hardly conceivable that Congress intended [this] to apply only to a narrow ... category of rights. We cannot doubt that the purpose and effect [here] was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments, and not merely under part of it." *Price,* at 805.

The *Greenwood* dissent concludes by saying in part:

> "The Court defeats that purpose by giving a narrow, cramped meaning to § 1443 (1). These defendants' federal civil rights may, of course, ultimately be vindicated if they persevere, live long enough, and have the patience and the funds to carry their cases for some years through the state courts to this Court. But it was precisely that burden that Congress undertook to take off [their] backs." *Greenwood*, at 854.

Therefore, provided a majority of the Court agreed with the holding in *Price* raised here in *Greenwood*'s dissent mere months later as a reminder of the intent of Congress known by the clear text of its statutes, the *Greenwood* decision appears perhaps egregiously wrong considering the intra-term contradiction.

The following year however, in *Loving* the Court appears to realize this contradiction, stating "[t]here is patently no legitimate overriding purpose independent of invidious racial discrimination" where "Virginia prohibits only interracial marriages involving white persons." *Loving v. Virginia*, 388 U.S. 1, 11 (1967). In *Rachel* by contrast, the Court considered legislative history where proponents of the 1866 Act ignored critics who thought courts could "fall into" applying the Civil Rights Act to State anti-miscegenation statutes. *Rachel*, at 792 fn. 19; see Bickel, *The Original Understanding and the Segregation Decision*, 69 Harv. L. Rev. 1, 16 (1955). However, having decided to reject such "debates in the Thirty-ninth Congress" and that "this Court has consistently repudiated "[d]istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality," one might say that if they fell into anything, it was in love with the law regarding the cherished institution of marriage. *Loving*, at 10-11.

Accordingly, by contrast, the holding in *Rachel* appears to have overlooked the significance of the 1870 Act (now 42 U.S.C. 1981) which meant for equal civil rights, due process, and equal protection to be read together, thereby reflecting in contrast a severe departure from the original text and its related 28 U.S.C. 1443(1) progeny. Therefore considering the results, this appears grievously wrong because perhaps too many cases without the capacity to reach this Court for a *Loving* kind of outcome, suffer in the application of *Rachel* by circuits often seemingly repressed by the separate doctrine of equal rights statutes. Moreover, while not limited to race, such protections also intended a "check against" even "subtle" racial "prejudices,"[8] that are further secured by treaty[9] where discrimination as described on rehearing below and of judicial notice here gone unchecked by review here of the broadly tailored civil rights removal statute, or otherwise, would result in a violation.

As to baseline (2), State citizens, see Part 2 (a)(vii) below regarding Congressional intent to ensure equal civil rights

8 STRAKY, ANDREW, THE BRIEF LIFE AND ENDURING PROMISE OF CIVIL RIGHTS REMOVAL, 124 Colum. L. Rev. 123 (2024), at 155.

9 International Convention on the Elimination of All Forms of Racial Discrimination Adopted by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19. United States Ratification/Accession 1994.

for white State citizen refugees just as well under the 1870 Act by overlapping the expiration of protections under the FRB Acts of 1865 and 1866.

2. Removal by Virtue for Freedmen and Refugees

The FRB Act included land assignments to citizens of every race and the protection of awardees there. See ch. 90, §4, 13 Stat. 508-509. In *Greenwood*, the Court held the Civil Rights Act of 1866 "made no specific provision for removal of actions against freedmen and refugees." *Id.* at 818 fn. 13. The key language that appears to do so however is found in §3 where removal "by virtue ... of this act or the act establishing a Bureau for the Relief of Freedmen and Refugees" is clearly manifest. See ch. 31, §3, 14 Stat. 27. The adjacent statutory note also cites the 1865 Act. The plain meaning of the statutory note alongside the language in the 1866 Act referencing the entire FRB Act of 1865, starting on page 507, may be fairly understood to include removal by "other persons" "by virtue" of §4 at page 508, especially considering §1 removal "under color of law" extends to page 508 and would cover subsections that further extend to page 509. See ch. 90, 13 Stat. 507-509. This goes further in showing removal is not limited to race in 28 U.S.C. 1443(1) because it appears "any person" assimilated "other person" into subpart one of the 1948 edition seen further below.

In *Greenwood*, decided the same day as *Rachel*, the Court intertwines their analyses to distinguish the application of Title 28 Section 1443(1) from 1443(2). See *Rachel*, 384 U.S. 780 at 786 fn. 4, 792, 794 fn. 23, 24; and *Greenwood*, 384 U.S. 808 at 824-828, 831. Here the Court refers to subparts one and two as subsections. *Rachel* at 783-784; and *Greenwood* at 813, 815 fn. 9, 821, 824. Although, one and two may be related subparts, not quite separate subsections, given some idea from the scope of subparts canon from Scalia and Garner's *The Interpretation of Legal Texts*.[10] However, "the older a legislative provision is, the less this canon can be relied on." *Id.* Moreover, the point of greater essence here is that "other person" from §3 of the Civil Rights Act of 1866 also belongs in Section 1443(1) because freedmen and refugees of every race provided land were also ensured removal as protection, for instance, from State trespass statutes if they were denied or could not enforce the virtue

10 ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) at 156.

of the Act in State court by State law remnants of the Confederate Sequestration Act of 1861 for instance (seizing land of those loyal to the union). See ch. 31, §3, 14 Stat. 27; ch. 90, §4, 13 Stat. 508; and note 12, *infra*.

The Court in *Greenwood*, however, firmly placed "other person" from §3 of the 1866 Act in Section 1443(2). 384 U.S. 808, 815-821. While the FRB Act (1865) clearly covers an "other person legally authorized" in §6 for instance, there is very strong reasoning to support a more complete interpretation here. See ch. 31, §6, 14 Stat. 28. Essentially, "other person" from §3 of the 1866 Act strongly appears to serve a dual role in relation to the 1865 Act, accordingly: (1) those lawfully assisting civil or military officers; and (2) lessees or owners of land acting by virtue of §4 of the 1865 FRB Act and others so acting under its amendatory Act of 1866.

a. Reasons to Review the Reference to Other Person

i. In §3 of the Civil Rights Act of 1866, the phrase "any such person" refers to someone who was "denied or cannot enforce" a right under §1 as a defendant in a State court case brought for "any cause whatsoever" but, that would only reach a Refugee defendant under §4 of the 1865 Act if he were non-white or a non-citizen of the State or an "other person," seen in detail further below. See ch. 31, §1, §3, 14 Stat. 27; also ch. 90, §4, 13 Stat. 508. For immediate instance, consider, had Congress intended to cover only officers and those assisting them, they could have easily written "against any officer, civil or military, or [person assisting]" to be clear the "other person" language following the appositive parenthetical "civil or military" was limited to acts under color of authority. See ch. 31, §1, §3, 14 Stat. 27.

ii. The Court reasoned in *Greenwood* that "officers and agents" of the FRB "among others, with the duty of enforcing" the 1866 Act fully covered "other persons" there in §3. 384 U.S. 808, 816-818. However, the phrase "officers and agents" is immediately followed by "and every other officer" clearly placing agents and officers together as officers. See ch. 31, §1, §3, 14 Stat. 27. For example, say the FBI has approximately 35,000 officers including 10,000 agents, those agents are also officers.

iii. As to "among others" with enforcement duty, §5 "authorized United States commissioners to appoint "one or more suitable persons" to execute warrants and other

process" where those suitable persons were "authorized "to summon and call to their aid the bystanders or posse comitatus of the proper county."" 384 U.S. 808, 818-819. The Court cites *Baines v. City of Danville*, 357 F. 2d 756, 760 (4th Cir. 1966) where the Fourth Circuit finds such a suitable person "was authorized to call to his aid all bystanders or posse comitatus," but "all bystanders" is rather misleading. The 1866 Act alongside its Title 42 Section 1989 progeny both speak specifically to "the bystanders or posse comitatus of the proper county." See ch. 31, §6, 14 Stat. 28; 42 U.S.C. 1989. This specific reference conflated as "all" in *Baines* portrays an improper sense of the word bystander. See *Id.*; and 357 F. 2d 756, 760. Bystanders as referred to in the 1866 Act are in fact comparable to present-day National Guards.

For insight, consider this excerpt by Jennifer Elsea from the Navy Department Library's republication of *The Posse Comitatus Act and Related Matters* where ""bystanders" ... in fact encompassed members of the armed forces by virtue of their duties as citizens as part of the posse comitatus."[11] To second that, consider United States Marine Corps Major Meeks writing for the Military Law Review affirming these provisions as "the authority to use troops in order to counterbalance the expected inaction of recalcitrant marshals."[12] Thus, the Fourth Circuit's reasoning where ""suitable persons" could call upon bystanders ... [as] civilians whom they were authorized to command" appears, instead of misleading, perhaps misunderstood because *the bystanders of the proper county* were not civilians. See *Baines,* at 772; Elsea, *supra*; and Meeks, *supra.*

iv. At enactment, the term "officers" referred to FRB officers and agents, district attorneys, marshals, deputy marshals, commissioners, and any special presidential appointees. See ch. 31, §4, 14 Stat. 28. Commissioners "(now

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11 See Elsea, Jennifer, *The Posse Comitatus Act and Related Matters: A Sketch*: Congressional Research Service Report for Congress (Updated June 6, 2005). (Essentially, "the Posse Comitatus Act predates the National Guard only in name for the Guard "is the modern Militia reserved to the States by Art. I, § 8, cls. 15, 16, of the Constitution" which has become "an organized force, capable of being assimilated with ease into the regular military establishment of the United States," Maryland v. United States, 381 U.S. 41, 46 (1965)").

12 See MAJ. MEEKS III, CLARENCE I., USMC, MILITARY LAW REVIEW, ILLEGAL LAW ENFORCEMENT: AIDING CIVIL AUTHORITIES IN VIOLATION OF THE POSSE COMITATUS ACT, 70 MIL. L. REV., 83 (1975) at 107; See also 42 U.S.C. 1989.

called magistrates),"[13] appointed by United States courts of cognizance were to issue "warrants and precepts" regarding offenses created by the Civil Rights Act of 1866. *Id.* Marshals and their deputies were made principally responsible for executing such warrants and process, having been first designated by the 1866 Act itself. *Id.*, at §5. To enhance the ability of commissioners to bring offenders of the Act to justice, Congress "authorized and empowered" commissioners to make further suitable appointments of persons to execute "such warrants" and "process." *Id.* Those "so appointed" for these official duties were to be dubbed with "authority to summon" nearby armed forces including what is today Reservists or National Guards ("the bystanders or the posse comitatus"), U.S. Navy, and State Militia (note "the National Defense Act of 1916 materially altered the status of the militias by constituting them as the National Guard") who were made available to "lawfully [assist]" as a duty requirement. *Id.*; Elsea, *supra*; and *Maryland v. United States*, 381 U.S. 41, 46 (1965). Accordingly, "other person" as a reference to those "suitable" with "authority to summon" these military officers appears for purposes of giving effect to the enactment because those "suitable persons" who may become civil officers are yet to be appointed. *Id.*

Consider Special Deputy Marshal John R. Upchurch who sued for compensation under "the civil rights bill of 1866.... providing for the appointment of other officers" where "the account is allowed." See *In Re Upchurch*, 38 F. 25 (1889). Accordingly "other person" includes those suitable to become officers and the use of language here speaks to those persons yet appointed according to their status at enactment. For direct insight consider first-hand guidance written for other commissioners by Arthur Bush where: "commissioners have power to appoint special officers to serve process in civil rights cases of which commissioners have jurisdiction." Bush, Arthur G., Bush's Borden Hicks Mills, *United States Commissioners' Manual* (1926) at 84.

v. The words "by virtue" as written in §3 of the 1866 Act have a clear capacity for a duality of reference regarding an "other person" there. Essentially, it appears applicable to those acting *because of* the 1865 Act and those acting from

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13 *Id.*

the sense *of duty* required by the 1866 Act. While as stated in *Greenwood*, "[i]t is clear that the "other person" in ... § 3 of the Civil Rights Act of 1866 was intended as an obvious reference to ... enforcement," it also seems obvious that both the statutory note alongside this very sentence in §3 and the sentence itself includes removal for those acting because of the 1865 Act. 384 U.S. 808, 816; and ch. 31, §4, 14 Stat. 28. The FRB "agents, clerks, and assistants" made appointable by the amendatory Act of 1866 were reasoned by the Court to be such other persons where ""agents" ... would be entitled as "other persons," if not as "officers."" *Id.* at 818 fn. 11. This appears to agree somewhat with the idea that the "other person" reference "formula" was to distinguish persons before and after an appointment where such a person would not be an officer until giving an oath of office pursuant to the Act of July 2, 1862. See *Id.* at 816; Rev. Stat. § 641 (1874); ch. 31, §3, 14 Stat. 27; ch. 90, §1, 13 Stat. 508; and ch. 128, 14 Stat. 502. The Court also cites *Upchurch* for comparison. *Id.* at 818 fn. 14.

vi. The amendatory FRB Act of 1866 makes an important improvement that resolves the concern previewed above as the first reason (i) for review here regarding prospective Refugee defendant removal by virtue of §4 (land awardee) of the 1865 FRB Act that may have been a white citizen of the State of removal. Essentially the 1866 FRB Act resolves this issue in §14 where civil rights are "secured to and enjoyed by all citizens of such State or district without respect to race" meaning the 1866 Civil Rights Act removal provisions for those denied or unable to enforce a land right due to prevailing State law, on sequestration perhaps, were also ensured protection as white citizens of such State as well. See ch. 200, §14, 14 Stat. 177. In *Greenwood*, regarding land awards, the Court notes "persons assigned to such lands "shall be protected in the use and enjoyment"" of them by quoting §4 there, and further, introduced "the extension of military jurisdiction" to States where "the ordinary course of judicial proceedings had been interrupted by the rebellion" as if to show the sense of Congress was that such awardees would not need such removal, therefore, it was not provided. *Id.* at 817-818 fn. 11, 13. However, while regarding that, the military jurisdiction extension was to "cease in every State" where "the peaceable course of justice" is undisturbed in "courts of the State and the United States" after the State

was "fully restored" in its "constitutional relations" with "the United States" and was "duly represented in the Congress." See ch. 200, §14, 14 Stat. 177. Therefore, the overlapping protections seen next cover such awardee needs throughout the transition and into the future.

vii. The FRB Act was first established on March 3, 1865 "to last during the rebellion and for one year thereafter." *Greenwood* at 817 fn. 11; see also ch. 90, §1, 13 Stat. 507. Its amendment enacted on July 16, 1866, continued the Act for two years from passage. *Id.*; see also ch. 200, §1, 14 Stat. 173. An Act of 1867 included the military duty to "protect all persons in their rights of person and property" and the "power to organize" tribunals (March 2, 1867); and the associated expense appropriation resolution was made March 30, 1867. See ch. 153, §3, 14 Stat. 428; res. 32, 15 Stat. 29. The FRB was discontinued after June 30, 1872, but re-established business as a branch of the War Department[14] purely for the resolution of stolen funds owed to freedmen, or their loved ones, especially for their military service.[15] See ch. 415, 17 Stat. 366.

When the Act of 1870 reenacted the Civil Rights Act of 1866 it made an important distinction in addition. See ch. 114, §16, §17, §18, 16 Stat. 144. Essentially, the 1870 Act secured, in addition to the rights of U.S. citizens, that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States." *Id.* It also specifies that "all persons ... shall be subject to like ... exactions of every kind." *Id.* In *Rachel*, the Court considered this "concerned solely with the re-enactment, in somewhat expanded form, of the 1866 Act."

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14 "War Department General Orders No. 55, dated June 25, 1872—herewith ... discontinuing the Bureau of Refugees, Freedmen and Abandoned Lands, ... the transfer, from Howard University to a building near the War Department, was commenced, and, on or about August 3, completed ... September 7, final instructions to ... re-established business, known as the freedmen's branch of the Adjutant-General's Office." House Executive Document 10, 43rd Congress, 1st Session (1873) at 21.

15 "[C]laimants, who had already waited long and anxiously for their money, were forced to undergo the hardship of further delay. This condition of affairs did not result, as stated by the late Commissioner in his letter above referred to, "by failure of appropriation," but, on the contrary, from a misapplication in part of ample appropriations made by Congress for the conduct of the work in question. ... Therefore, the question involved is not one of policy, but of law, and its direct violation." *Id.* at 13.

384 U.S. 780, 791. However, these changes closed the gap on the loophole that would have allowed perhaps an exaction of land or prosecution of a white, state citizen, refugee awardee under perhaps remnant State law from the unlawful Confederate Sequestration Act of 1861, and made it clear that equal civil rights are about more than race. *As to baseline (2) in continuance of the discussion further above on state citizens consider the following*:

For example, consider person Y: if he, a white U.S. citizen but non-citizen of State A and a Refugee in State A was awarded land there and was denied or could not enforce a real property right in State A court he could remove his case because under §3 of the 1866 Act it was a right secured to him by the first section. Comparatively, consider person Z: if he, a white U.S. citizen, a citizen of State A, and a Refugee in State A was awarded land there and was denied or could not enforce a real property right in State A court he could not remove his case because under §3 of the 1866 Act it was not a right secured to him by the first section because the baseline measures (white & state citizen) for equal rights in State A are already met so the clause "[any State law] to the contrary notwithstanding" cannot apply. Importantly, the reenactment's addition of "all persons" as a follow on would allow the "all persons" enactment provision in 1870 to effectively become the new baseline measure and therefore from this point forward person Y and person Z could remove their case because if person Y can remove based on the 1866 Act for a certain denial of real property rights, then so can person Z because Z is also a person "within the jurisdiction of the United States" and thereby gets the same rights as Y in State A even though they were not secured to him by §1 of the 1866 Act as a refugee white citizen of State A.

This is very important because the Confederate Sequestration Act would have covered land confiscated by the United States from those aiding the Confederate States and a white citizen intra-state refugee, like hypothetical person Z above, would stand to lose their land through the competing provisions of Sections 14 and 22 there because the awarded land would have been confiscated by the United States.[16]

16 Sequestration Act, passed by the Congress of the Confederate States, August 30, 1861 at 10, 12.

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In short, the decisions found in *Rachel* and *Greenwood* appear grievous and perhaps egregious respectively in light of clear statutory text. As shown above, the "other person" language from the 1866 Act long considered synonymous with only officers "under color of law" in 28 U.S.C. 1443(2) appears far more truly to have been made part of "any person" under Subpart 1443(1) when positive law codifiers made no substantive changes in 1948; long after the FRB was discontinued in 1872, and when "bystanders" had long been recognized as National Guard Officers since the National Defense Act of 1916. The other reason is the reenactment of the 1866 Act in 1870 where the baseline measure of equal civil rights was raised to "all persons within the jurisdiction of the United States" where any person denied or unable to enforce a right in a State or Territory whether domiciled there or not and whether a U.S. citizen or not could remove their case there so that everyone everywhere in the United States would have equal rights in each jurisdiction. Considering doctrine disallows what the statutes require, the petition for certiorari should be granted.

Finally, more in respect of Petitioner's very strong case for subject matter jurisdiction here as to the "denied or cannot enforce" element of civil rights removal under 1443(1) is set forth in detail in the following section.

B. Civil Rights Removal of Necessarily-Federal, Required and Permissive, Joinder Under 1443

In order to properly address this area of interest it appears imperative to briefly revisit the history that makes the District of Columbia so unique. In fact, "[t]he history of the controversy begins with that of the Republic." See *National Ins. Co. v. Tidewater Co.*, 33 7 U.S. 582, 603 (1949). Congressional delegates at the Federal Convention[17] of 1787 agreed to Article I provisions of the Constitution for the establishment of a national seat of power. See *O'donoghue v. United States*, 298 U.S. 516, 539 (1933). Through land cessions of Maryland and Virginia the District of Columbia

17 History, Art & Archives, U.S. House of Representatives, "Delegates of the Continental and Confederation Congresses Who Signed the United States Constitution," (Ret. Feb. 14, 2024). https://history.house.gov/People/Signatories/Signatories/.

was located, deriving its sovereignty transitively from all States existing and added to the Union, initially by an act of acceptance commonly known as the Residence Act of 1790, as amended in 1791. *Id.* In the years to follow, one pivotal clause of Article I regarding commerce remained essential to the governance of the seat of the nation. The Commerce Clause provided Congress the power to "regulate commerce ... among the several states." However, interstate commerce being highly standardized raised questions concerning the District of Columbia in the early 19th and mid-20th centuries. See *Tidewater*, at 582-655; cf. *Hepburn v. Ellzey*, 6 U.S. 445 (1805).

This is relevant here because SBA is a Title 15 Commerce and Trade agency with a jurisdictional subsection that excludes the Art. I local courts of this jurisdiction, so in this respect the Plaintiff's complaint is necessarily federal because SBA joinder is required and jurisdiction is conferred to the United States district court here. First Residences' cause of action is necessarily federal because it arises out of the same series of transactions and occurrences with common questions of law and fact involving SBA, and requires the joinder of the agency and removal of the case for complete relief among the existing parties. The right to joinder and complete relief could not be enforced by Petitioner in superior court for lack of judicial power and was thereby removed pursuant to 28 U.S.C. 1443. The clearly manifested intent of Congress requires judicial review of SBA in federal court for cases arising in the District of Columbia due to the Commerce Clause of the United States Constitution where "the laws of congress, in regulation of commerce, are paramount." *Miller v. New York et al.*, 13 Blatch. 469 (1876) as noted in Rev. Stat. 641 (1874); affd., 109 U.S. 385 (1883).

The Commerce and Seat of the Nation Clauses and, the Thirteenth and Fourteenth Amendments are deeply involved in removal pursuant to Section 1443 here. Even under the clash of clauses between the powerful Seat of the Nation and the strict Regulation of Commerce, civil rights jurisdiction under 28 U.S.C. 1343 and equal rights under 42 U.S.C. 1981 are fully covered by the Thirteenth and Fourteenth Amendments ensuring due process and equal protection remain secure in law and—in equity. Accordingly, "[w]here the underlying right is based on the Constitution

itself, rather than an Act of Congress, § 1343 (3) obviously provides jurisdiction." *Chapman*, 441 U.S. 600, 618 fn. 36 (1979). The vindication of civil rights by removal here is "in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;" and covered furthermore, if not by law then "in equity" by the power granted Congress in the Second Section of the Thirteenth and the Fifth Section of the Fourteenth Amendments of the Constitution where the exercise thereof is found also in Section 1988 "for the protection of all persons in the United States in their civil rights." See 42 U.S.C. 1988; and 28 U.S.C. 1343(4). Moreover, "to the extent that § 1343 (4) was thought to expand existing federal jurisdiction" it has been used "to vindicate" real property rights ""equitable or other relief under any Act of Congress [i.e. Section 1988] providing for the protection of civil rights . . . ." 28 U.S.C. § 1343 (4)." See *Chapman*, at 619; and *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 412 fn. 1 (1968).

These very strong constitutional and statutory provisions reveal that joinder and removal by preemption is the intent and full purpose of Congress when the actions of SBA give rise to a third-party cause of action brought in the Superior Court of the District of Columbia because the jurisdictional nature of the paramount regulation of commerce would otherwise make the equal civil right of joinder in the Court Reform Act under the civil jurisdiction clause of the D.C. Code unenforceable under the vested exclusive federal jurisdiction clause of District of Columbia law. See D.C. Code § 11–946; 84 Stat. 487, Pub. L. 91-358, title I, § 111; D.C. Code §11–921; D.C. Code §1–204.31.

1. Manifestly Complete Preemption

As to the manifestation of the full purpose of Congress as complete preemption here, first consider ""the critical factor" in determining "the scope of rights and remedies under a federal statute ... is the congressional intent behind the particular provision at issue." 457 U.S., at 22." *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 695 (2006). In this case, the Commerce Clause is essential to discovering the clearly manifest intent of Congress in 15 U.S.C. §634 seen further below albeit as preemption found manifestly complete by First Residences' artfully pleaded cause of action, provisions of the constitution, and vested exclusive jurisdiction here.

Meanwhile, "if Congress intends a preemption instruction completely to displace ordinarily applicable state law, and to confer federal jurisdiction thereby, it may be expected to make that atypical intention clear." *Id.* at 698. However, many noteworthy caveats and exceptions are synthesized here further below.

To begin, "[w]here . . . the field that Congress is said to have pre-empted has been traditionally occupied by the States 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 715 (1985) (*citations omitted*). Here (§634) Congress' conferral of jurisdiction was silent on the District of Columbia but "[m]ere silence ... cannot suffice to establish a clear and manifest purpose to pre-empt local authority." *Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 433 (2002) (*internal citation and quotation marks omitted*). However, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Id.* at 433-34 (*internal quotation and citation omitted*). Accordingly, we may presume Congress acted intentionally when leaving the District of Columbia out of the jurisdictional subsection of the Small Business Act while including it in several other sections of the same statute (15 U.S.C. §657, §648, §636, §631 note (Ex. Or. No. 12007)). Although, we must seek more evidence to suffice in the discovery of the full purpose and intent of Congress here.

2. The Plaintiff's Cause of Action

To start the engine of our search for preemption intent by Congress, the plaintiff's cause of action is key. "A right or immunity created by the Constitution or [U.S. law] must be an element, and an essential one, of the plaintiff's cause of action." *Gully v. First Nat. Bank in Meridian, 299 U.S. 109,* 112 (1936). It must be "supported" if "given one construction or effect" of the Constitution or U.S. law and "defeated" granted "another," thereby disclosing a "genuine and present controversy ... upon the face of the complaint, unaided by the answer or [notice of] removal." *Id.* at 112-13. "Indeed," it is the "plaintiff's cause of action" that sets the

bounds of jurisdictional bases, not "[anticipation of or reply] to a probable defense" elsewhere "in the complaint itself." *Id.* Considering the first suit (dismissed) also of judicial notice here where this suit, for instance, brought by First Residences using another entity thereby avoiding the same judicial assignment yet involving, even more evidently, the same issues concerning SBA being the cause of action: arising under jurisdiction here is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court" because "federal law create[d] the cause of action asserted." See *Gunn v. Minton*, 567-568 U.S. 251, 258 (2013).

Basically, since the superior court rules require assignment to the same judge upon refiling of dismissed disputes First Residences artfully pleaded their second complaint by filing suit as a different entity thus disguising the required joinder of the completely preempted SBA matter on the face of their second complaint. See Super. Ct. Civ. R. 40-I(g) (required when: "a second case is filed involving the same parties and relating to the same subject matter"). This rule requires initial notification to the court by the plaintiff or immediate notification upon awareness by either party. Here the change in JBG subsidiaries with slightly different names makes suit one and suit two technically involve different plaintiffs. However, since seeking future rent payments where the SBA Act included provisions for rent payment; the full amount requirement delivered to Petitioner by SBA is the only way for First Residences to obtain the relief sought. However artfully pleaded, this is actually a case of complete preemption because "a state-law cause of action was "brought to enforce" a duty created by [a Federal Act] because the claim's very success depends on giving effect to a federal requirement." *Merrill Lynch, Pierce, Fenner v. Manning*, 136 S. Ct. 1562, 1570 (2016).

Accordingly, out of great concern for certain causes of action, "Congress may so completely pre-empt a particular area that any civil complaint raising [certain] claims is necessarily federal." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987). Along this corollary moreover, certain causes of action are "necessarily federal in character by virtue of the clearly manifested intent of Congress." *Id.* at 67. In the same lane, "the touchstone of the federal removal

jurisdiction "is not the "obviousness" of the pre-emption defense but the intent of Congress." *Id.* at 66. This inherent defense overlays certain causes of action, like traffic lights in D.C., often peripheral and occasionally non-obvious, nevertheless clearly manifest within the bounds of directional intent set from above. Here, for "purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws. See, *e.g., City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973)." *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985).

Nevertheless, "[e]ven where Congress has not completely displaced [local] regulation in a specific area, [local] law is nullified to the extent that it actually conflicts with federal law." *Id.* "[Local] laws can be pre-empted by federal regulations as well as by federal statutes." *Id.* However, if "neither Congress nor [the agency] expressly pre-empted state and local" law concerning SBA jurisdiction, and the local laws "fail[, by some right or immunity] they must do so either because Congress or [the agency] implicitly pre-empted the whole field ... or because particular provisions ... conflict with the federal scheme" in a way that is "strong enough to overcome the presumption that state and local [law] can constitutionally coexist with federal [law]." *Id.* at 714, 716. Here, superior court jurisdiction and judicial power over SBA cannot constitutionally coexist with the Commerce Clause as seen further below.

3. Right of Required and Permissive Joinder in DC

This case involves consideration of both required and permissive joinder; jurisdiction including local civil, subject matter, supplemental, and federal question; and both federal and local common law as applied to the rules of civil procedure. The applicable common law standard is reviewed here, as it is relevant to the areas where the local court has civil jurisdiction and nevertheless lacks judicial power thus subject matter jurisdiction concerning required joinder (Super. Ct. Civ. R. 19(a)) and also becomes relevant to the district court's supplemental jurisdiction.

As to the application of common law generally: "State law is to be applied in the federal as well as the state courts and it is the duty of the former in every case to ascertain from all the available data what the state law is and apply it rather than to prescribe a different rule." *West v. AT&T Co.*, 311

U.S. 223, 236-237 (1940); also *Huron Corp. v. Lincoln Co.*, 312 U.S. 183, 189 n. 7 (1941). Consider in comparison moreover that "local ordinances [are] analyzed in the same way [as State law]." *Hillsborough*, at 713. Finally, "whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

As to common law application to the rules of civil procedure, the D.C. Court of Appeals, as the locality's highest court, controls and has held that: "While this court is not bound in its interpretation of the Superior Court Rules by the federal courts' interpretation of the Federal Rules, we may find the decisions to be analogous authority for our interpretation of the essentially identical provisions." *Bazata v. National Ins. Co. of Washington*, 400 A.2d 313, 314 n.1 (D.C. App. 1979). "[T]he federal courts' interpretations of federal rules essentially identical or similar to our rules . . . may be accepted as persuasive authority in interpreting our rules." *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A. 2d 61, 68 (D.C. App. 1980).

As to permissive joinder, "Rule 20 allows for the joinder of a defendant where any "right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and "any question of law or fact common to all defendants will arise in the action." Super. Ct. Civ. R. 20(a)(2). Superior Court Civil Rule 20 is largely identical to Rule 20 of the Federal Rules of Civil Procedure. See Super. Ct. Civ. R. 20 cmt.; Fed. R. Civ. P. 20. See *Eisenberg v. Swain*, 233 A. 3d 13, 24 (D.C. App. 2020).

Here, Defendant made a motion for joinder pursuant to Super. Ct. Civ. R. 18 (joinder of claims), SCR-LT 3-II(b)(1) (requiring joinder motion no later than initial appearance, see also subpart (a) requiring joinder be warranted under Super. Ct. Civ. R. 19), and 13(a) (motions in general). ECF No. 1-2 at 34. This joinder motion was made while incorporating by reference (see Super. Ct. Civ. R. 10(c)) a third-party complaint claim (under §11–921 local civil jurisdiction) made in superior court pursuant to Rule 14(a)(3) by reason of both Rule 19 and 20 there also and exhibiting a third-party complaint claim (under § 1331 federal question jurisdiction) for joinder of claims under

Super. Ct. Civ. R. 18 by way of SCR-LT 13-I(b) (transfer to Civil II Judge for lack of consent to magistrate) for removal under Fed. R. Civ. P. 81 for § 1367 supplemental (where "supplemental jurisdiction shall include claims that involve the joinder ... of additional parties") and §1331 federal question jurisdiction over the entire case. See also §1343.

As to required joinder, formerly known as compulsory joinder, which is joinder deemed necessary, Super. Ct. Civ. R. 19(a)(1) states in part that "[if feasible, a] person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party ... if in that person's absence, the court cannot accord complete relief among existing parties." In consideration of part (a) regarding whether the required joinder is feasible the Court states "Rule 19 describes a person who is not "subject to service of process" as an example of a person whose joinder is not feasible. The Rule later states that the court should consider dismissal only if a person whose presence would be desirable "cannot be made a party." Super. Ct. Civ. R. 19(b). Thus, given the explicit language of the Rule, we join the federal courts and interpret Rule 19 to require a trial judge to order joinder whenever possible." *Id.* at 21. Although, in Footnote 4 there, the D.C. Court of Appeals says:

> "Rule 19 also refers to a person "whose joinder [would] deprive the Court of jurisdiction over the subject matter of the action." This language comes from the federal rule, which clearly refers to a party whose presence would defeat the federal court's diversity jurisdiction.... Because the concept of diversity jurisdiction has no relevance to our courts, however, this language in our local Rule 19 has no obvious meaning." *Id.* at 21 n. 4.

While the meaning may be non-obvious generally speaking, in this case, the operation of the rule becomes apparent upon recognition of preemption manifestly complete in the object and purpose of Congress in light of, artful pleading, the Seat of the Nation and Commerce clauses, the silence on D.C. in the jurisdictional subsection of the SBA Act, and the intent of making the Federal Rules local law through the Court Reform and Procedure Act of 1970. The purpose altogether applied affords D.C. residents similar judicial procedures to those found in States which

better accomplishes the constitutional necessity of equal civil rights for all people in D.C. As in several States joinder is right here by legislative acts, and removal in cases with conflicts of federal and local law is abundantly clear as operationally flawless in consideration of the full purpose of Congress. 28 U.S.C. Chapter 89 (Removal); and D.C. Court Reform Act Pub. L. No. 91 – 358.

4. Removal

Of course, "the Superior Court of the District of Columbia is considered a State court for purposes of the removal statute. 28 U.S.C. § 1451(1)." ECF No. 5. Otherwise, however, it is an Article I court where Congress is empowered to "exercise exclusive Legislation." U.S. Const. art. I, § 8, cl. 17. In accord, "[t]he Superior Court of the District of Columbia" was "established pursuant to article I of the Constitution." Pub. L. No. 91–358, 84 Stat. 475, D.C. Code § 11–101. Furthermore, local legislation enacted by Congress in 1970 (before the "D.C. Home Rule") established that "[t]he Superior Court shall conduct its business according to the Federal Rules of Civil Procedure." *Id.* at 487, D.C. Code § 11–946.

By law, therefore, Rule 20 permitted and Rule 19 required the joinder of the Small Business Administration. Typically, this would not become a basis for removal. However, the jurisdictional subsection of 15 U.S.C. § 634 prescribes jurisdiction upon "any court of record of a State having general jurisdiction, or any United States district court" but does not include the District of Columbia; or a definition of State anywhere in this chapter to include the local courts of D.C. for purposes of jurisdiction. See ch. 14A of Title 15; cf. ch. 89 of Title 28.

Nevertheless, the Code of the District of Columbia contains two pertinent jurisdictional subsections, one for civil jurisdiction and another for judicial power. As to civil jurisdiction, "the Superior Court has jurisdiction of any civil matter ... brought in the District of Columbia .... [except] over which exclusive jurisdiction is vested in a Federal Court." D.C. Code §11–921. As to judicial power, "the Superior Court has no jurisdiction ... over which a United States court has exclusive jurisdiction pursuant to an Act of Congress." D.C. Code §1–204.31. Applied together, these subsections create a jurisdictional scope with an outer perimeter of civil jurisdiction and an inner perimeter of

judicial power leaving a margin of uniquely federal cases ripe for removal.

This is made clear by the operative word *vested* in §11–921. This draws the outer perimeter of jurisdiction over civil cases brought in D.C. at a limit where matters beyond this bright line limitation are those expressly prescribed exclusive jurisdiction in federal court by statute. See §1–204.31. In contrast, an inner perimeter of the judicial power associated with this jurisdiction is drawn at a lesser reach to a limit where matters beyond this bright line limit on judicial power are those matters vested with exclusive jurisdiction in federal court. See §11–921.

To make sense of allowing the superior court civil jurisdiction but without judicial power in this marginal area appears to be for providing this margin of say transitory jurisdiction for the exercise of the right of joinder in civil cases brought in D.C. that are of exclusive federal jurisdiction that is not express (silent for instance, as here: 15 U.S.C. §634) yet vested as exclusive jurisdiction because that power was only conferred to U.S. District Court in this jurisdiction and thereby necessitating removal to federal court having been vested since excluding D.C. local courts from the jurisdictional subsection of the Small Business Act.

Comparatively, the Court has held that "although the [plaintiff] had undoubtedly pleaded an adequate claim for relief under the state law ... and had sought a remedy available only under state law. The necessary ground of decision was that the pre-emptive force ... is so powerful as to displace entirely any state cause of action." *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 7 (2003). As here, while the Plaintiff's possession of real property and future rent deposit claim sought remedies only under local law, the Petitioner's right to joinder of the party responsible for this same cause of action that was first dismissed and brought again with federal issues having already been necessarily raised, disputed, substantial, and resolvable in federal court: this action also introduced the "unusually "powerful" pre-emptive force" of Congressional intent strong enough to place First Residences "within the zone of interests" Congress sought to protect and entirely remove the state cause of action to federal court. *Id.*; *Gunn*, at 258; *Match-E-Be-Nash-She-Wish Band v. Patchak*, 567 U.S. 209, 132 S.Ct. 2199, 2210 (2012).

Accordingly, "[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Anderson*, at 8. "[I]f a federal cause of action completely pre-empts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law." *Id.* at 7. "Any such suit is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of [federal law]" *Id.* at 7.

"This claim is then removable under 1441([c]), which authorizes any claim that "arises under" federal law to be removed to federal court." *Id.* at 8. Moreover, because a right could not be enforced pursuant to Section 1443, the case was also removed by reason of the civil rights removal statute provided the Court grants certiorari and answers the question presented in the affirmative. Therefore pursuant to Section 1441, and Section 1443 as it appears, "removal was proper even though the complaint purported to raise only state-law claims." *Id.* at 7. Furthermore, "concurrent state court jurisdiction does not destroy federal subject matter jurisdiction and require remand." *Hutchinson v. District of Columbia*, 2010 U.S. Dist. LEXIS 60153, *3 (D.D.C. 2010) (internal citations omitted).

The district court's remand order however relies on the general application of 28 U.S.C. § 1441(a) without consideration of its opening phrase which states "[e]xcept as otherwise expressly provided by Act of Congress," nor considered where § 1441(c) expressly provides for "joinder of federal law claims and state law claims ... arising under the Constitution, laws, or treaties of the United States." ECF No. 5, App. 7a. The district court then relies on *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987), regarding the 'well-pleaded complaint rule' without considering its exceptions. *Id.* "Under this rule, plaintiff is "the master of the claim" and "may avoid federal jurisdiction by exclusive reliance on state law." *Kormendi/Gardner Partners v. Surplus Acquis. Vent.*, 606 F. Supp. 2D 114, 117 (2009). However, "[i]n *Boyle v. United Technologies Corp.*, 487 U.S. 500, 504, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988), the Supreme Court set forth an exception to the general rule that state law is not displaced by federal law absent "a clear statutory prescription" or a

direct conflict between the two bodies of law. This exception applies when two criteria are met: first, the case must involve "an area of uniquely federal interest"; and second, there must exist "a significant conflict . . . between an identifiable federal policy or interest and the [operation] of state law." *Id.* at 507, 108 S.Ct. 2510 (*internal quotation omitted*)." *Id.*

Petitioner's notice to First Residences of the SBA claims beforehand then made of record in superior court prior to the second suit, a federal question concerning SBA also necessarily arose in their second complaint because SBA gave rise to the cause of action and was therefore a necessary party therein. First Residences (with removal intent of notice) artfully pleaded their second complaint by using a different entity which, inadvertently or not, disguised the required joinder of the completely preempted SBA matter on the face of their second complaint.

Here, where local jurisdiction over SBA is exclusive to the district court, this is an exception to the well-pleaded-complaint-rule because the intent of Congress manifested in the jurisdictional subsection (§634) appears in conflict with D.C. Code §11–921 (civil jurisdiction), and accordingly, without vested exclusive jurisdiction in a Federal Court under §634, SBA can only be joined in superior court but must be removed for lack of judicial power under D.C. Code §1–204.31.

Removal was also made pursuant to 28 U.S.C. 1443 according to the text thereof, particularly by reason of the inability to enforce an equal civil right in local judicial proceedings. Note also "[another] exception to [the well-pleaded-complaint] rule is 28 U.S.C. § 1443, which allows removal to address the violation of a [civil] right ... that is unenforceable in state court." See *Hunt v. Lamb*, 427 F. 3d 725, 727 (10th Cir. 2005).

5. Commerce Clause

The important role played by the commerce clause here concerns the purposeful exclusion of the District of Columbia from the jurisdictional subsection of the Small Business Act (§634) silently because D.C. is not a state and Title 15 of the United States Code concerns "commerce and trade." The subsection is necessarily silent on D.C. because U.S. Const. art. I, § 8, cl. 3 grants Congress the power to "regulate commerce ... among the several states." After all, "Congress

in creating the District of Columbia "a body corporate for municipal purposes" could only authorize it to exercise municipal powers." *Stoutenburgh v. Hennick*, 129 U.S. 141, 147 (1889).

Meanwhile, the SBA has been defendant to fourteen civil division actions per superior court case search, but not once appeared, twice defaulted by court order, once dismissed by court order, five times dismissed by plaintiff, and four times dismissed by consent of other parties or closed by settlement of other parties. ECF. No. 7 at 10-11. Recently, a Superior Court Associate Judge determined that "in matters involving decisions of federal agencies, relief lies "in a court of the United States," a federal district court, not a state court." See *Fisco v. U.S. Small Business Administration*, 2022-SCB-001545 (June 5, 2023).

However, even when causes of action "arise under the laws of the United States, so as to fall within a federal court's jurisdiction under 28 USCS 1331" (citing *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 60 (LEXIS HN. 1)); they still do fall within state court jurisdiction when the state [or local laws] and federal laws can "constitutionally coexist." *Hillsborough*, 471 U.S. 707, 716 (1985). Accordingly, "determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system." 478 U.S., at 810." *Grable & Sons*, 545 U.S. 308, 319 (2005). While some cases "are removable to federal court under 28 USCS 1441([c) because] Congress has clearly manifested an intent to make such causes of action removable to federal court by including language in the jurisdictional subsection," here, 15 U.S.C. § 634 expressly confers jurisdiction on States and U.S. district courts but silently excludes jurisdiction over SBA in DC local court. *Id.* However, this disparate silence becomes clearly manifest intent because D.C. Code §1–204.31 (judicial power), a derivative of the U.S. Const. art. I Seat of the Nation Clause, read in contrast with the Commerce Clause restriction on the regulation of interstate commerce through an Article I local legislative court makes the full purpose of Congress clearly out to be a limit on jurisdiction through a limit on judicial power concerning Title 15 (commerce and trade) agency matters because complete preemption is clearly manifest as a matter of necessity concerning constitutional coexistence with local law. For instance:

> "[Congress] unites the powers of local legislation with those which are to operate through the Union, and may use the last in aid of the first, or because the power of exercising exclusive legislation draws after it, as an incident, the power of making that legislation effectual, and the incidental power may be exercised throughout the Union, because the principal power is given to that body as the legislature of the Union .... Whether any particular law be designed to operate without the District or not, depends on the words of that law. If it be designed so to operate, then the question, whether the power so exercised be incidental to the power of exclusive legislation, and be warranted by the constitution, requires a consideration of that instrument. In such cases the constitution and the law must be compared and construed." *Cohens v. Virginia*, 19 U.S. 264, 428 (1821).

Congressional intent is made complete here because while the intent of Congress is silent in §634 alone, federal statutory, common, and constitutional law reveals the historic full purpose and clearly manifest intent of the Constitutional Congress regarding the commerce clause, in unison with the 83rd and the 91st Congresses regarding SBA jurisdiction and District of Columbia court reform respectively, such that the 83rd nor 91st Congresses made any conferral of judicial power over SBA to D.C. local courts. See D.C. Code §1–204.31 (judicial power); cf. D.C. Code §11–921 (civil jurisdiction). While jurisdiction without judicial power over SBA poses no concern for constitutional principles while facilitating the useful function of removal, the use of judicial power here does because any D.C. local common law precedent involving several States concerns "a regulation of commerce in violation of the Constitution" because here for example, Petitioner signed the SBA agreement in Maryland, as an officer of a Delaware Corporation, and the dispute involves the SBA Office of Disaster Assistance in Texas. *Stoutenburgh* at 148.

For more consider that a ruling on a commercial agency matter by an Article I local court in D.C. would concern the regulation of interstate commerce where judgments may be weighed as either (1) nationwide common law considering "[Congress'] incidental power may be exercised throughout

the Union" because "in all commercial regulations, we are one" or (2) more likely, pose insurmountable separation of powers conflicts with Article III jurisdiction where any such conceptual Article I interstate commercial common law was rather intentionally avoided by purposefully excluding judicial power over such matters here. *Cohens* at 413, 428. Furthermore, in concert, the Court held "interstate commerce ... must be subject to one system ... it falls, therefore, within the domain of the great, distinct, substantive power to regulate commerce, the exercise of which cannot be treated as a mere matter of local concern, and committed to those immediately interested in the affairs of a particular locality." *Stoutenburgh* at 148.

Accordingly, upon examination of the full purpose of Congress, it is clearly manifest that Congress did not confer judicial power over SBA to the local District of Columbia courts nor leave its intentional silence in that respect of the Constitution to SBA for agency deference, not to mention their inability to defer local interstate commercial judicial power "which could not originally have been authorized" by Congress without a constitutional amendment ratified by the States. *Id.* at 149; see also U.S. Const. art. V. §4 cl. 2.

Ultimately, like the avenues of Maryland and Pennsylvania converging on the steps of the Capitol at precisely the same angle, both complete and implicit preemption arrive as completely the intent and full purpose of Congress if the action arises from the seat of the nation and concerns the regulation of interstate commerce.

C. YOUNGER ABSTENTION DOES NOT APPLY

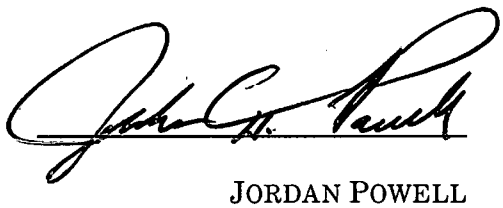
Younger abstention, inapplicable here, applies only to "criminal prosecutions," "civil enforcement[s]," and "contempt orders." See *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 78 (2013); also *New Orleans Pub. Serv., Inc. v. New Orleans*, 491 U.S. 350, 368 (1989). The only expressed exception is civil rights cases removable pursuant to 28 U.S.C. 1443. See *Younger v. Harris*, 401 U.S. 37, 56 (1971).

CONCLUSION

The petition for certiorari should be granted.

October 2020

Respectfully submitted,



JORDAN POWELL
1263 1ST STREET, SE, 523
WASHINGTON, D.C. 20003
(202) 503-5284
JTTP@PM.ME