No. 24-_____

In the Supreme Court of the United States

DEBRA BROWN,

Petitioner,

v.

BANK OF AMERICA CORPORATION AND FANNIE MAE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Circuit conflicts exist as to the first question "whether the government is the government." The First Circuit Court of Appeals in this case determined that "FNMA is not the government or a government actor subject to the Due Process Clause of the U.S. Constitution when taking property from a private citizen." The U.S. Supreme Court determined in *Collins v. Yellen* that the Federal Housing Finance Authority is an instrumentality of the U.S. Government. The First Circuit maintains that Federal National Mortgage Association ("FNMA") is not the government and does not need to comply with the U.S. Constitution.

The Question Presented is:

Whether FNMA is an instrumentality of the U.S. Government and/or state government or whether Congress authorized FNMA to take private citizens' property without due process of law or adherence to any state consumer and property law.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the First Circuit

No. 21-1978

Debra Brown, *Plaintiff - Appellant*, v. Bank of America Corporation; Fannie Mae, *Defendants - Appellees*

Date of Final Judgment: August 26, 2024

Date of Rehearing Denial: September 25, 2024

U.S. District Court, District of Massachusetts

No. 10-11085-GAO

Debra Brown, *Plaintiff*, v. Bank of America Corporation and Fannie Mae, *Defendants*

Date of Final Order: September 30, 2021

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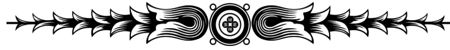
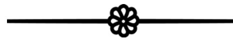


OPINIONS BELOW

The U.S.C.A. for the First Circuit opinion affirming the District Court Judge's decision finding the Petitioner's appeal untimely and meritless (App.1a) and the U.S.C.A. decision denying the reconsideration En Banc dated September 24, 2024 (App.7a).



JURISDICTION

The First Circuit denied reconsideration on September 24, 2024. (App.7a) This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. V

> No person shall be... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

> process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

12 U.S.C. § 4617(a)(7)
Housing and Economic Recovery Act

28 U.S.C. § 455(b)(4)
Void Not Voidable

INTRODUCTION

In 1995 the Mortgage Electronic Registry System ("MERS") was formed for the purpose of tracking mortgage loans and servicing rights bypassing traditional land registries for recording ownership maintained by counties in Massachusetts. Unknown to homeowners, the MERS system was used to record mortgages that were sold to FNMA at the initiation of a mortgage loan or refinance. In this case a refinanced mortgage was entered into with Countrywide and all payments were made to Countrywide, but the loan was funded/purchased by FNMA near the origination date.

In 2008 there was a great "reset" that triggered many mortgages and refinances made with Countrywide to go into default.[1] In February 2009 the U.S. Treasury entered a Financial Agency Agreement with FNMA naming them their "financial agent" for purposes of conducting foreclosures – making this the largest taking of private property to the U.S. Govern-

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[1] Deposition testimony from a senior official from FNMA stated that the Petitioner was not in default, but FNMA has continued to represent in the Courts that no default does not matter.

ment in the history of the United States.[2] The agreement that contained confidentiality clauses, included a section titled "foreclosure prevention" and mandated *inter alia* that FNMA perform exception management; receive and review modification requests that are outside of the established parameters and, if permitted, evaluate the acceptability of modifications for exception processing; and approve or deny such exceptions and servicer/borrower appeals, as appropriate and delegated by Treasury."

FNMA had an established attorney network willing to file documents and cases in the names of other parties without revealing the identity of FNMA in the transactions to take homes by non-judicial foreclosures. FNMA even designated two special firms per jurisdiction that could file documents into U.S. Bankruptcy Courts that did not reveal FNMA in the transactions. These firms typically performed a cradle to grave foreclosure for a small fee without identifying FNMA as the true party of interest.

In January 2010 the U.S. Treasury entered into an Amended and Restated Commitment to Purchase Financial Instrument and Servicer Participation Agreement, also containing confidentiality clauses. The agreements stated that FNMA and BOA agreed to modify first lien mortgages and offer foreclosure prevention services to homeowners and affirmatively stated that FNMA was designated by the Treasury

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[2] In 2009 the U.S. Treasury contracted with FNMA declaring FNMA their financial agent and keeping the agreement confidential. https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf

as a financial agent. The FNMA attorney network agreements provided that the law firms would take instructions from FNMA and even if a "servicer/bank" instructed the law firm to undo the foreclosure – FNMA would have the final say. The agreements do not mention providing any due process or appeal process for homeowners wrongly foreclosed upon.

In this case FNMA utilized their attorney network contractor to conduct a cradle to grave foreclosure in the name of BAC Home Loans that did not comply with Massachusetts state law; that did not allow any consideration of a modification in accordance with the U.S. Treasury directives; and allowed no due process.[3]

Petitioner, a homeowner, taxpayer and officer of the Court pursued every avenue over the last fifteen years to have the wrongful foreclosure reversed in courts and through the administrative agency-Federal Housing Finance Authority ("FHFA"), the Inspector General of the FHFA and FNMA. Throughout the legal proceedings FNMA successfully argued that (1) fraud did not matter; (2) no due process was required; and (3) the Housing and Economic Recovery Act ("HERA") 12 U.S.C. § 4617(a)(7) anti-injunction clause gave FNMA immunity from all state consumer protection laws arguing that these rights, powers and

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[3] Like in the story of Henny Penny-all the courts in the U.S. received the message that the sky is falling if anyone is allowed to keep their home after a fraudulent foreclosure by FNMA. The U.S. Constitution does not allow for the government taking of homes without due process and all judges are bound by the Constitution.

privileges expressly include the transfer or sale of any GSE asset without approval, assignment or consent.[4]

On June 23, 2021 this Court issued the first decision interpreting HERA *Collins v. Yellen*, 141 S.Ct. 1761 (2021). The decision held that (1) Federal Housing Finance Agency ("FHFA") was the government; (2) the directorship (leadership) of the FHFA was unconstitutional; (3) FHFA at all times was the executive branch of the federal government; (3) FHFA did not "step into the shoes" of FNMA as conservator; (4) by statute, FHFA's powers differ critically from those of most conservators and receivers *id.* 1791; (5) a party with an injury has standing to bring a claim for the violations by the director of the FHFA and (6) that HERA statute cannot be interpreted to allow for any violation of the U.S. constitution.[5]

The First Circuit issued a decision in June 2021[6] two weeks prior to this Court's decision in Collins that

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[4] FNMA took possession of Petitioner's home by force on November 12, 2024 and threatened continued legal action against her after taking the $750,000.00 home, all the possessions and $140,000.00 appeal bond payments.

[5] FNMA's arguments that they are not the government are contrary to constitutional rights. *Abbott Lab v. Gardner*, 387 U.S. 136, 155 (1967).

[6] On June 8, 2021 the United States Court of Appeals for the First Circuit reversed a decision of the Chief Judge of the District of Rhode Island that ruled that FNMA was required to provide due process prior to the taking of homes with non-judicial foreclosure. *Fed. Hous. Fin. Agency*, 324 F.Supp.3d 273, 284 (D.R.I. 2018). The First Circuit held that FNMA and FHFA were *not acting as the government* when they did so, citing the decision issued the same day by the First Circuit in *Montilla v. Federal National*

provided for the opposite – that FNMA is not the government. *Montilla v. Federal National Mortgage Ass'n*, 999 F.3d 751 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1360 (2022) The decision of the First Circuit affirming the District Court relied on their decision in Montilla that has been determined to be overruled by Collins in other circuit courts of appeals. FNMA successfully argued that (1) they are not an instrumentality of the U.S. Government; (2) no due process was required; and (3) the HERA 12 U.S.C. § 4617(a)(7) anti-injunction clause gives FNMA immunity from all state consumer protection laws arguing that these rights, powers and privileges expressly include the transfer or sale of any GSE asset without approval, assignment or consent, including fraud.[7]

In the Second Circuit on July 2, 2024 that Court voided judgment(s) made by a U.S. District Court Judge when it was identified that his wife owned stock in Bank of America. *Litovich v. Bank of America et al*, 21-2905 July 2, 2024. This decision was immediately filed pursuant to Rule 28j in the First Circuit. The First Circuit determined that the argument that the District Court Judge had a financial interest in a party was meritless.

Since *Collins v. Yellen*, this Court issued a number of decisions reducing the powers of administrative

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Mortgage Ass'n, 999 F.3rd 751 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1360 (2022) ("Montilla")

[7] In a case brought against FNMA by the Massachusetts Attorney General, the U.S. District Court dismissed the complaint (declared FNMA had immunity from all state consumer laws) merely speculating that the Complaint would "likely" not withstand a preemption analysis. *Commonwealth v. FHFA*, 54 F.Supp.3d 94 (2014)

state agencies that fail to comply with the U.S. Constitution limiting federal agencies over-reaching power[8] and one decision that recognizes that a state cannot take a private citizen's property. *Tyler v. Hennepin County*, 598 U.S. 631 (2023).[9]

A. Why This Petition Matters

The confidentiality clauses contained in the U.S. Treasury agreements with BOA and FNMA evidence that the U.S. Treasury, recipient of all profits accumulated by FNMA, required the signatories to take private properties and not reveal the true party and overall directives of the U.S. Treasury. Millions of Americans, including the Petitioner lost their homes to the U.S. Treasury via FHFA the administrative agency charged with oversight-without due process.[10] The Treasury Agreements also allowed for the servicers to receive compensation for all the mortgages they serviced in full – meaning that the servicers were

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[8] *West Virginia v. EPA*, 142 S.Ct. 2587 (2022); *Biden v. Nebraska*, 143 S.Ct. 2355 (2023); *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024), No. 22-451 (June 28, 2024); *SEC v. Jarkesy*, 603 U.S. ___ (2024), No. 22-859 (June 27, 2024); *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. ___ (2024), No. 22-1008 (July 1, 2024).

[9] Massachusetts is one of the states where the statute declared unconstitutional in Tyler also remains in force. To date there has been nothing by the legislature or the SJC to adhere to the Tyler decision.

[10] The National Foreclosure Settlement paid small amounts to violated homeowners after a lengthy review by third party consultants and petitioner received a small check. Massachusetts also paid small settlements for wrongful foreclosures. How does Petitioner qualify for these settlements while the perpetrators of the taking are allowed to take the property anyway?

compensated for the value of the Petitioner's mortgage. FNMA was compensated for the value of the Petitioner's mortgage through insurance on all mortgages put into mortgage-backed security trusts. Yet Petitioner was not allowed to keep her home that was unlawfully foreclosed upon by Respondents and even when presented with all the evidence of the unlawful action. FNMA and BOA rely on the HERA provisions to take the property well in excess of the mortgage amount without recourse. FNMA and BOA get a "free house," appeal bond money and all possessions from a homeowner.[11] The First Circuit's Montilla decision relies on HERA in determining that FNMA is not the government.

REASONS FOR GRANTING THE PETITION

I. Settle the Question of Whether FNMA Can Take Private Property Without Due Process

A. Understanding the Nature of Due Process

Due process prior to deprivation of property is required by the U.S. Constitution. In the earliest test to the Nation's new judiciary, the Supreme Court ruled:

> If a law be in opposition to the Constitution, if both the law and the Constitution apply to

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[11] In *Loper Bright* the Supreme Court overturned the Chevron doctrine, Chief Roberts wrote that [the statute, much like HERA] prevents judges from judging. The Massachusetts Legislature has enacted many regulations that made the actions of FNMA unlawful—but Massachusetts Courts refused to recognize the legitimacy of those statutes.

> a particular case, so that Court must either decide the case comfortably to the law, disregarding the Constitution or comfortably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules govern the case. This is the very essence of judicial duty. A law repugnant to the Constitution is void and all courts, as well as other departments are bound by the [Constitution]. *Marbury v. Madison* 5 U.S. 137 (1803)

This case presents a disturbing reality as to the duration of the matter in the Courts without due process (Due process requires an evidentiary hearing of some type-the opportunity to question witnesses under oath before an independent tribunal). What use is a court if the court does not allow due process? The District Court Judge dismissed Petitioner's initial complaint without a hearing and motions to void judgment without any hearing. He ignored the substantial volume of evidence submitted that proved beyond a reasonable doubt that an unlawful foreclosure occurred. The U.S. Court of Appeals affirmed the District Court without any hearing or reference to the 1000+ pages of documentary evidence. Their decision that this was meritless and untimely does not indicate any application of law to facts.

Something cannot be deemed "fully litigated" with the absence of due process of law in any proceeding where it was required. Judgments issued without due process of law are void ab initio. Void is void. Due process by its' very name is timeless – there either is due process or there is none.

B. Due Process Includes *Weighing the Private Interest v. Public Interest* and in this case the Government had No Financial Interest

This Court has determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. *Los Angeles v. David*, 538 U.S. 715, 717(2003) (deprivation of even money is the deprivation of property for purpose of evaluating due process protection). *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538; 541 (1985) ("The point is straightforward:

> The Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures") (emphasis supplied). The Due Process Clause mandates that a sanction such losing one's home "should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766-767 (1980).

Individuals are entitled to procedural due process if the property/liberty interest at stake is deemed to be of such magnitude or importance that its loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970).

This Court has outlined that once it is determined that the Due Process Clause applies to the proceedings below, "the question remains what process is due." *Loudermill*, 470 U.S. at 541 quoting *Morrissey v. Brewer*, 408 U.S. at 481. This Court's decision in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976) dictates that the process due in any given instance is determined by weighing "the private interest that will be affected by the official action" against the government's asserted interest, "including the function involved" and the burdens the government would face in providing greater safeguards. *Id.* at 335. The Mathews calculus contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional or substitute procedural safeguards." *Id. See Hamdi v. Rumsfeld*, 542 U.S. 507, 528-529 (2004). The District Court and/or Court of Appeals did not engage in any balancing. (CA1A and CA3A).

Factors roughly in order of priority that have been considered to be elements of a fair hearing: (1) an unbiased tribunal[12]; (2) notice of the proposed action and the grounds asserted for it; (3) an opportunity to present reasons why the proposed action should not have been taken; (4), (5) and (6) the right to call witnesses, to know the evidence against one, and to have decision based only on the evidence presented; (7) counsel; (8) and (9) the making of a record and a statement of reasons; (10) public attendance; and (11)

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[12] *See* section on District Court Judge's reported financial interest in BOA.

judicial review. Friendly, "*Some Kind of Hearing*", 123 U. PA. L. REV. 1267, 1279-95 (1975).

II. FNMA'S ACTIONS EXCEEDED THEIR AUTHORITY

FNMA was chartered by Congress to further governmental objectives related to the secondary mortgage market and national housing policies. The Agreement with the U.S. Treasury confirms that[13] 1) FNMA has been under the control of FHFA and/or financial agent of the United States Treasury for fifteen years. In 2018 the Chief Judge from the smallest state of Rhode Island held:

> "based on these facts, FNMA is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the federal government by the United States Constitution. *Sisti v. Fed. Hous. Fin. Agency*, 324 F.Supp.3d 273, 277 (D.R.I. 2018). *See DOT v. Ass'n of Am. R.R.*, 135 S.Ct. 1225, 1232-1233 (U.S. 2015); *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374 (1995).

The First Circuit reversed that decision in 2021 determining that FNMA was not acting as an agency or instrumentality of the United States.

In Collins, this Court wrote that "every Court of Appeals has held that the *[anti-injunction clause] prohibits relief where the FHFA action at issue fell*

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[13] In 2009 the U.S. Treasury contracted with FNMA declaring FNMA their financial agent and keeping the agreement confidential. https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf

within the scope of the Agency's authority as conservator, but that relief is allowed if the FHFA exceeded that authority." *Id* at 1776. Following Collins all courts: federal and state should be starting with an analysis if whether FNMA's action (such as taking properties directly) exceeded their chartered authority as a secondary market participant. If a court starts with the required analysis per Collins, state consumer protection laws receive their vitality back. FNMA attorney network agreements engaging foreclosure attorneys to represent FNMA in another entities' name *is, was and always will* be direct participation in the mortgage market. FNMA claiming ownership of property such as this Petitioner's home is direct participation in the mortgage market and ultra vires.

III. THIS IS A MAJOR QUESTION

In Collins the Court opined "And there can be no question that FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy and keep their home." *Id.* Collins This is a major-questions case.

> Analysis of an agency's statutory authority "must be 'shaped, at least in some measure, by the nature of the question presented'— whether Congress in fact meant to confer the power the agency has asserted." *West Virginia*, 142 S.Ct. 2587, at 2608 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). Major-questions cases are those "in which the history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason

to hesitate before concluding that Congress meant to confer such authority." *Id.*

The major-questions doctrine is a constitutionally based clear-statement canon rooted in "both separation of powers principles and a practical understanding of legislative intent." *Id.* at 2609. The Court "presume[s] that Congress intends to make major policy decisions itself, not leave those decisions to agencies." *Ibid.* And the Court exercises "common sense as to the manner in which Congress is likely to delegate a policy decision of ... economic and political magnitude." *Brown & Williamson*, 529 U.S. at 133.

Clear-statement rules "ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation." *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion). They "operate[] as a vital check on expansive and F.3d 381, 417 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc).

A. The Key Major-Questions Factors Are Present Here.

The Government's claimed authority to take private property without due process is a matter of great "economic and political significance." *West Virginia*, 142 S.Ct. at 2608. (quote from *Collins v. Yellen* about mortgage market) Congress enacted the HERA in 2008 as financial reform legislation in response to the subprime mortgage crisis and the collapse of the U.S. financial markets. HERA was

intended to renew public faith in government-sponsored enterprises (GSEs) that provided home loans—namely Fannie Mae and Freddie Mac. Congress created Help for Homeowners ("HAMP") to keep homeowners in their homes – not strip them of their homes. As a new agency, the FHFA used its newfound authority to put Fannie Mae and Freddie Mac under conservatorship in 2008.[14]

> FNMA was chartered by Congress to further governmental objectives related to the secondary mortgage market and national housing policies. The federal government maintains a substantial ownership interest in FNMA and FNMA is substantially funded by the federal government. The Board of Directors of FNMA are appointed by FHFA and FNMA has been under the control of FHFA and/or the United States Treasury for thirteen years.

This broad assertion of power is also "unheralded. This novel power is also a transformative expansion" of the Secretary's authority. *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (UARG).

FNMA engaged directly in the mortgage market creating an attorney network that took their orders, not the servicers; and took ownership of properties directly – exactly what their charter never allowed. They served as a financial agent for the U.S. Treasury in the taking of properties and were contractually bound to adhere to all state laws. On the contrary, FNMA created attorney referral networks to keep the

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[14] https://www.investopedia.com/terms/h/housing-and-economic-recovery-act-hera.asp

identity of FNMA a secret in court proceedings in Massachusetts. FNMA entered into an agreement to be the financial agent of the U.S. Treasury to take homes without letting anyone know of the agreement.

"FHFA as conservator was charged with *reorganizing, rehabilitating or winding up [FNMA] affairs* 12 U.S.C. § 4617(a)(2). In fact, FHFA expanded FNMA affairs, embraced a nationwide litigation campaign to further insulate FNMA actions from judicial scrutiny, engaging courts to determine that (1) FHFA is not a government actor; (2) HERA gave FHFA and FNMA immunity from all state consumer protection laws: and (3) "Congress intended FHFA to "exercise [its]rights, powers, and privileges" as conservator without being "subject to the direction or supervision of any other agency of the United States or any state. Congressional intent appeared to be establishing programs to save homes not destroy them.

Under the FHFA conservatorship FNMA has exponentially increased their interests in the U.S. mortgage market.[15] The taking of homes with non-judicial foreclosures – a business prohibited by FNMA's own charter should be excluded from HERA's anti-injunction clause because (1) prohibited by FNMA charter and (2) un-constitutional acts or acts repugnant to the constitution cannot be allowed. The great success of FNMA's legal campaign that they are not the government throughout the United States' federal

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[15] By 2009, Fannie Mae, Freddie Mac, and FHLB provided 90% of the financing for new mortgages. This was more than double their share of the mortgage market prior to the 2008 crisis. Private mortgage financing had simply dried up. https://www.thebalance.com/fannie-mae-vs-freddie-mac-3305695 by Kimberly Amadeo sourced to Fannie Mae and FHFA reports.

and state court systems has led to lawlessness, particularly in states that are "non-judicial." [16] In fact Congressional intent was made known in the following:

> In response to the waves of foreclosures, Congress made foreclosure mitigation an explicit part of the Emergency Economic Stabilization Act (EESA), designed to address the nation's economic crisis.[ftnt omitted] Two of EESA's stated goals are to "preserve homeowner-ship" and "protect home values." [ftnt omitted] In addition, EESA instructs the Treasury Secretary to take into consideration "the need to help families keep their homes and to stabilize communities." [ftnt omitted] It also includes express directions to create

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[16] "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." *Bowsher*, 478 U.S., at 730. Their solution to governmental power and its perils was simple: divide it. To prevent the "gradual concentration" of power in the same hands, they enabled "[a]mbition... to counteract ambition" at every turn. The Federalist No. 51, p. 349 (J. COOKE ED. 1961) (J. Madison). At the highest level, they "split the atom of sovereignty" itself into one Federal Government and the States. *Gamble v. United States*, 139 S.Ct. 1960 (2019) (slip op., at 9) (internal quotation marks omitted). They then divided the "powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." *Chadha*, 462 U.S., at 951. They did not stop there. Most prominently, the Framers bifurcated the federal legislative power into two Chambers: the House of Representatives and the Senate, each composed of multiple Members and Senators. Art. I, §§ 2, 3. The Framers viewed the legislative power as a special threat to individual liberty, so they divided that power to ensure that "differences of opinion" and the "jarrings of parties" would "promote deliberation and circumspection" and "check excesses in the majority." *See* The Federalist No. 70, at 475 (A. Hamilton); *see also id.*, No. 51, at 350. *Id.* 591 U.S. ___ (2020)

> mortgage modification pro-grams. Congressional Oversight Panel October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After 6 Months. October 9, 2009. Submitted under Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343.[17]

Demonstrating that FHFA's administration of FNMA is also "'incompatible' with 'the substance of Congress' regulatory scheme.'" *UARG*, 573 U.S. at 322 (quoting *Brown & Williamson*, 529 U.S. at 156).

> The major questions doctrine rests on "separation of powers principles and a practical understanding of legislative intent" that "presume[s] ... Congress intends to make major policy decisions itself." *West Virginia*, 142 S.Ct. at 2609. Those principles apply regardless of whether an agency is regulating private actors or administering a congressionally created benefit program. In both contexts, "an agency literally has no power to act ... unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). So what matters is not whether the agency is regulating private parties or administering benefits, but whether it is exercising the type of power that courts would expect Congress to clearly delegate.
>
> Unlike the Government's narrow view, the Court has recognized that major-questions cases "arise[] from all corners of the admin-

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[17] https://www.govinfo.gov/content/pkg/CPRT-111JPRT52671/pdf/CPRT-111JPRT52671.pdf

istrative state." *West Virginia*, 142 S.Ct. at 2608. *Notably, King v. Burwell*, 576 U.S. 473, 485–86 (2015), applied the doctrine to a government-benefit program—a federal tax-credit program under the Affordable Care Act—because those tax credits "involved billions of dollars in spending each year," "affect[ed] ... millions of people," and presented a question of deep "economic and political significance." For the same reasons, the doctrine applies here.

IV. FNMA IS RESPONSIBLE FOR THEIR CONTRACTORS' ACTIONS

FNMA's use of foreclosure network attorneys to represent FNMA while dictating that the foreclosure network attorneys file documents in all courts in the names of servicers is unlawful, ultra vires and criminal. Furthermore, FNMA relies on the "honor system" for all their contractors to comply with local laws. On July 27, 2020 the FHFA-OIG issued a report "Oversight by FNMA of Compliance with Forbearance Requirements Under the CARES act and Implementing Guidance by Mortgage Servicers. The report stated the following:

> "We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence that servicers are well-informed of their legal and contractual obligations under the

> CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. FHFA advised us that it considered this oversight acceptable. FHFA-OIG Report March 30, 2020: FHFA Faces a Formidable Challenge: Remediating the Chronic and Pervasive Deficiencies in its Supervision Program Prior to Ending the Conservatorships of Fannie Mae and Freddie Mac.[18]

V. FNMA CANNOT USE NON-JUDICIAL STATUTE FOR TAKING PRIVATE PROPERTY

The right to cross-examine and confront adverse witnesses and their evidence implies the right to marshal and adduce one's own evidence in support of a position on a contested fact issue such as (1) whether the foreclosure was void because there was no pre-deprivation hearing *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 89 S.Ct.1820 (1969); and (2) the precise amount of the debt due respondents under the note, if plaintiff's liability was established. 441 U.S.

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[18] FNMA conducted foreclosures through their attorney networks. Contractors hired through an app. There were no background checks or due diligence on contractors hired and no supervision. There was also no supervision over the creation of mortgage pools, designation of custodians and document retention for the investors.

418, 423 (1979). *See Hamdi v. Rumsfeld*, 542 U.S. at 534. A law student's article summarized the issues and concluded with the question:

> "Courts must consider whether homeowners' due process rights are too high a price to pay for protecting the secondary mortgage market?" William E. Eye, *Are Fannie Mae and Freddie Mac State Actors? State Action, Due Process, and Nonjudicial Foreclosure,* 65 EMORY L. J. 107 (2015).[19]

Pre-deprivation due process is not difficult to administer and should determine whether FNMA has standing to bring a foreclosure and offer a mortgagor the opportunity to present evidence, confront and cross-examine persons who supplied information upon which the foreclosure action is grounded. A neutral informal hearing officer could make a determination based on applicable law prior to the termination of a party's property interest.

Courts have held that when the Government forecloses, it may not use a state's non-judicial option. *Anderson v. Alaska Housing Finance Corp.*, 462 P.3d 19 (Alaska 2020); foreclosure of Farmers Home Admin ("FMHA") mortgage subject to due process constraints); *Ricker v. United States*, 417 F.Supp. 133 (D. Me. 1976), *order supplemented* 434 F.Supp. 1251 (D. Me. 1976).

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[19] Available at: https://scholarlycommons.law.emory.edu/elj/vol65/iss1/3 Many other articles have been written: *see* Goldman, *The Indefinite Conservatorship Of Fannie Mae And Freddie Mac Is State Action.* J. Bus & Sec. L. 11, 26 (2016); Summers, *Fannie Mae and Freddie Mac's Subversion of State Consumer Protection Law under the Guise of HERA: Post-Foreclosure Litigation in Massachusetts*, 20 U. PA. J. L. & Social Change 273 (2017)

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be "shaped, at least in some measure, by the nature of the question *Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). In the ordinary case, that context has no great effect on the appropriate analysis. Nonetheless, our precedent teaches that there are "extraordinary cases" that call for a different approach—cases in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority. *Id.*, at 159–160. presented"—whether Congress in fact meant to confer the power the agency has asserted. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). *West Virginia v. EPA,* 597 U.S. ___ (2022)

VI. FNMA CONFUSING THE COURTS: THESE FEDERAL AGENCIES ARE HIDING ELEPHANTS IN MOUSEHOLES;[20] STATE COURTS CONFUSED?

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[20] Courts must look to the legislative provisions on which the agency seeks to rely "'with a view to their place in the overall statutory scheme.'" *Brown & Williamson*, 529 U.S., at 133. "[O]blique or elliptical language" will not supply a clear statement. *Ante*, at 18; *see Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 139 (2005) (plurality opinion) (cautioning against reliance on "broad or general language"). Nor may agencies seek to hide "elephants in mouseholes," *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001) *West Virginia v. EPA*, 497 U.S. (2022)

> One of the Judiciary's most solemn duties is to ensure that acts of Congress are applied in accordance with the Constitution in the cases that come before us. To help fulfill that duty, courts have developed certain "clear-statement" rules. These rules assume that, absent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds. In this way, these clear-statement rules help courts "act as faithful agents of the Constitution." A. Barrett, *Substantive Canons and Faithful Agency*, 90 B. U. L. REV. 109, 169 (2010) (Barrett). *West Virginia v. EPA*, 142 S.Ct. 2587.

FNMA's taking properties has led to the largest toxic plume in the federal and state courts leading to the most widespread distrust of the judiciary in the country's history. A government that takes homes at whim would not be considered democratic or a republic. Unlawful takings are done by dictators and royals.[21]

In *Biden v. Nebraska*, 142 S.Ct. 2355 (2023) the majority held:

> Supreme Court precedent – old and new – required that Congress speak clearly before a Department Secretary can unilaterally alter large sections of the American economy. *Id.* at page 2380.

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[21] This analysis should be conducted throughout the judiciary. Judges that act like dictators and/or royals with out regard to state decisis or U.S. Supreme Court decisions should be reprimanded and/or removed but certainly not upheld.

In *West Virginia* Chief Justice Roberts wrote:

> All of these regulatory assertions had a colorable textual basis. And yet, in each case, given the various circumstances, "common sense as to the manner in which Congress [would have been] likely to delegate" such power to the agency at issue, *Brown & Williamson*, 529 U.S., at 133, made it very unlikely that Congress had actually done so. Extraordinary grants of regulatory authority are rarely accomplished through "modest words," "vague terms," or "subtle device[s]." *Whitman*, 531 U.S., at 468. Nor does Congress typically use oblique or elliptical language to empower an agency to make a "radical or fundamental change" to a statutory scheme. *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 229 (1994). Agencies have only those powers given to them by Congress, and "enabling legislation" is generally not an "open book to which the agency [may] add pages and change the plot line." E. Gellhorn & P. Verkuil, *Controlling Chevron-Based Delegations*, 20 CARDOZO L. REV. 989, 1011 (1999). *Id* at 19

Thus, in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us "reluctant to read into ambiguous statutory text" the delegation claimed to be lurking there. *Utility Air*, 573 U.S., at 324. To convince us otherwise, something more than a merely plausible textual basis *for* the agency action is neces-

sary. The agency instead must point to "clear congressional authorization" for the power it claims. Ibid.

"In extraordinary cases ... there may be reason to hesitate" before accepting a reading of a statute that would, under more "ordinary" circumstances, be upheld. 529 U.S., at 159. Or, as we put it more recently, we "typically greet" assertions of "extravagant statutory power over the national economy" with "skepticism." *Utility Air*, 573 U.S., at 324.

In *Collins*, Justice Gorsuch wrote in his concurring opinion:

> One of the Judiciary's most solemn duties is to ensure that acts of Congress are applied in accordance with the Constitution in the cases that come before us. To help fulfill that duty, courts have developed certain "clear-statement" rules. These rules assume that, absent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds. In this way, these clear-statement rules help courts "act as faithful agents of the Constitution." A. Barrett, *Substantive Canons and Faithful Agency*, 90 B. U. L. REV. 109, 169 (2010) (Barrett).

VII. FRAUD VITIATES EVERYTHING – THERE IS NO TIME BAR

A. "Fraud on the Court is not fraud between the parties or fraudulent documents, false statements or perjury[22]" The qualifying conduct must be shown to have actually deceived the court that entered the judgment"

FNMA argues that fraudulent documents, false statements or perjury don't matter. Like the U.S. Supreme Court wrote in West Virginia this appears to be a Freudian slip.

> The Government attempts to downplay the magnitude of this "unprecedented power over American industry." *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645 (1980) (plurality opinion).
>
> But this argument does not so much limit the breadth of the Government's claimed authority as reveal it. On EPA's view of Section 111(d), Congress implicitly tasked it, and it alone, with balancing the many vital considerations of national policy implicated in deciding how Americans will get their energy.

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[22] FNMA submitted a brief citing *United States v. Smiley*, 553 F.3d 1137, (8th Cir. 2009) for the precedent that fraud does not matter.

1. Laches Does Not Apply

The standard for fraud on the Court was set by this Court in *Hazel-Atlas Glass*, 322 U.S. 238 (1944)[23] that laches does not apply:

> [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute to helpless victims of deception and fraud.
>
> Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to

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[23] This First Circuit agreed that *Hazel-Atlas Glass* set the standard. *Roger Edwards, LLC v. Fiddes & Son*, 427 F.3d 129 (2005)

> accord all the relief necessary to correct the particular injustices involved in these situations. Fraud vitiates the most solemn contracts, documents and even judgments. *U.S. v. Throckmorton*, 98 U.S. 61 (1878)

In *Bullock v. United States*, 763 F.2d 1115 (10th Cir. 1985) the Court explained the standard that FNMA presents:

> "Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself.
>
> It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted. The basic decisions of the Supreme Court are *Throckmorton, Hazel-Atlas*, and *Universal Oil Products*, cited above. These cases considered the basic issues raised in cases to set aside judgments and demonstrate with *Marshall v. Holmes*, 141 U.S. 589, 35 L.Ed. 870, 12 S.Ct. 62, the nature of the fraud and the proof required for relief as set out in the preceding paragraph. As to actions for relief from fraud on the court it is generally held that the doctrine of laches as such does not apply. *Id.*
>
> We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the highest degree of diligence Hartford's

> fraud cannot be condoned for that reason alone. This matter does not concern only private parties.[24]

This Court wrote in *Hazel-Atlas*:

> Truth needs no disguise. The article, even if true, should have stood or fallen under the only title it could honestly have been given-that of a brief in behalf of Hartford, prepared by Hartford's agents, attorneys, and collaborators.[25]
>
> We have, then, a case in which undisputed evidence filed with the Circuit Court of Appeals in a bill of review proceeding reveals such fraud on that Court as demands, under settled equitable principles, the interposition of equity to devitalize the 1932 judgment despite the expiration of the term at which that judgment was finally entered. Did the Circuit Court have the power to set aside its own 1932 judgment and to direct the District Court likewise to vacate the 1932 decree which it entered pursuant to the mandate based upon the Circuit Court's judgment?

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[24] As in Hazel, this matter does not concern only private properties—it involved the government taking of private property without due process and using the Massachusetts Courts to obtain possession.

[25] The "article" in this matter is the non-compliant notice of default letter, the original false assignment of mortgage created by FNMA lawyers, all recordings and court filings using the charade that BAC Home Loans had an interest in the original note or mortgage.

> So also could the Circuit Court of Appeals have dismissed the appeal had it been aware of Hartford's corrupt activities in suppressing the truth concerning the authorship of the article. The total effect of all this fraud, practiced both on the Patent Office and the courts, calls for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced.[26]

FNMA's use of attorney networks to conceal its' identity in court proceedings and property assignments is fraud on the court.

VIII. FNMA HAD NO FINANCIAL INTEREST AT STAKE BEFORE TAKING THE PROPERTY, APPEAL BOND FUNDS AND ALL POSSESSIONS

In the Rule 30(b) deposition, a senior officer of FNMA was questioned about their financial interest in the property. This was the testimony:

> Q. So if the trust holds nothing, then it holds nothing?
>
> A. Yes.
>
> Q. Do you know the amount of consideration FNMA paid at foreclosure?
>
> A. I want to say it was in the ballpark of 297,000.
>
> Q. So what would be the actual amount FNMA paid.

[26] The same analysis applies to this matter.

A. It was the consideration given.

Q. So what does that mean? What's the difference between paid and consideration given? So no money exchanged hands?

A. That's right. I mean, we basically – you know, we took ownership of the property.

Q. And in doing so, you did not receive any consideration?

A. Well, the property.

Q. You didn't pay any consideration?

A. Right. (APP 79, page 233)

A. The property is reverted into Fannie Mae's REO inventory.

Q. But no money exchanges hands

A. Correct.

Q. Because Fannie Mae buys the property for itself

A. Essentially. (Deposition testimony of Terrence Evans, FNMA representative in discovery during the Housing Court proceeding)[27]

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[27] The mortgage balance was 254,000 and the house was valued at 400,000. No accounting was ever provided or allowed. This type of state action was condemned by the unanimous court in *Tyler v. Hennepin County*, 598 U.S. 631 (2023) and Massachusetts has the same statute allowing state taking of private property. Petitioner has made payments of 1500.00 per month for seven years and house is now valued at 600,000—which results in a free house and financial windfall to FNMA from the USCA decision that renders petitioner and her family homeless.

FNMA takes the property with all the improvements and possessions. This Court has already ruled that this is unlawful for a municipality to do this so how could a federal government agency allow this? *Tyler v. Hennepin County*, 598 U.S. 631 (2023).

For where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971). As a title-theory state, even though a property has a mortgage, they have not lost all rights to their property.

> The doctrine of standing implements this requirement by insisting that a litigant "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992). Two aspects of standing doctrine are relevant here. First, standing requires an ""injury in fact"' that must be "concrete and particularized," as well as ""actual or imminent."' *Id.*, at 560. It cannot be """"conjectural or hypothetical."""' *Ibid.* Second, a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an "injury in fact." And it consequently does not show standing. *Hollingsworth, supra*, at 706; *see also Lance v. Coffman*, 549 U.S. 437, 439–441 (2007) (per curium) (describing

this Court's "lengthy pedigree" in refusing to serve as a forum for generalized grievances). In other words, a plaintiff cannot establish standing by asserting an abstract "general interest common to all members of the public," *id.*, at 440, "no matter how sincere" or "deeply committed" a plaintiff is to vindicating that general interest on behalf of the public, *Hollingsworth, supra*, at 706–707. Justice Powell explained the reasons for this limitation. He found it "inescapable" that to find standing based upon that kind of interest "would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government." *United States v. Richardson*, 418 U.S. 166, 188 (1974) (concurring opinion). He added that "[w]e should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch." Ibid.; *see also Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974); *Warth v. Seldin*, 422 U.S. 490, 500 (1975). *Cf. Federal Election Comm'n v. Akins*, 524 U.S. 11, 21–25 (1998).

IX FNMA'S ACTIONS VOID

Justice Gorsuch in his concurring opinion in *Collins* sounded the alarm on the Court's majority decision. He wrote:

"Today the Court sounds the call to arms and declares a constitutional violation only to

head for the hills as soon as its' faced for meaningful relief." He aptly reasoned "the only lesson I can devine is that the Courts opinion today is a product of its unique context – a retreat prompted by the prospect that affording a more traditional remedy here could mean unwinding or disgorging hundreds of millions of dollars that have already changed hands."

Citing *FTC v. Rerbvoid Co.*, 343 U.S. 470, 487 (1952) he wrote "fewer things could be more perilous to liberty than some "fourth branch" [of government] that does not answer even to the one executive official who is accountable to the body politic." In footnote 1 – Justice Gorsuch writes: the FHFA director is accountable to no one. The idea that whether acts are void or not turns on a label rather than the functions an officer is assigned and who he is accountable to should not be taken seriously. Void is void.

Citing this Court's decisions in *Seilla Law* and *Bowsher* "the officials could not be entrusted with executive power from day one and the challenged actions are void."

In this world, real people are injured by actions taken without lawful authority "The Framers did not rest our liberties on ... minutiae like some guessing game about what might have transpired in some other timeline. *Free Enterprise Fund v. Public Accounting Oversight Board*, 561 U.S. 477, 500 (2010).

X. An Unbiased Tribunal Is Not One That Allows a District Court Judge Who Owns Stock or Other Interest in a Party to Decide the Outcome

A. 28 U.S.C. § 455(b)(4) requires a Judge with a financial interest in one of the parties to refrain from presiding in that case. If the Judge accepts the case assignment with a conflict– all rulings and judgments are void not voidable.

The Second Circuit Court of Appeals recently vacated a District Court Judgment because the Judge's wife owned stock in BOA. *Litovich v. Bank of America et al.*, 21-2905 Second Circuit decided July 2, 2024. In this matter fifteen years of financial reports filed by the District Court Judge listed BOA. A Judge's violation of 28 U.S.C. § 455(a) can make a judgment "voidable" but a violation of 28 U.S.C. § 455(b)(4) makes a ruling or judgment "void."

The legal standard is that the Court consider an appearance of partiality requiring disqualification under Section 455(a) results when circumstances are such that (i) a reasonable person, knowing all the facts, would conclude that the Judge had a disqualifying interest in a party under Section 455(b)(4) and (ii) such a person would also conclude that the Judge knew of that interest and yet heard the case. *Chase Manhattan Bank v. Affililated FM Ins. Co.*, 343 F.3d 120 (2nd Cir. 2003)

1. Waived By Not Raising The Issue Below

"A litigant has no obligation to investigate possible bases for disqualification." *American Textile Mfrs., Inc. v. The Limited, Inc.*, 190 F.3d 729 (6th Cir. 1999)

This Court described the standard set forth in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988)

> Petitioner's argument ignores important differences between subsections (a) and (b)(4). Most importantly, § 455(b)(4) requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety. *See* § 455(d)(4); *In re Cement and Concrete Litigation*, 515 F.Supp. 1076 (Ariz. 1981), *mandamus denied*, 688 F.2d 1297 (CA9 1982), *aff'd by absence of quorum*, *Arizona v. United States District Court*, 459 U.S. 1191, 75 L.Ed.2d 425, 103 S.Ct. 1173 (1983). In addition, § 455(e) specifies that a judge may not accept a waiver of any ground for disqualification under § 455(b), but may accept such a waiver under § 455(a) after "a full disclosure on the record of the basis for disqualification." Section 455(b) is therefore a somewhat stricter provision, and thus is not simply redundant with the broader coverage of § 455(a) as petitioner's argument posits.

The 2nd Circuit discussed differences between Section 455(a) and 455(b):

> In this regard, it is important to understand that judges have an obligation to exercise reasonable effort in avoiding cases in which they are disqualified. Section 455 is not a provision that requires judicial action only after a party to the litigation requests it. The relevant provisions are directive and require some reasonable investigation and action on a judge's own initiative. Indeed, a Section 455(b)(4) conflict is non-waivable by the parties' express consent, much less by their silence. Judges therefore bear the principal burden of compliance with that section. *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120 (2nd Circuit 2003) [emphasis added]

Appellant only discovered the contents of the signed financial reports in March 2022-well after the proceedings had concluded but while the controversy is still alive.

2. Evidence of District Court Judge's Interest in BOA

As Chief Justice Roberts stated in his 2023 annual report:

> the lack of direct monetary benefit to a judge is no excuse because we are duty bound to strive for 100% compliance because public trust is essential, not incidental, to our function.

The financial statements included reports of: (1) corporate shareholder directly in stock of BOA from at least 2006-2009; (2) reportable interest from BOA

accounts from 2006 through 2019; and (3) corporate shareholder interest in Berkshire Hathaway a 10% owner of BOA from at least 2016 through at least 2019.

Research identified that the same Judge dismissed cases against BOA and/or predecessors at least five other times over the timeline of 2010-2017. [28] The Supreme Court wrote in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988)

> Petitioner's argument ignores important differences between subsections (a) and (b)(4). Most importantly, § 455(b)(4) requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety. *See* § 455(d)(4)

3. Evidence Warrants Vacatur of the Judgments and Rulings

In addition, § 455(e) specifies that a judge may not accept a waiver of any ground for disqualification under § 455(b), but may accept such a waiver under § 455(a) after "a full disclosure on the record of the basis for disqualification." Section 455(b) is therefore a somewhat stricter provision, and thus is not simply

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[28] *See Jacobs v. Bank of America*, Civ. Action No. 12-12056 Not reported in Fed.Supp., 2013 WL 12218269 (6/27/2013); *Kupperstein v. Bank of America*, Civ. Act. No. 14-13766 Signed 7/31/15; *McAllister v. Countrywide Home Loans, Inc.*, Civ. Act. No. 16-10911 GAO 3/29/17; *Lustgarten v. Bank of America Loan Servicing, LP*, Civ. Act. No. 10-10839 March 31, 2011; and *Marley v. Bank of America*, Civ. Act. No. 10-10885 September 25, 2012.

redundant with the broader coverage of § 455(a) as petitioner's argument posits.

Congress has defined as a non-waivable disqualification circumstance of any known financial interest in a party no matter how small. In some cases a Judge can divest of a particular asset using 455(e) to cure the conflict. Divestiture after remand could not cure the past appearance of a disqualifying financial interest. *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120 (2nd Cir. 2003)

Although motions for relief from judgment are generally committed to the discretion of the district court, and thus subject to review for abuse of discretion, there is no question of discretion on the part of the court when a motion is based on a void judgment; if the judgment is void, relief is mandatory. Fed. Rules Civ. Proc. Rule 60(b)(4), 28 U.S.C.A *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175 (D.C. Cir. 2013).

CONCLUSION

This case presents a question of extraordinary importance: whether FNMA is a government instrumentality. In Massachusetts the First Circuit maintains that FNMA is not the government. This Court's consideration of the question presented is essential and this Court is asked to request a response from FNMA and BOA to this petition.

Respectfully submitted,

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