No. _____

In the
SUPREME COURT OF THE UNITED STATES

Joshua C. Plumb and Kameron F. Plumb, et al,

Petitioners

v.

U.S. Bank National Association, et al.,

Respondents

On Petition for a Writ of Certiorari from
Washington Supreme Court
Case No. 100394-3

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The trial court, through its judge, brazenly told pro se defendant homeowners that U.S. Bank did not have to have any interest in their mortgage loan in order to file a complaint for foreclosure against them and their home. On appeal, the Court of Appeals did not reach this issue because it held that pro se homeowners had not disproved U.S. Bank's standing because the discovery responses admitting U.S. Bank's lack of standing which were filed by U.S. Bank's purported legal attorney and attorney-in-fact (Ocwen Loan Servicing) was hearsay. The Supreme Court of Washington, as well as this Court, then denied review of that Court of Appeals' decision.

Prior to the time their home was to be sold, the then remaining pro se defendants moved for post judgment relief to stop the sale of their home based on their contention that the Plaintiff had failed to prove its standing to enforce the Note at the time the foreclosure complaint was filed. The Superior Court denied relief and on appeal a panel of Washington's Court of Appeals absurdly held that the burden was on the pro se defendants to prove that the Plaintiff did not have standing. The Washington Supreme Court again denied review.

The issues posed for review are:

1. Whether the Due Process Clause of the Fourteenth Amendment limits the judicial power of state courts to issuing judgments deciding those justiciable matters which exist between adverse parties.
2. Whether the Due Process Clause of the Fourteenth Amendment prevented Washington's appellate court judges from requiring defendants to disprove plaintiffs standing.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioners for this writ are Georgia A. Plumb, Joshua C. Plumb, Kameron F. Plumb, and The Word Church. Petitioners, along with several others, were named as defendants in the complaint for judicial foreclosure[1] which gives rise to these proceedings. Georgia F. Plumb died while these proceedings were ongoing. Her sons, Joshua and Kameron Plumb, are individuals. And Petitioner The Word Church is an unincorporated church, which is not owned by anyone.

It has never been clear to Petitioners who is their real and actual adversary in this case. Plaintiff below, the Respondent herein, was designated by the "legal" attorneys, i.e. attorneys at law, who styled and filed the foreclosure complaint in this case as being "U.S. Bank National Association, as successor in interest to Wilmington Trust Company, as trustee, successor in interest to Bank of America, National Association, as Trustee for Structured Asset Trust Mortgage Pass-Through Certificates Series 2005-1." But there is no indication in the record of these proceedings that the attorneys at law who filed this complaint have ever had any contact with U.S. Bank National Association in any capacity. Instead, the record reflects (as it does in most cases involving trustees of securitized trusts foreclosing on homeowners) that

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[1] The other defendants named in the complaint for foreclosure prepared by the legal attorneys included: Estate of Carl Plumb, deceased, unknown heirs and devisees of Carl Plumb, Deceased, Citibank, N.A., and also all persons or parties unknown claiming any right, title, lien, or interest in the property described in the complaint herein.

the attorneys at law who prepared the complaint, submitted discovery, and litigated this case have only had contact with Ocwen Loan Servicing, LLC (Ocwen), an entity which claims to be acting as the attorney-in-fact for "Plaintiff[2]." Ocwen also claims to be servicing the loan on behalf of "Plaintiff."

[2] The Plumbs refer to the plaintiff named in the complaint initiating this case either by a verbatim recitation of the name set forth in the complaint or by the term "Plaintiff" (in quotation marks). This is intended to reflect the fact that the "Plaintiff" has never proved those facts which its name asserts as true.

RELATED PROCEEDINGS

Larson v. Snohomish County, which also involves a presently pending petition for a writ of certiorari to this Court is related to this proceeding in that both this petition and that petition seek review of decisions by Washington State judicial officers which appear on their face to be improper to such a degree as to offend due process. For example, the petition in *Larson* asserts that a biased court clerk failed to file evidence the Larsons submitted to the clerk in opposition to the plaintiffs' motion for a summary judgment and as a result it was not considered by judges. Further, the Larsons assert in that Petition that Washington Court judges failed to consider whether their investments in mortgage-backed securities was disqualifying under this Court's due process precedents.

Here, the Plumbs and their Church assert that Washington's judicial officers have upheld the judicial foreclosure of their home based on the pretexts that (1) the Plumbs' evidence that the "Plaintiff" did not possess their note when the complaint was filed was "hearsay"; and (2) the Plumbs as defendants had the burden of establishing "Plaintiff's" lack of standing.

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PETITION FOR A WRIT OF CERTIORARI

Defendants in the trial court and Petitioners here as identified above respectfully petition for a writ of certiorari to review the judgment of the final decision of Washington Court of Appeals in this case.

DECISIONS BELOW

The Order of the Supreme Court of Washington denying review of the Plumbs' petition for review of the Court of Appeals decision is not reported, but is reproduced at Pet. App. 4a-5a.

The Court of Appeal's decision affirming the superior court's denial of the Plumbs' motion to vacate the summary judgment is not reported. It is reproduced at Pet. App. 6a-11a.

The Order of the Superior Court for Yakima County, Washington denying the Plumbs' motion for an Order under rule 60(b)(5) vacating the final order confirming the Sheriff's sale is not published. However, it is reproduced herein at Pet. App. 12a-13a.

The Order of this Court denying Plumbs' petition for certiorari to review the original order of the Court of Appeals granting summary judgment in favor of "*U.S. Bank National Association, as successor in interest to Wilmington Trust Company, as trustee, successor in interest to Bank of America, National Association, as Trustee for Structured Asset Trust Mortgage Pass-Through Certificates Series 2005-1*" is, of course, not published. However, a facsimile of that Order by this Court is reproduced at Pet. App. 14a-16a.

The Order of the Supreme Court of Washington denying review of that state's court of appeals'

affirmation of the Superior Court's original grant of summary judgment is not reported. A copy of that Order is reproduced at Pet. App. 17a-18a.

The Court of Appeals' original Order affirming the Superior Court's grant of summary judgment foreclosing on the Plumbs' home and Word Church is not published, but is reproduced at Pet. App. 19a-28a.

The Order of the Washington superior court granting summary judgment in favor of "Plaintiff" is not published. It is reproduced at Pet. App. 37a-39a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 as this Petition is being timely filed as per the Order by Justice Kagan extending the time to file this petition to 150 days after the Washington Supreme Court's denial of the Plumbs' request for discretionary review of the Court of Appeal's decision. See Pet. App. 3a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in this case are set forth in the Appendix at Pet. App. 52a-56a.

STATEMENT OF THE CASE

The Superior Court for Yakima County, Washington -- acting through the judge presiding over the judicial foreclosure action between the parties named in the applicable complaint -- granted a summary judgment foreclosing on the Plumb Petitioners' home

notwithstanding that the "Plaintiff," *i.e.* "*U.S. Bank National Association, as successor in interest to Wilmington Trust Company, as trustee, successor in interest to Bank of America, National Association, as Trustee for Structured Asset Trust Mortgage Pass-Through Certificates Series 2005-1*" through its attorney-in-fact and servicer Ocwen Home Servicing admitted that "Plaintiff" had no interest in the Plumbs' mortgage loan, i.e. promissory note and deed of trust, at the time this foreclosure case was filed.

We know this because the legal attorneys and attorney-in-fact for the purported "Plaintiff" produced an email correspondence prepared by Ocwen, the "Plaintiff's" servicer, which conceded that the pertinent promissory note was not held by it or the "Plaintiff" at the time the complaint against the Plumbs was filed on December 26, 2013.

Here's what the correspondence, produced by Ocwen, "Plaintiff's attorney-if-fact during discovery, stated:

> Note Location Determined
>
> Hello Ragul.
>
> . . . This is the information I am able to obtain for you in such little notice . . . [B]ased on Deutsche Bank data base they first initially received the loan 9/13/2004 then withdrew and sent it to GMAC on 10/14/04, received it back on 11/9/04, withdrew and sent it to Ocwen on 7/28/14, received it again on 9/14/13 and withdrew

> and sent it to Ocwen on 7/22/10, received again on 9/14/13 and withdrew and sent it to Ocwen on 7/28/14. ***Ocwen received the Original Note and Mortgage on 8/4/14 and has remained in custody of the Original documents since that date.*** I have included screen shots of the records I was [able to] find.

(Emphasis Supplied)

Additionally, this fact, i.e. that the "Plaintiff" and its servicer had no legal interest in the pertinent mortgage at the time this case was filed (and by implication had suffered no injury when the case was filed) was conceded during oral argument. See (7/10/2020 Verbatim Report of Proceedings, pp. 20-23 where the purported attorney at law for the denominated "Plaintiff" admits that contrary to the allegations of their complaint, the "Plaintiff" and its servicer/attorney-in-fact did not have the promissory Note on December 26, 2013, the day the complaint was filed. In this regard, please note this transcript shows the judge specifically asked counsel to confirm that his client did not have possession of the note on December 26, 2013. And when counsel did so the judge orally acknowledged that "Plaintiff" did not hold the note when this case was filed. *See* Pet. App. 48a-51a.

On appeal of the Superior Court's grant of summary judgment in favor of "*Plaintiff*", the Court of Appeals decided not to reach the standing issue the Plumbs raised; rejecting it based on the pretext that the Ocwen report produced as a part of discovery admitting that neither it (Plaintiffs' attorney in fact) nor its client ("Plaintiff") had the note, was hearsay.

Here's what the Washington Court of Appeals, through its Panel of judges decided based on this evidence in the record:

> A threshold problem with the Plumbs' arguments in opposition to summary judgment is that the note location document is hearsay. ER 801(c). Contrary to the Plumbs' assertions, the document is not an admission of a party opponent. The document purports to have been made by an employee of Ocwen, not U.S. Bank. Although Ocwen worked as a servicing agent for U.S. Bank's loan, there is no evidence Ocwen had authority to speak on behalf of U.S. Bank. ER 801(d)(2)(iii). Nor is there any evidence U.S. Bank ever adopted the note location document as its own or agreed to its truthfulness. ER 801(d)(2)(ii). Because the note location document is hearsay, it can only be considered on summary judgment if the Plumbs are able to establish an exception to the hearsay rule.

Pet. App. 22a-23a.

But these judges' argument, that Ocwen was not authorized to speak on behalf of U.S. Bank ignores the fact that "Plaintiff" admitted in discovery that Ocwen was the attorney-in-fact for U.S. Bank[3] and prepared the discovery responses which contained the Ocwen communication which admitted "Plaintiff"

[3] See Pet. App. 43a (interrogatory responses identifying Ocwen as the attorney in fact for plaintiff).

U.S. Bank (and it, as U.S. Bank's servicer) did not hold the note at the time the complaint for foreclosure was filed on December 26, 2013[4]. With all due respect to the government in Washington State, it is the Plumbs' position that there is no way neutral judges there observing these facts could have concluded that that there was not a question of fact for purposes of summary judgment with regard to whether Deutsche Bank possessed their promissory note at the time the purported attorney at law for "Plaintiff" filed this lawsuit against the Plumbs on the day after Christmas, 2013.

Notwithstanding that historically it has always been the burden of the plaintiffs in lawsuits to prove standing, the Supreme Court of Washington affirmed the Court of Appeals decision in this regard by denying Plumbs' pro se petition for review, see Pet. App. 17a-18a, and then this Court denied the Plumbs' pro se petition for a writ of certiorari. Pet. App. 14a-16a.

Prior to the time their home was to be sold by the Sheriff based on the Order of the Superior Court, the Plumbs, still pro se, sought post-judgment relief, which was denied. Pet. App. 12a-13a. In denying the Plumbs' appeal of this decision, a panel of judges of the Washington Court of Appeals outright stated that it was requiring defendants Plumb to disprove U.S. Bank's standing. Here's what this panel of judges held:

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[4] See Pet. App. 46a ("Note Location Determined" document produced by Ocwen indicating that Deutsche Bank actually possessed the Plumbs' note when Plaintiff's purported attorney at law filed "Plaintiff's" complaint to enforce the Note against the Plumbs.)

In 2017, this court addressed an appeal between the parties regarding an order of foreclosure issued after summary judgment. U.S. Bank Nat'l Ass'n v. Plumb, No. 34615- 3-III (Wash. Ct. App. Dec. 14, 2017) (unpublished), …. ***In the superior court litigation, the Plumbs argued U.S. Bank lacked standing to initiate foreclosure proceedings because the bank did not possess the applicable promissory note on the date it filed suit. We disagreed, explaining the Plumbs lacked sufficient evidence that U.S. Bank did not hold the note.*** The Plumbs unsuccessfully sought review of our decision in both the Washington Supreme Court, 190 Wash. 2d 1010 (2018), and United States Supreme Court, 139 S. Ct. 227, reh'g denied, 139 S. Ct. 587 (2018). A mandate was issued from this court on April 19, 2018.

U.S. Bank proceeded with foreclosure proceedings in superior court. Five months after the superior court issued an order confirming sale of the subject property, the Plumbs moved to vacate under CR 60(b)(5). The Plumbs again asserted U.S. Bank lacked standing to proceed with foreclosure. According to the Plumbs, the lack of standing divested the superior court of subject matter jurisdiction, thereby rendering the court's order

> void. The trial court denied the motion to vacate. The Plumbs appeal.
>
> ANALYSIS
>
> The trial court did not abuse its discretion in denying the motion to vacate. Alleged defects in standing do not deprive superior courts of jurisdiction over forfeiture proceedings. *In re Estate of Reugh*, 10 Wash. App. 2d 20, 57, 447 P.3d 544 (2019), review denied, 194 Wash. 2d 1018, 455 P.3d 128 (2020) ("[I]n Washington, a plaintiff's lack of standing is not a matter of subject matter jurisdiction.")[5]; *Deutsche Bank Nat'l Tr. Co. v. Slotke*, 192 Wash. App. 166, 171, 367 P.3d 600 (2016) (superior courts have jurisdiction over foreclosure actions[6]). The Plumbs therefore lacked a basis to void the superior court's order.

Pet. App. 8a-11a.

The Plumbs, again pro se, petitioned the Washington Supreme Court for review of this second

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[5] The Plumbs assert that *In re Estate of Reugh*, a court of appeals precedent involving the waiver of statutory standing is not applicable to their situation because they timely raised "Plaintiff's" lack of actual adversity in their answer. See *infra.*

[6] *Slotke* actually held that a holder in possession of the note at the time the complaint of foreclosure was filed could enforce the note by way of a foreclosure. *See infra.*

decision based on the Court of Appeals judges' obviously erroneous holding that they had the burden of proving U.S. Bank's lack of standing.

The Plumbs were supported in this second effort by Church of the Gardens (COTG), Stafne Law Advocacy and Consulting (SLAC), and Scott Stafne, which organizations and person filed a motion for permission to file an amicus memorandum on the Plumbs' behalf. When this motion was granted by the Washington Supreme Court, these COTG groups filed an Amicus Curiae Memorandum supporting the Plumbs' petition for review, which Memorandum asserted, among other things, that Washington State judges had been economically incentivized to make such illegal foreclosure decisions by Washington's State's political branches forcing judges into judicial retirement programs heavily invested in mortgage-backed securities.

When the Washington Supreme Court denied review of the Plumbs' pro se petition for review, see Pet. App. 4a-5a, Scott Stafne through SLAC (a faith-based auxiliary of the Church of the Gardens) agreed to represent the Plumbs as their counsel before this Court.

REASONS FOR GRANTING THE PETITION

This Nation's founders sought to create a government that would discourage factions by establishing, among other things, a means for all persons to obtain Justice. In Federalist Paper No. 10, James Madison acknowledges that "the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and

those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. …"

The facts of this case, including the pretextual rulings described above and below, suggest that the judges of Washington State have been compromised by the wealthy to the point where they no longer follow those basic requirements necessary to invoke a legitimate exercise of governmental *judicial power*.

The term "judicial power" as used in this Nation does not mean that courts and judges can do anything they want. Indeed, the parameters of judicial power have been defined by the evolution of human society and are reflected in its history.

> Since at least the time of the American Revolution, courts in the United States have employed a system of procedure that depends upon a neutral and passive fact-finder (either judge or jury) to resolve disputes on the basis of information provided by contending parties during formal proceedings. This sort of dispute-resolving mechanism is most frequently referred to as the adversary system.

Stephen Landsman, The Adversary System: A Description and Defense (1984)

This Court has often observed that history and tradition define the meaning of Article III judicial power. *See e.g.*, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021)("As Madison explained . . . federal courts . . . decide only matters 'of a Judiciary Nature.' 2 Records of the Federal Convention of 1787, p.

430 (M. Farrand ed. 1966)"). *Sprint Communs. Co., L.P. v. APCC Servs.*, 554 U.S. 269, 274 (2008) ("[H]istory and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider."); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998) ("Article III, § 2 of the Constitution extends the judicial Power of the United States…[to] cases and controversies of the sort traditionally amenable to and resolved by the judicial process" citing *Muskrat v. United States*, 219 U.S. 346, at 356-357 (1910)." (cleaned up)); *Gte Sylvania v. Consumers Union of United States*, 445 U.S. 375, 382 (1980) ("The purpose of the case-or-controversy requirement is to limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.")(cleaned up)).

The Plumbs assert here that this Court should consider whether history and tradition also define the parameters of state judicial power when state court judges appear to ignore those circumstances courts have always found necessary for the justiciability of disputes. The Plumbs further assert that this Court's separation of powers and due process precedents requiring judicial neutrality with regard to the adjudication of cases, which are also based on history and tradition, suggest so.

History demonstrates that well before the founding of the United States, civilized societies had determined that judges must be neutral decision-makers and that our founders understood this as to be an aspect of that *judicial power* our Constitution delegated to the federal government in Article III. *See e.g.*, Scott Douglas Gerber, *A Distinct Judicial Power:*

The Origins of an Independent Judiciary, 1606–1787 (Oxford Univ. Press 2011) (Part One of Gerber's Book, at pp 3–41, demonstrates the ancient origins of that judicial neutrality which is incorporated in Article III. Part Two of Gerbers' book, at pages 42–321, chronicles the history relating to each of the thirteen states during this time period.); *See also* Gelinas, Fabien, The Dual Rationale of Judicial Independence at 9–10 (March 23, 2011). *Constitutional Mythologies: New Perspectives on Controlling the State*, Alain Marciano, ed., New York: Springer, 2011[7] (discussing ancient roots of the concept of adjudicatory justice, which trace back to Egypt's First Intermediate Period and also appear in Babylonian inscriptions about this same period of time.) *See also* Clifford S. Fishman, *Old Testament Justice*, 51 Cath. U. L. Rev. 405 (2002)(Explaining the ancient basis for modern day law and procedure.)

The classic principle of judicial neutrality established in antiquity and referenced early on by this Court as a Separation of Powers principle applicable to the exercise of judicial power is "no one shall be his own judge or decide his own case." *See Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 133, 3 L. Ed. 162, 177 (1810) (stating that this principle of justice applicable to courts and judges is universally acknowledged.)

This Due Process principle was codified by our human ancestors at least as early as 276 AD. *See* Code Just. 3.5.1 (Emperors Valens, Gratian and Valentinian (376) *See also* English translation of the Justinian Codex from Fred H. Blume, "Annotated Justinian Code", edited by Timothy Kearley, 2nd edition, online:

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[7] Available at SSRN: https://ssrn.com/abstract=1761436

University of Wyoming.[8] This principle of Roman law became a part of European legal principles applicable to the exercise of judicial power in both civil and common law courts well before the founding of the United States. In France, a nation which has an inquisitorial justice system, this principle of judicial neutrality has been observed since medieval times and was codified by edicts in 1493 and 1667, which eventually came to be incorporated into that nation's rules of procedure known as Grande Ordonnance de Procédure Civile, also known today as Code Louis. *See e.g.*, Gelinas, Fabien, The Dual Role of Judicial Independence, *supra*, at 10–11.

History also demonstrates that in England, which has an adversarial system of justice, the principle that a judge at common law *was not competent* to adjudicate a matter in which he had a direct financial interest was recognized as early as 1563, *see Sir Nicholas Bacon's Case* (1563) 2 Dyer 220b., and was well established before the lack of neutral judges in the King's courts of North America became a rallying cry for revolution in this Nation's Declaration of Independence. *See e.g., Dr. Bonham's Case*, 8 Co. Rep. 107a, 118a, 77 Eng. Rep. 638, 652 (C.P. 1610); *Earl of Derby's Case*, 12 Co. Rep. 114, 77 Eng. Rep. 1390 (K.B. 1614); and *Day v. Savage*, Hobart (3d ed. i67i) 85 (K. B. 1614). *See also* Madison, James, *Federalist Paper No. 10* (1787) ("No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity."); Hamilton, Alexander, *Federalist Paper No. 80*

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[8] Available at http://www.uwyo.edu/lawlib/blume-justinian/_files/docs/Book3PDF/Book%203-5.pdf

(1788) ("No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias.")

Washington State adopted these same principles as part of its statutory law limiting the exercise of judicial power by judges in 1891 when it adopted section 2.28.030(1) of the Revised Code of Washington, which states:

> A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases: (1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.

Later on in *Tumey v. Ohio*, 273 U.S. 510, 522-32 (1927) Chief Justice Taft on behalf of a unanimous Court recognized this separation of powers principle, *i.e.* no one shall be his own judge, was also a source of Due Process protections afforded litigants by the Fourteenth Amendment. *See also In re Murchison*, 349 U.S. 133, 136 (1955) (Recognizing that "[o]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." (emphasis supplied))

Just as history and tradition have established that judicial power can only be exercised by judicial officers who are and appear to be neutral as between the parties to a case, that same history and tradition demonstrate that judicial power can only be exercised

by judges deciding disputes between actually adverse parties.

This Court considered the role of attorneys-in-fact in debt litigation based on assignments of contacts in *Sprint Communs. Co., L.P. v. APCC Servs.*, 554 U.S. 269 (2008). There was no dispute in that case with regard to the fact that at the time the complaint was filed, the attorneys-in-fact, APCC Servicers, had actually been assigned the debts they sought to collect from their adversary. This case, of course, is different from *Sprint* because here the servicer/attorney-in-fact has admitted that neither the "Plaintiff" nor it had any interest in the Plumbs' promissory note at the time they sought to enforce that note against the Plumbs by foreclosing on their home.

Although a five-justice majority of this Court held in *Sprint* that history and tradition demonstrated that collection assignees actually having an interest in an assigned debt could sue to enforce the debt, there is nothing in that decision which suggests that an entity, i.e. servicer or attorney-in-fact on behalf of a plaintiff which is not owed debt, would be able to invoke judicial power in an adversarial system of justice to collect a debt not owed to any of them. Indeed, the majority's reliance on the distinction between plaintiffs having an actual interest in the contract they seek to collect through judicial power demonstrates that the history and tradition of our adversary system of justice do not contemplate that a servicer/attorney-in-fact not having any interest in a debt could invoke the power of a court to enforce it.

Four justices dissented in *Sprint*. The Chief Justice argued in his dissent (in which three justices joined) that the servicer/attorney-in-fact in that case

-- which had been assigned the chose in action for purposes of collection -- had no personal stake in the outcome of the litigation sufficient to confer Article III standing. In reaching this conclusion, the Chief Justice observed that history and tradition demonstrated that "at all times, suits based on assignments remained subject to the prohibition on champerty and maintenance," citing 7 W. Holdsworth, History of English Law 535-536 (1926). The Chief Justice then observed:

> By the 18th century, an assignment no longer constituted maintenance *per se*, see *id.*, at 536, but it appears to have been an open question whether an assignment of the "[b]are [r]igh[t] to [l]itigate" would fail as "[s]avouring" of champerty and maintenance, see M. Smith, Law of Assignment: The Creation and Transfer of Choses in Action 318, 321 (2007). In order to sustain an assignment of the right to sue, the assignment had to include the transfer of a property interest to which the right of action was incident or subsidiary. *Id.,* at 321-322; see also *Prosser* v. *Edmonds*, 1 Y. & C. Exch. 481, 160 Eng. Rep. 196 (1835); *Dickinson* v. *Burrell*, 35 Beav. 257, 55 Eng. Rep. 894 (1866); 2 J. Story, Commentaries on Equity Jurisprudence § 1040*h*, pp 234-235 (8th ed. 1861); R. Megarry & P. Baker, Snell's Principles of Equity 82 (25th ed. 1960).

Sprint Communs. Co., L.P. v. APCC Servs., 554 U.S. at 306-07.

In this case, what we have is a servicer and attorney-in-fact suing to collect on a note it knows, or should know, its purported client, the "Plaintiff", does not possess, despite the dishonest representations of the complaint. In note 3 to this Court's four justice dissent in *Sprint* it is observed that:

> Blackstone defined maintenance as the "officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it . . . . ***This is an offence against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression.***" 4 W. Blackstone, Commentaries *134-*135. Champerty "is a species of maintenance, . . . being a bargain with a plaintiff or defendant *campum partire*, to divide the land or other matter sued for between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expense." *Id.,* at *135.

Id. (Emphasis Supplied)

This Court should grant the Plumbs' petition for a writ of certiorari to determine whether Washington judges' decision to convert their courts into

engines of oppression by processing foreclosure lawsuits by entities having no interest in debt at the time a case is filed is consistent with the history and tradition of the exercise of judicial power in this Nation. Or instead, is the result of Washington judges' financial interests in mortgage back securities.

And in this regard, the Plumbs would note that not only does history indicate that Washington court judges are not exercising judicial power in a way that tradition allows, they would also observe that Washington judges are out of step with the overwhelming majority of state courts hold which have resolved similar issues so as to require actual adversity between a would-be creditor and debtor. *See e.g., Bank of Am., N.A. v. Reyes-Toledo*, 139 Haw. 361, 368- 69 (2017); *Deutsche Bank Nat'l Tr. Co. v. Johnston*, 369 P.3d 1046, 1052-56 (New Mexico 2016); *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, at 19 (2012); *FV-I, Inc. v. Kallevig*, 392 P.3d 1248, 1257-60 (Kansas 2017); *Deutsche Bank v. Brumbaugh*, 2012 OK 3, ¶ 12, 270 P.3d 151, 155 (Oklahoma 2012); *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170 (Fla. Dist. Ct. App. 2012); *U.S. Bank Nat. Ass'n v. Kimball*, 190 Vt. 210 (Vt. 2011).

Also significant for purposes of considering whether review should be granted here is that prior to the time Washington's political branches passed a retirement law giving judges an interest in mortgage-backed securities, courts had previously held that actual adversity between parties is a prerequisite for the legitimate exercise of judicial power pursuant to Wash. Const. Art. IV. *See e.g.*, *Bellingham Bay Improvement Co. v. New Whatcom*, 20 Wash. 53, 58, 54 P. 774, 775 (1898)("[W]e think that it is equally clear

that . . . [judicial power] does not necessarily include the power to hear and determine a matter that is not in the nature of a suit or action between parties."). *Cf. Stephen Landsman, The Adversary System: A Description and Defense* (1984).

And even more recently, the Washington Supreme Court has held that Washington courts, though judges, cannot exercise judicial power in cases, where as here, plaintiffs have not complied with the statutory predicates necessary for asserting a justiciable claim. *See Freedom Found. v. Teamsters Local 117 Segregated Fund*, 197 Wash. 2d 116, 141-142, 480 P.3d 1119 (2021) citing *In re Marriage of Buecking*, 179 Wash. 2d 438, 449, 316 P.3d 999 (2013). *See also Wastewater Dist. v. Olympic View Water & Sewer Dist.*, 196 Wash. 2d 353, 370, 474 P.3d 547 (2020) ("We previously held that the municipal court lacked the authority to issue relief that implicated the interests of a nonparty. *Id.* 196 Wash. 2d at 370.)

This Court should also review this decision by the panel of judges on the Court of Appeals that finally decided the Plumbs' defense against them because of the obviously pretextual nature of those judges' decision.

The superior court judge held at the trial level that the purported "Plaintiff" in this case did not have to possess the Plumbs' note at the time "Plaintiff's" attorney-at-law and attorney-in-fact purportedly filed its lawsuit to enforce the promissory note by way of foreclosing upon their home. But that judge's decision in this regard was obviously wrong. Section 62A.3-301 of the Revised Code of Washington sets forth clear statutory prerequisites which must be proven in order

for parties to enforce promissory notes in Washington. That statute provides:

> Person entitled to enforce instrument. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Instead of deciding the judicial inquiry the Plumbs raised, which was whether the "Plaintiff" through its attorney-at-law and attorney-in-fact had presented proof of compliance with those statutory predicates for enforcing the Note under Washington law or under the terms of the note (which also provides for enforcement by the Note Holder), the judges of that court of appeals ducked this issue by ruling the Plumbs' evidence demonstrating "Plaintiff" did not hold the note when the complaint was filed was hearsay because Ocwen had no authority to prepare such a document. But as is obvious from the evidence itself that statement is false because Ocwen was acting as the attorney-in-fact for the purported "Plaintiff." And it appears inconceivable from the record that these judges would not have known this.

Now this time around in their latest ruling, see Pet. App. 8a-11a, the judges of that same court of appeals make explicit that which was implicit in their first ruling; namely, their absurd contention that the Plumbs as defendants had the burden of showing that the "Plaintiff" in this case complied with the statutory predicates for invoking the judicial power of the Washington State government. No case law anywhere in this Nation supports this absurd, oppressive, and legally untenable proposition.

The Court of Appeals judges' outrageous ruling in this regard also is not supported by any of the precedent it cites. For example, *Deutsche Bank Nat'l Tr. Co. v. Slotke*, 192 Wash. App. 166, 367 P.3d 600 (2016) does not hold that a superior court has jurisdiction and/or authority to decide cases under the circumstances which exist here. *See id.*, at 192 Wash. App at 175 where a different court of appeals, i.e. Division One, states:

> ***Under the UCC, the "holder" of the note entitled to commence a judicial foreclosure is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.***" …
>
> Here, Deutsche Bank obtained possession of the promissory note when the note was indorsed to Deutsche Bank by the Lending Center, the original payee under the note. Moreover, Deutsche Bank maintained possession

> throughout this judicial foreclosure action. It is the holder of Slotke's note.

Americans, overall, have been pretty supportive of their courts as instruments of justice, notwithstanding those errors in judgment, many of those courts, including this one, have made throughout the years. But what is the alternative? And, as the Chief Justice recently rhetorically asked, are not our courts the best alternative among the three branches of government to decide adjudicatory disputes? *See* National Public Radio, "Chief Justice John Roberts defends the Supreme Court—as people's confidence wavers" (September 10, 2022).[9]

The Plumbs would answer the Chief Justice by observing that courts are only a better alternative than the political branches for exercising judicial power if they are operated by judges who are -- and appear to be -- neutral as between the parties to adjudicatory disputes. See *supra*.

SUGGESTED RELIEF

Rule 10(c) of this Court's Rules advises that among the factors this Court considers when deciding whether to grant review of a state court decision is whether the state court has decided an important question of federal law that has not been, but should be, settled by this Court.

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[9] Available at: https://www.npr.org/2022/09/10/1122205320/chief-justice-johnroberts-defends-the-supreme-court-as-peoples-confidence-waver

The Plumbs, through counsel, assert that the limits imposed by the Fourteenth Amendment on state court judges' exercise of judicial power in favor of entities that have no interest in the notes they seek to enforce through foreclosure involves questions of federal due process that this Court should decide. This is because the history and tradition of judicial power in this country and its states has always recognized that adjudications of this type must be between adverse parties, especially where property is involved because it makes no sense under our notions of justice to presume that a judge can simply give one person's property to another, who has no right to it.

And this is an issue of federal law that this Court should resolve now because the greed of America's money lenders and debt buyers acknowledges no moral limits on these entities' authority to foreclose on homes, even the homes of people like the Plumbs who they acknowledge had no debt obligation to them when this case was filed. As Lord Blackstone observed centuries ago, allowing "want to be" creditor's access to judicial power to take peoples' homes without any interest of their own for doing so makes state courts instruments of oppression that affect us all when such despicable exercises of judicial power force people to the streets, where they often die or become diseased in a fashion that affects us all. See e.g. Jack Tsai and Michael Wilson, *COVID-19: A potential public health problem for homeless populations*, The Lancet Public Health, March 11, 2020[10]; Christiana Lee, Asia Times

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[10] Available at https://www.thelancet.com/journals/lanpub/article/PIIS2468- 2667(20)30053-0/full text

"California sees resurgence of 'medieval diseases'" (While the world is preoccupied with the Wuhan coronavirus, surging homelessness in the US is fueling the spread of typhus and typhoid fever)"(February 10, 2020);

This Court states in Rule 10 that: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." To be clear it is the Plumbs' position that the judicial misconduct challenged in this case and in the related case identified above (Larson v. Snohomish County) is not based on erroneous factual findings or the misapplication of a properly stated rule of law. This is because the judicial inquiry which the Plumbs posed was whether for purposes of summary judgment the "Plaintiff" had proved by a preponderance of evidence that it had standing to bring this case seeking to enforce a promissory note it did not possess.

The judges of Washington's Court of Appeals ducked this inquiry for pretextual reasons when they shouldn't have. Because there is no basis in fact for these judges holding that Ocwen had no authority to prepare the "Note Location Determined" document and because there is no basis in law for the Court of Appeals' judges' holding that the Plumbs must disprove "Plaintiff's" standing, this Court should consider summarily reversing these pretextual decisions and remanding this case back to the Washington Court of Appeals to resolve the judicial inquiry which was actually before those judges.

This would give the "Plaintiff" and others like it an opportunity to make a record explaining why they should be allowed to take homes based on notes they have no standing to enforce.

CONCLUSION

The Plumbs' Petition for Certiorari should be granted.

DATED this 2nd of November, 2022.

Respectfully Submitted,

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