Case No.

In The
Supreme Court of the United States

SCOTT ERIK STAFNE

Petitioner,

v.

BANK OF NEW YORK MELLON,
A NEW YORK BANKING CORPORATION

Respondents.

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

PETITION FOR CERTIORARI

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Church of the Gardens Press
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QUESTIONS PRESENTED

Alexander Hamilton hypothesized in Federalist Paper No. 78 the People had little to fear from oppression at the hands of the judicial department. A reason for Hamilton's confidence was that under the Constitution the exercise of judicial power by independent judges is limited to deciding cases and controversies between aggrieved parties arising within the limited subject-matter jurisdiction of federal courts.

The issues in this case are:

1. Whether the Federalism structure of government prevented the District Court from assuming subject-matter jurisdiction over a real property *res* for purposes of determining its boundary lines where that same issue was already being adjudicated in a state court having jurisdiction over the same *res*.
2. Whether the courts below had the authority to ignore or overrule this Court's precedent requiring attorneys to prove that authority by which they claim to represent purported parties in federal courts.
3. Whether Federal Rule of Civil Procedure 17(a)(3) authorized the courts below to avoid (a) performing a traditional Article III injury-in-fact analysis, (b) applying the presumption against their jurisdiction; and (c) considering Congress divestiture of jurisdiction pursuant to 28 U.S.C. §1359.
4. Whether the senior judge who decided this action was an independent judge within the meaning of Article III where he had to be periodically delegated and assigned by other judges to exercise federal judicial power.

PARTIES TO THE PROCEEDINGS

Petitioner Scott Erik Stafne is a resident of Washington state and the owner of one of fifteen real estate parcels in the Twin Falls community that is located in a rural area of Snohomish County. Scott and his brother, fellow Defendant Todd Stafne, who died during the proceedings below, developed the parcels in the Twin Falls community and shared adjacent lots, to which they made a small boundary line adjustment pursuant to the provisions of Washington law. This adjustment allowed Scott Stafne to place a septic system near the house.

The Respondent here was originally purported to be "Bank" of New York Mellon, a Delaware corporation. Attorneys for Nationstar later moved to substitute "The Bank of New York Mellon, a New York corporation," which was described by the acronym "BONY," as the real party in interest pursuant to Fed. R. Civ. Pro. 17. These attorneys claimed "BONY" was the "Trustee" for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2. The attorneys claimed this "Trust" owned Stafne's note by way of several assignments and sought to foreclose on the property *res* which they claimed included property owned by both Scott and Todd pursuant to the legal description set forth in the deed of trust. Attorneys further requested a deficiency judgment, plus interest, from Scott Stafne.

RELATED PROCEEDINGS

Stafne v. Zilly, U.S.S.C. Petition No. 20-1085, filed February 1, 2021.

Stafne v. Zilly includes a collateral attack on the orders of Senior Judge Zilly in this case on several grounds, including that senior judges no longer

have that good behaviour tenure within the meaning of Article III necessary to exercise federal judicial power as an independent judge. The issue before this Court in the *Zilly* petition is limited to whether such a claim is justiciable. Here, Stafne requests this Court resolve the merits of Stafne's argument that the District Court, through Senior Judge Zilly, could not exercise judicial power over the property *res* and Stafne personally because as a structural matter Article III mandates that federal lower courts exercise judicial power only through judges who have good behaviour tenure.

Hoang v. Bank of America, U.S. District Court for the Western District of Washington Case No. 2:17-cv-00874-JLR

Hoang v. Bank of America was remanded back from the Ninth Circuit Court of Appeals to the District Court of Western Washington to allow Plaintiffs Jerry Hoang and Le Uyen Thi Nyguen to amend their complaint to assert rescission claims against lenders under the Truth in Lending Act consistent with this Court's decision in *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015). *See Hoang v. Bank of Am., N.A.*, 910 F.3d 1096 (9th Cir. 2018). After remand Hoang amended his complaint to assert, among other things, that the senior judge deciding the case for the District Court (the judge who replaced Senior Judge Zilly and then became a senior judge himself) did not have the tenure attributes required of an Article III judge and for that reason was not independent within the meaning of Article III. The Court, via the senior judge, granted Hoangs' motion to amend their complaint but then *sua sponte* granted a summary judgment against them on this ground holding that "senior judges 'are, of course, life tenured Article III judges'" quoting *Nyguyen v. United States*, 539 U.S. 69, 72 (2003). *See Hoang v. Bank*

of Am., N.A., No. C17-0874JLR, 2021 U.S. Dist. LEXIS 29696, at *13-16 (W.D. Wash. Feb. 17, 2021). But the District Court did not address Stafne's arguments the statutes requiring senior judges be periodically designated and assigned to exercise judicial power frustrate that tenure the Framers intended Article III judges must have.

Stafne asserts these important arguments about the check and balances within the judicial department to protect the People should receive a fair review.

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The Memorandum decision of the Ninth Circuit Court of Appeals on October 8, 2020, is not published. It is reported at *Bank of N.Y. Mellon v. Stafne,* 824 F. App'x 536 (9th Cir. 2020). It is reproduced at Petition Appendix, A1–A3.

On May 14, 2019, the District Court, through Senior Judge Thomas Zilly, entered an Amended Partial Judgment in a Civil Case pursuant to Fed. R. Civ. Pro. 54(b). The judgment (and the decision within it) is not published or recorded. It is reproduced at A4–A5. On that same day, May 14, 2019, the District Court also directed the court clerk to issue a Minute Order denying and granting in part Plaintiff's request for an amended partial judgment. This Order is not published or reported. It is reproduced at A6–A8.

Other orders and minute orders of the District court through Senior Judge Zilly related to this petition for writ of certiorari are not published or reported but are reproduced at A9–A48.

Several days ago, on March 2, 2021, the District Court through another Minute Order directed the parties to file a status report explaining why the property *res* owned by Stafne had not yet been sold by the Snohomish County Sheriff. This Minute Order is not published or reported. It is reproduced at A47–A48.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its opinion affirming the District Court's granting of summary judgments against Scott Stafne and the Estate of his brother Todd Stafne on October 8, 2020. *See* Appendix, A1–A3. A motion for rehearing or reconsideration was not filed. Stafne's Petition for Certiorari is being filed within this Court's present 150-day emergency filing period. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. § 1245(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Articles III and V of the United States Constitution together with relevant statutory provisions are reprinted in the Appendix to this brief at A49–A55.

STATEMENT OF THE CASE

A. Introduction

This case involves an attempt by a purported assignee of a note obligation secured by real property in Washington state to foreclose on that *res* in an in rem foreclosure action brought in the United States District Court for the Western District of Washington. Stafne, the owner of the *res*, claims the District Court did not have subject-matter jurisdiction over that dispute for several reasons, including: (1) the Complaint did not allege facts supporting diversity jurisdiction pursuant 28 U.S.C. §1332; (2) "Bank of New Mellon, a Delaware corporation" Plaintiff had no Article III standing; and (3) the unrebutted evidence in the record at the time of summary judgment on the merits demonstrated the purported assignee and/or its attorneys improperly or collusively used assignments to invoke the jurisdiction of the District Court in violation of 28 U.S.C. §1359. Stafne also claimed the District Court's assumption of jurisdiction over the property *res* in rem for purposes of determining its boundaries violated the Tenth Amendment and this nation's Federal Structure.

B. The allegations of the Complaint

The caption of the still operative Complaint identifies the Plaintiff as "Bank of New York Mellon, a Delaware corporation, as Trustee for Structured Asset Mortgage Investments Trust, Mortgage Pass-Through Certificates 2005-AR 2." A 335. Paragraph 1.1 of the Complaint alleges in pertinent part that

> Bank of New York Mellon, a Delaware corporation, serves as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2, and in that capacity owns and holds Defendant Scott Stafne's Note. . . . Bank of New York Mellon's main office, headquarters, and principal place of business are in New York. Bank of New York Mellon is acting in foreclosure proceedings in this case through its attorney-in-fact, Nationstar Mortgage LLC.[1]

A335.

Paragraph 3.3 of the Complaint alleges that Scott Stafne executed a deed of trust that encumbered "Lot 11, Survey for Twin Falls, Inc., as recorded under recording no. 200110105002, re-recorded to correct survey recorded under recording no. 2001111275007" followed by a legal description setting forth the boundaries of the lot appearing in this private 2001 survey. A337.

With regard to how Bank of New York Mellon, a Delaware corporation as Trustee acquired Scott Stafne's loan from Countrywide the Complaint alleges "[a]fter closing [on Stafne's loan], Countrywide transferred the Note to JP Morgan Chase Bank N.A. . . . as then-Trustee for Structured Asset Mortgage Investment Trust 2005." A337, ¶ 3.4. The Complaint then states "in 2006 Chase sold its trustee operations to Bank of New York and that "after October 1, 2006, Chase was no longer trustee (and thus no longer holder of Borrower's Note.)" A337, ¶ 3.4. According to the Complaint: "Bank of New York Mellon assumed the role of trustee of the SAMI

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[1] As can be seen the operative Complaint does not set forth the citizenship of Nationstar Mortgage LLC (Nationstar), the attorney-in-fact that is bringing this case. A335, ¶1.1. The Complaint also does not allege the citizenship of Plaintiff "Bank" if it is a national association because it does not allege the address set forth in its articles of association. A335, ¶1.1. The Complaint does not allege the citizenship of either Scott or Todd Stafne because it only alleges their purported residence, not domicile. A336, ¶1.2 and 1.3 And the Complaint states nothing about the trust and the relationship between it, its beneficiaries and/or certificate holders, and the purported "trustee," the named Plaintiff to represent those entities that actually have standing. A335–A343. The Pooling and Servicing Agreement, which is Attachment F to the Complaint, demonstrates that there is no traditional or business trust—only a securitization—for the trustee to represent in this case. *See infra.*

Trust and Nationstar, as its attorney-in-fact, indorsed the Note to Bank of New York Mellon as successor to JP Morgan as Trustee for the SAMI Trust. A337, ¶ 3.4. The Complaint does not allege when this happened. *Id.*

But evidence in the record before the lower courts demonstrate that Chase had not transferred ownership in Stafne's loan to anyone as late as May 2014. For example, on January 9, 2013, Specialized Loan Servicing, LLC—Stafne's servicer before Nationwide—informed Stafne that his "Current Creditor and Note holder: was SAMI 2005-AR2." And on May 21, 2014, attorney-in-fact Nationstar wrote Stafne's attorney: "Our records indicate the JPMorgan Chase Bank for SAMI 2005-AR2, is the current owner of the loan."A298.

Attached to the Complaint are several attachments including Attachment E, "Limited Power of Attorney" for Nationstar to act as attorney-in-fact for the "securitizations [not trusts] listed on Schedule A." A344–350, at 346 just before signatures. Attachment F to the Complaint is the May 1, 2005, Pooling and Servicing Agreement (P&S Agreement) the "Bank" claims established the trust on behalf of which the "Bank" is bringing this action against the Stafnes. "The Trust Fund was created pursuant to the Pooling and Servicing Agreement . . . among SAMI II, as Depositor, EMC Mortgage Corporation, Wells Fargo as Master Servicer and securities administrator and JP Morgan Chase Bank, N.A. as Trustee, . . ." *See* Attachment E at A156, 164, 182.

Paragraph 3.10 of the Complaint, A339, alleges Plaintiff Bank, as Trustee, holds and owns Borrower's Note pursuant to RCW 61.24.005(2), but Section 2.01 of the P&S Agreement does not confirm this allegation. The last sentence of this section of the P&S Agreement states:

> in the event that such conveyance is deemed to have granted to the Trustee a loan, it is the intent of the parties to this Agreement that the Depositor shall be deemed to have granted to the Trustee a first priority security interest in all the Depositors' right, title, and interest in, to and under the Mortgage Loans . . . and that this Agreement shall constitute a security agreement under applicable law.

Although Plaintiff Bank alleges in ¶3.10 of the Complaint that it contracted with Nationstar as its attorney-in-fact, that is not how the Pooling and Servicing Agreement establishes such attorney-in-fact relationships. *See* Attachment F, A413, which states: "The Trustee shall furnish each Servicer and the Master Servicer with any powers of attorney, in substantially the form attached hereto as Exhibit K, *and other documents in form as provided to it* necessary or appropriate to enable such Master Servicer and Servicer to service and administer the related Mortgage Loans and REO Property." (Emphasis added) (The Power of Attorney signed by The Bank of New York Mellon as successor Trustee is in the same form and language as Exhibit K. *Compare* A344–A346 with A578–580.)

The P&S Agreement also states: "The Trustee shall execute and deliver to the related Servicer and the Master Servicer any court pleadings, . . . or other documents necessary or desirable to (i) the foreclosure or Trustee's sale with respect to a Mortgaged Property; . . ." The point being that under the P&S Agreement the Servicer, not the Trustee, operates as the attorney-in-fact based on the P&S Agreement—not by will of a trustee that owes a fiduciary duty to anyone. As is explained *infra*, this becomes problematic because there is nothing in these attorney-in-fact forms that requires servicers purportedly acting on behalf of trustees to make truthful allegations to federal courts about subject-matter jurisdiction or anything else. Thus, there is nothing in the P&S Agreement that is designed to protect federal

courts and Americans generally from frauds being perpetrated by attorneys-in-fact to improperly obtain jurisdiction over these disputes.

Article IX, of the Pooling and Servicing Agreement is entitled "Concerning the Trustee and the Securities Administrator." It demonstrates the Trustee owes no fiduciary duties to certificate holders or anyone else under the Pooling and Servicing Agreement. *See* Sections 9.01(a) and (d), 9.02, 9.03, 9.04, and 9.05 at A474–479.

Significantly, Section 9.06 of that Article requires "[t]he Trustee and any successor trustee . . . be a state bank or trust company or national banking association." A479. Further, the P&S Agreement states "[i]n case at any time the trustee shall cease to be eligible in accordance with the provisions of this Section 9.06, the Trustee . . . shall resign immediately and with the effect specified in Section 9.08." *Id.* Section 9.08 requires the Depositor to promptly appoint a successor trustee" when the Trustee or successor is not qualified. A480–A481.

These provisions are significant because the evidence in the record established that Nationstar, the attorney-in-fact, and its attorneys at law, the Davis Wright Tremaine law firm (DWT) knew, or should have known, that neither *Bank* nor *The Bank* of New York Mellon as Delaware corporations were appropriate trustees under the P&S Agreement when the Complaint was filed.

C. Motions practice related to subject-matter-jurisdiction.

On February 29, 2016, Scott Stafne (who was already involved in another Washington state court in rem litigation seeking to declare the boundary lines for the property *res* sought to be foreclosed upon here, *see* A581–597) moved to have this case dismissed from the Federal District Court because (1) the Complaint did not adequately allege the citizenship of the parties for purposes of establishing diversity jurisdiction, *see* A324–A327; and (2) the Ninth Circuit's Exclusive

Jurisdiction Doctrine[2] based on *Kline v. Burke Constr. Co.*, 260 U.S. 226 (1922) mandated this federal case be dismissed because a lawsuit involving the boundaries of the same real property *res* was already ongoing in the Washington Superior Court for Snohomish County. *See* A 327–332.

While this first jurisdictional motion was pending, Scott and Todd Stafne each attempted to serve "Bank of New York Mellon, a Delaware corporation" (exactly as it was named in this action) with a Complaint in the ongoing Washington court action because of the common boundary line issues related to both lawsuits. A287–A288. Surprisingly, neither could obtain service on the purported Plaintiff "Bank" because the registered agent for "The Bank" refused service claiming no entity named "Bank of New York Mellon" existed in Delaware. *Id. See also* service rejection notice: "Service rejected . . . The correct name is The Bank of New York Mellon Corporation. . . ." A295–96.

On April 28, 2016, Senior Judge Zilly directed the clerk of court to issue a Minute Order that stated (1) "Plaintiff Bank of New York Mellon, a Delaware corporation, has alleged facts that establish subject-matter jurisdiction. *See* U.S.C. 28 § 1332". A9; and (2) the court would exercise jurisdiction over the property *res* because "[n]o state court exercised jurisdiction over the Defendants' property prior to Plaintiff filing its complaint in this Court." A9.

On June 2, 2016, Scott Stafne filed a motion, supported by evidence, *see* A 260–268 (motion); A269–A274 (evidence), requesting the District Court require attorneys *i.e.,* Fred Burnside and Zana Bugaighis of the DWT law firm to prove that authority by which they claimed to represent the named, but apparently non-existent

[2] Stafne relied upon the Ninth Circuit's decision in *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 651 F.3d 1039 (9th Cir. 2011) to demonstrate that the duty to dismiss the federal case under these circumstances was non-discretionary.

"Bank" as a Trustee. Evidence in the record at that point which justified such a motion included, "The Bank" of New York Mellon's refusal to accept service in the ongoing Washington state court action involving the property *res* because it was improperly named, Stafne's experience litigating against DWT and particularly attorney Burnside in another litigation, *see e.g., Robertson v. GMAC Mortg., LLC*, 640 F. App'x 609 (9th Cir. 2016), and questionable assignments of Stafne's loan.

In *Robertson* attorney Burnside—as well as other attorneys from other national, regional, and local law firms representing the various Defendants in that case—alleged in removal pleadings that The Bank of New York Trust Company, N.A., became the Trustee acquiring loans from the same 2006 transaction between JP Morgan's trust department and Bank of New York. Attorneys representing all the defendants[3] in *Robertson* erroneously alleged in removal proceedings the citizenship of the BNY Mellon purported Trustee was Florida when it was clearly California. The District Court for Western Washington could have ascertained from the public records that Robertson was correct about that trustee's citizenship, but the judge through which it was acting chose to accept the misrepresentations of counsel about this jurisdictional fact. *Compare Robertson v. GMAC Mortg., LLC*, at 640 F App'x at 611–12, with *Robertson v. GMAC Mortg. LLC*, No. C12-2017-MJP, 2013 U.S. Dist. LEXIS 197044 (W.D. Wash. 2013)(stating that attorneys "notice of removal *established* . . . Bank of New York Mellon Trust Company Trust Company, N.A. is a nationally chartered trust company with *its office in Miami, Florida*." *Id.* at

[3] Defendants in *Robertson* included GMAC Mortgage LLC, Executive Trustee Services LLC, Residential Funding Real Estate Holdings LLC, Residential Funding Company LLC, Residential Funding Corporation, HomeComings Financial LLC, JP Morgan Chase Bank NA, Bank One National Association, The Bank of New York Trust Company NA, and First American Title Insurance Company. In addition to DWT the law firms representing defendants in *Robertson* included Sussman Shank LLP, K&L Gates LLP, and Hanson Baker Ludlow Drumheller P.S.

*3)(Emphasis added) Misrepresentations by attorneys about the citizenship of this BNY Mellon entity continued into the Court of Appeals, which eventually observed in denying sanctions against all of them "[w]e do not condone the defendants' attorneys' unreasonable persistence throughout the litigation in claiming BNY to be a citizen of Florida when it was not." *See* A57–A60 at A59–A60. (This decision appears not to have been picked up by Westlaw or Lexis.)

Attorney Burnside responded to Stafne's request to prove his authority to represent the erroneously named "*Bank*" in this case by arguing (1) nothing more than the filing of a pleading or an appearance is required to prove an attorney's authority to represent a party; (2) Stafne failed to identify any valid basis for challenging "counsel chosen by BNYM to represent its interests in this lawsuit;"[4] (3) proving its authority "would force BNYM to reveal communications protected by the attorney-client privilege and work product doctrine;"[5] (4) the cases cited by Stafne supporting his motion involved "clear facts demonstrating the attorneys did not have authority in court, generally where the purported client challenged the attorneys' authority;" and (5) the District Court should follow Judge Pechman's decision in *Robertson v. GMAC Mortg. LLC*, No. C12-2017-MJP, 2013 U.S. Dist. LEXIS 197044 *4 (W.D. Wash. 2013) and hold Stafne's motion to prove authority in this case is "wholly without merit, unnecessary, and frivolous." *See* A256–A259.

On June 24, 2016, while Stafne's motion to prove the authority of DWT attorneys to represent the "Bank" was pending—DWT's attorney Burnside now

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[4] This argument is not true because under the P&S Agreement the Trustee is required to appoint the servicer as its attorney-in-fact and has no choice in this matter. A413 Additionally, this argument appears to be contradicted by Burnside's later Declaration that his client was Nationstar, and he had to review publicly available records to obtain the name of his purported client. *See infra*.

[5] This argument also appears to be contradicted by Burnside's later Declaration that he only represented Nationstar. *See Infra.*

purporting to be the attorney at law for Nationstar (a non-diverse Texas entity)—moved pursuant to Fed. R. Civ. Pro. 17 (a)(3) to substitute "The Bank of New York Mellon, a New York corporation", which it identified by the acronym "BONY," as the real party in interest. In support of this motion, DWT's Burnside testified:

> 2. In seeking to verify the correct Bank of New York entity that acts as Trustee for the SAMI Trust owning Mr. Stafne's loan, Nationstar—as servicer and attorney-in-fact for BONY, authorized and required to prosecute foreclosures on defaulted loans within the Trust—and I examined the records reflecting the corporate history and mergers for the Bank of New York of Mellon Corporation (founded by Alexander Hamilton, *see, e.g.*, https://www.bnymellon.com/us/en/timeline.jsp).
>
> 3. BNYM's Annual Report to shareholders, uses BNY Mellon as a short-form for Plaintiff the Bank of New York Mellon Corporation, and explains at 4 BNY Mellon:
>
> > In this Annual Report, references to "our," "we," "us," "BNY Mellon," the "Company" and similar terms refer to The Bank of New York Mellon Corporation and its consolidated subsidiaries. The term "Parent" refers to The Bank of New York Mellon Corporation but not its subsidiaries.
>
> The Report confirms at BNY Mellon 29 that "BNY Mellon" acts as Trustee of ***securitized trusts*** like the one owning Stafne's loan:
>
> > ***BNY Mellon acts as trustee and document custodian for certain mortgage-backed security ("MBS") securitization trusts. . . . BNY Mellon is indemnified by the servicers or directly from trust assets under the governing agreements. BNY Mellon may appear as the named plaintiff in legal actions brought by servicers in foreclosure and other related proceedings because the trustee is the nominee owner of the mortgage loans within the trusts.***
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> * * *
>
> 6. I drafted (and Nationstar approved) the Complaint listing as Plaintiff the Bank of New York Mellon (a Delaware corporation), rather than its wholly owned subsidiary, the Bank of New York Mellon (a New York corporation).

* * *

> 8. In response to Stafne's challenge that the Plaintiff was incorrect because it should have been "The Bank of New York Mellon" instead of "Bank of New York Mellon," I reviewed various cases and SEC filings referencing the Bank of New York Mellon, and determined the use of the definite article "the" was not a material distinction, was frequently omitted, and did not change the identity (let alone eliminate the existence) of Plaintiff.[6]
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> * * *
>
> 12. The primary reason for seeking to substitute the Bank of New York Mellon for the Bank of New York Mellon Corporation (rather than merely to seek ratification by the Bank of New York) is that Mr. Stafne testified in deposition that he intends to continue litigation over jurisdiction tied to the corporate structure of the Bank of New York Mellon, and because he does not believe the Court's Order was a "reasoned" decision. . . .

A238–A240.

Fay Janati, a "Litigation Resolution Analyst" working for Nationstar claimed to ratify these actions on behalf of these banks. "Nationstar, as Attorney in Fact for BONY, hereby ratifies the Bank of New York Mellons Corporation's (BNYM) act of filing the Complaint in the above captioned action on behalf of the SAMI Trust." A243–A244 at ¶12. However, there is nothing in the attorney-in-fact agreements that gives Nationstar employees such broad powers. *See e.g.,* A344–A 346; A578–A580.

On June 30, 2016, (while Stafne's motion to prove authority and Nationstar's motion to substitute the real party in interest were both pending) Stafne filed a Rule 12(b)(1) motion to dismiss, *see* A199–A220, *supported by evidence*, *see* A202, including without limitation (1) the P&S Agreement; (2) history of Twin Falls and the boundary lines adjustment of it parcels; (3) Communications with Servicers,

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[6] Stafne asserts that an attorney representing a plaintiff in federal court should ascertain the *actual* name of the client from his or her client before including a false name of a client in a complaint.

including Nationwide; (4) Articles of Incorporation of SAMI II, *i.e.,* the Depositor corporation; (5) evidence that "The Bank" of New York Mellon claimed original Plaintiff "Bank" did not exist; (6) evidence of other cases where counsel for BNY Mellon entities acting as trustees had misled courts.

Stafne argued the evidence demonstrated that defense counsel in these cases claiming to represent trusts assigned notes that were improperly and collusively attempting to invoke jurisdiction in violation of 28 U.S.C. § 1359. The evidence in the record before the district court regarding its jurisdiction when it granted Nationstar's motion for summary judgement against Scott and Todd Stafne on December 7, 2016, on the merits, *see* A18–A19, regarding such assignments, included without limitation:

The evidence in the record before the District Court regarding its jurisdiction when it granted Nationstar's Motion for Summary Judgment against Scott and Todd Stafne on December 7, 2016, on the merits, *see* A18–A19, with regard to such assignments, included:

(1) The signature page of the note obligation which contains an undated purported endorsement from Countrywide Home Loan, Inc. to "JP Morgan Chase Bank, as Trustee" but does not identify any trust. Below this text there is another purported endorsement of the note from "Nationstar Mortgage LLC, Attorney-In-Fact" to "The Bank of New York Mellon F/K/A The Bank of New York, Successor Trustee to JP Morgan Chase Bank, As Trustee" its principal. But there is no endorsement of the note by "JP Morgan Chase Bank as trustee" to Bank of New York Mellon entity.

(2) On December 15, 2011, Mortgage Electronic Registration Systems, Inc. assigned all its beneficial interest in the deed of trust "together with note and

obligations therein due or to become due" to The Bank of New York Mellon FKA The Bank of New York, as successor Trustee to JP Morgan Chase Bank N.A. as Trustee for the holders of the SAMI II Trust 2005-AR2, Mortgage Pass-Through certificates, series 2005-AR2. The recorded assignment indicates that it was requested by Bank of America. *See* A140–142.

(3) On August 16, 2013, Bank of America recorded an assignment of all beneficial interest under that same deed of trust "together with the note(s) and obligations therein described and money due or to become due" to Nationstar Mortgage, LLC, ***in its own name*** "whose address is 350 Highland Drive, Lewisville, Texas." A143–A145. This assignment indicates that it was requested by Bank of America. A144.

(4) On March 3, 2015, The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JP Morgan Chase Bank N.A. as trustee for the holders of the SAMI II Trust 2005-AR2, Mortgage Pass-Through certificates, series 2005-AR2 Lewisville, Texas" assigned the same deed of trust "with all interest secured thereby, all liens, and any rights due or to become due thereon" to Bank of America. A146–A147.

(5) On that same day, March 3, 2015, Nationstar—***in its own name*** — assigned the same first deed of trust "with all interest secured thereby, all liens, and any rights due, or to become due to The Bank of New York Mellon as trustee for ***Structured Asset Mortgage II Inc.*** [the entity defined as the "Depositor" in the P&S Agreement] Mortgage Pass-Through Certificates Series 2005-AR 2005 whose address is also 350 Highland Drive, Lewiston, Texas." A148–A149.

(6) On August 13, 2015, Bank of America Assigned to "Bank of New York Mellon, trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-

Through Certificates Series 2005-AR2 any right, title, in the deed of trust . . ." Bank of America N.A. states in the assignment that it is not "representing it has any right, title, or interest to convey. But any right, title, or interest it may have in the deed of trust is, by executing this assignment, intended to be conveyed to Assignee." The assignment indicates that it was recorded at the request of DWT, the attorney at law representing attorney-in-fact Nationstar.

Additionally, while Stafne's jurisdictional motions were pending before the District Court several assignments of his second 2006 deed of trust with Countrywide (which contained a different legal description with different boundaries than the first deed of trust being challenged here) were recorded. The effect of these assignments was to attempt to eliminate non-diverse Texas Defendant Real Time Resolutions from the lawsuit. These assignments and other transactions included (1) On July 29, 2016, about seven months *after this lawsuit was filed*, Mortgage Electronic Registration System, Inc. (claiming to be a nominee for Countrywide Bank, N.A., its successor and assigns) assigned the second deed of trust owned by Defendant Real Time Resolutions to Bank of America.[7] A150–A152. (2) On that same day July 29, 2016, Bank of America, N.A.—purportedly as beneficiary of Real Time Resolutions' second deed of trust—appointed First American Title Company as Trustee for that second deed of trust; (3) On that same day, July 29, 2016, First American Title Insurance Company, as Trustee for Bank of America, filed a Deed of Reconveyance to Bank of America, N.A. claiming to have been paid in full; and (4) on August 3, 2016, the attorneys for Nationstar filed a

[7] Stafne does not concede that MERS is a nominee or agent of the note holder, or any successor. No evidence was produced to establish such agency, which is necessary in Washington. *Bain v. Metro. Mortg. Grp.*, Inc., 175 Wn.2d 83, 107 (Wash. 2012).

motion to dismiss Real Time Resolutions, thus attempting to eliminate the non-diverse Texas citizen as a Defendant.

On August 9, 2016, the District Court decided those motions that were then pending before it. *See* A10–A17. In this regard, Senior Judge Zilly (1) granted Nationstar's motion to substitute "BONY" pursuant to Fed. R. Civ. Pro. 17 because it concluded it was the actual Trustee that held Stafne's note for "SAMI Trust." *See* A11–A14; (2) denied Stafne's motion to prove authority for Nationwide and its attorneys' representation of Bank of New York Mellon because "Stafne lacks a good faith basis to argue DWT lacks such a relationship" citing to *Robertson v. GMAC Mortgage LLC*, C12-2017-MJP, docket no. 82 (W.D. Wash. Feb 19, 2013)(Pechman, J). *See* A14–A15; and (3) denied Stafne's Fed. R. Civ. Pro 12(b)(1) *Factual* Motion to Dismiss for the "same reasons" as the District Court granted the Rule 17 motion to substitute the real party in interest. *See* A16.

At some point after the District Court granted the motion to substitute BONY the District Court unilaterally changed Plaintiff's name to the "Bank of NY Mellon" notwithstanding the Complaint was never amended to name this entity as the Plaintiff and the Motion to Substitute always identified the party to be substituted as Bank of New York Mellon, a New York corporation by the acronym BONY. *See e.g.,* A6 (Court stating it substituted "BONY for its parent corporation, Bank of New York Mellon, a Delaware corporation.") *See also* A12; (Court stating motion is to substitute "BONY" in place of its corporate parent Bank of New York Mellon, a Delaware corporation "BNYM") *See also* A11–A16; A19–26, A45, for other statements by District Court stating that BONY, not BNY Mellon Bank was the substituted entity. *See also* A163–A164; A182, A196. Stafne asserts Bank of NY Mellon is not the same entity as was originally named as Plaintiff, *i.e.*, a Delaware corporation, or the

proposed entity Nationstar moved to substitute as Plaintiff or the name of any real-life entity at all.

D. Stafne refuses to defend the merits and files first Appeal

Stafne filed his first Notice of Appeal with the Ninth Circuit on August 22, 2016. Stafne requested the Ninth Circuit stay the merits proceedings in the District Court. While the Appeal was pending Nationstar's attorneys, claiming to represent the "Bank", filed a Motion for Summary Judgment against him.

On September 22, 2016, the Ninth Circuit dismissed Stafne's Appeal, asserting that it had no jurisdiction to decide the Appeal. Nonetheless, Scott Stafne continued to assert throughout the proceedings below the District Court had no subject-matter jurisdiction to exercise judicial power to adjudicate merits of this dispute and therefore refused to defend on the merits.

E. Evidence in record that Nationstar and its attorneys improperly, and collusively attempted to invoke federal jurisdiction

In addition to the assignments, the time the Court granted summary judgment against Scott and Todd Stafne the following evidence was in the record before Senior Judge Zilly:

(1) An email from BNY Mellon Properties that stated with regards to a request for information about Stafne's parcel:

> After researching our database, we do not show any records of the address(es) listed in your email. If you have documents showing we are the Trustee, please send it to this mailbox so it can be researched further. All applicable documents should be sent to me via email. ***However, please note that BNY Mellon is solely the trustee and any property preservation, release, assignment, etc. would be handled by the applicable servicer. If you know the applicable servicer, please contact them directly. If not, please, send any documentation you have showing BNY Mellon as trustee so that we can direct your email to the appropriate party.***

A156–A160.

(2) Communications from Nationwide and a previous loan servicer to Stafne in 2014 and 2013 respectively stated that JP Morgan Chase was still the Trustee of his loan on behalf of the Depositor identified in the P&S Agreement. A153–A155; A297–A299.

F. Evidence in the record related to boundary issues of res within core authority of Washington state under the Tenth Amendment and Federalism Structure

There was also evidence in the record demonstrating the boundaries to the *res* sought to be foreclosed was being litigated in *Abrams v. Twin Falls, Inc.*, Snohomish County Cause No. 5-2-04710-6, and was a live issue which needed to be decided in this case. Such evidence included: (1) the Complaint in *Abrams v. Twin Falls* Inc., which was filed on June 29, 2015, seeking among other things a rescission and/or declaration that the boundaries established by the 2010 Boundary Line Agreement among all Twin Falls parcel owners "is void". A581–A597 at A594 prayer for relief 4; (2) A copy of the 2010 Boundary Line Agreement related to all the parcels within Twin Falls rural community. A126–A139; (3) A copy of the warranty deed from Twin Falls, Inc. to Scott Stafne demonstrating the boundaries of the real property parcel he acquired. A61–A64; and (4) Copies of the legal descriptions set forth in deeds of trust security instruments encumbering Scott Stafne's property A64–A125.

REASONS WHY CERTIORARI SHOULD BE GRANTED

A. The District Court should not have exercised jurisdiction over the property res

This Court has observed that "[t]he possession of the *res* vests the court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto, and for the time being disables other courts of coordinate jurisdiction from exercising a like power." *Farmers' Loan & Tr. Co. v. Lake S. E. R. Co.*, 177 U.S. 51, 61 (1900). Many cases of this Court confirm this jurisdictional rule "is

essential to the orderly administration of justice and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons." *Id. See also Marshall v. Marshall*, 547 U.S. 293, 311 (2006); *Penn Gen. Cas. Co. v. Pennsylvania*, 294 U.S. 189, 196 (1935); *Peck v. Jenness*, 48 U.S. 612, (1849). Stafne contends the failure to follow this jurisdictional doctrine in this case is unseemly and has resulted in the judicial power of the federal government being used to require state officials to act contrary to Washington state laws in violation of the Tenth Amendment and our Federalism Structure.

On April 28, 2016, Senior Judge Zilly first denied Stafne's 12(b)(1) motion to dismiss on Federalism grounds by stating: "[n]o state court exercised jurisdiction over Defendant's [Stafne] property prior to Plaintiff filing his complaint in this Court." A9. The court did not explain its finding in this regard, but did cite as support for it, *Sexton v. INDEX W., LLC*, 713 F. 3d 533, 537 (9th Cir. 2013), which was a single action that had been removed to a federal district court. Stafne contends this cryptic ruling makes no sense because Abrams earlier filed—*and then still ongoing* separate lawsuit—requested possible rescission of the boundaries of the property being foreclosed upon.

The District Court was again confronted with these same boundary issues in June 2017, when Senior Judge Zilly directed the clerk issue a Minute Order that stated:

> Having reviewed plaintiff 's proposed amended judgment, docket no. 126, it appears that the proposed amended judgment includes an abbreviated legal description that encompasses boundary lines that are inconsistent with the full legal description of the property encompassed by the Deed of Trust. . . .The parties are DIRECTED to submit supplemental briefing addressing this discrepancy on or before June 13, 2017. . . .

A 40.

And by this time Nationstar and its attorneys acting for BONY conceded that Stafnes attempts to obtain boundary line adjustments pursuant to Washington law was problematic: "Todd and Scott Stafne have changed the boundary lines enough times that it is unclear if the abbreviated legal description and the full legal description are the same." The attorneys argued "the Court can revise the abbreviated legal description in the proposed amended judgment to repeat the full legal description contained in the Deed of Trust, which is senior (and thus controlling) as to any subsequent boundary line adjustments."A613 The attorneys provided no federal or state authority for the proposition that "senior" boundaries control over those established by Washington law.

In order to resolve this problem Senior Judge Zilly—notwithstanding the parties' arguments otherwise—held that Washington law did not require the summary legal description match the actual description and that he could exercise federal judicial power to require the Sheriff to foreclose. A7 ¶(b). Stafne argued that his boundaries had been established by Washington law. *See e.g., Stafne v. Snohomish Cty.*, 156 Wn. App. 667, 674, 679-680 (2010) *aff'd on other grounds* 174 Wn.2d 24, 28, 39–40 (2012)(acknowledging the boundary lines for the parcel in question had been adjusted pursuant to Washington law to include more property in 2007).

The "devolution of property . . . is an area normally left to the States," *United States v. Oregon*, 366 U.S. 643, 649 (1961); the transfer of property being a "part of the residue of sovereignty retained by the states, a residue insured by the Tenth Amendment." *See United States v. Burnison*, 339 U.S. 87, 91–92 (1950) refusing to overrule *United States v. Fox*, 94 U.S. 315, 24 L. Ed. 192 (1876). *See also See e.g., Am. Land Co. v. Zeiss,* 219 U.S. 47, 60 (1911); *Arndt v. Griggs*, 134 U.S. 316, 321 (1890); *Pollard v. Hagan*, 44 U.S. 212, 230 (1845).

Under Washington law the boundary lines for parcels of land in that state are established pursuant to administrative land use decisions by counties, not by surveys or quit claim deeds or federal judicial power. *See* Snohomish County Code, 30.41E "Boundary Line Adjustments." If those boundary line adjustments, *i.e.,* local "land use" decisions, are not challenged within 21 days they are waived pursuant to the Washington Land Use Petition Act. *See* Ch. 36.70; RCW 36.70C.040(3); *See also Chelan Cty. v. Nykreim*, 146 Wn.2d 904, 921-23, (2002). *Cmty. Treasures v. San Juan Cty.*, 192 Wn.2d 47, 52-53 (2018); *Durland v. San Juan Cty.*, 182 Wn.2d 55, 59-60, 340 P.3d 191, 194 (2014). Under Washington law (unless it has now been changed by Senior Judge Zilly) banks, money lenders, and debt buyers are treated like everyone else unless there is some constitutional basis for exempting them. No such basis was shown here, and Senior Judge Zilly should not have assumed jurisdiction over the *res* to exercise judicial power in violation of the Tenth Amendment and the Federalism structure of our government.

B. The District Court and Court of Appeals improperly ignored and overruled this Court's precedent protecting the People from corrupt attorneys

The exercise of judicial power under Article III involves the adjudication of cases between genuinely adverse parties, *i.e.,* those with standing. For the most part in our history, the concept of standing has precluded attorneys—both *in fact* and *at law* —untethered to aggrieved principals or clients from litigating disputes in federal courts. *See e.g., Kowalski v. Tesmer,* 543 U.S. 125, 134 (2004); *Pueblo of Santa Rosa v. Fall*, 273 U.S. 315, 319-20 (1927); *Hatfield v. King*, 184 U.S. 162 (1902); *Shelton v. Tiffin*, 47 U.S. 163, 185-86 (1848).

In *Sprint Communs. Co., L.P. v. APCC Servs.*, 554 U.S. 269 (2008) a narrow majority of this Court held "an assignee of a legal claim for money owed has

standing to pursue that claim in federal court, even when the assignee has promised to remit the proceeds of the litigation to the assignor." But this holding was based on the majority's observations that (1) assignee servicers for payphone operators had presented arguments and evidence demonstrating the assignments there set forth a case of the sort traditionally amenable to, and resolved by, the judicial process. *Id.* at 554 U.S. at 272–75 (2) there were no allegations "the assignments were made in bad faith." *Id.* at 276; and (3) the assignments in *Sprint* were not made to attorneys. *Id.* at 289. Had these facts not been so, the majority indicated the result might well have been different. *Id.* at 292. This case is different in all three of these regards.

It is Stafne's position that each of *Sprint's* holdings above support denying Article III standing to BNY Mellon entities acting as a Trustee for securitizations when it is only the servicers that have been given the authority to act as attorneys-in-fact for the securitization entities and/or certificate holders and/or the Depositor.

One thing both the majority and dissent did agree upon in *Sprint* was that allowing attorneys at law unanchored to actual principals or clients to sue on assignments was inappropriate under Article III. *Sprint*, *supra*, 554 U.S. at 289 (majority opinion); at 301–02 (Roberts, CJ Dissenting). Stafne asserts his motion to require Nationstar's attorneys to prove their authority to represent BNY Mellon entities acting as trustees was appropriate because (1) the Complaint misidentified "Bank of New York Mellon" as the original Plaintiff; (2) the same attorney that misidentified "Bank" as Plaintiff in this case had previously persistently made jurisdictional misrepresentations about a different BNY Mellon entity in *Robertson*; (3) the same attorney after first claiming to represent the misidentified "Bank" belatedly admitted he and his firm represented only the servicer; and (4) the same

attorney admitted he had not consulted with any BNY Mellon entity before filing the Complaint on behalf of "Bank".

Stafne claims that these facts required the District Court acting through Senior Judge Zilly to have considered the factual basis for Stafne's motion to prove authority. *See e.g., Pueblo of Santa Rosa v. Fall*, *supra.*, at 319–20; *Hatfield v. King*, *supra.*, at 483–85 (1902); *Shelton v. Tiffin*, *supra.* at 185–86 (1848). As to court of appeal precedent, *see Abraham v. Shinberg*, 190 F.2d 595, 597-99 (D.C. Cir 1951); *In re Retail Chemists Corp.*, 66 F.2d 605 (2d Cir. 1933).

By not addressing the appropriateness of that motion based on the facts in the record, the lower courts in this case effectively overruled this Court's precedent designed to protect the due administration of justice from attorneys who claim to represent parties they really do not.

> . . . ***The charges*** [that attorneys do not represent parties they claim to represent in these court proceedings] ***are serious ones, affecting the integrity of counsel***, . . . ***They involve that due administration of justice in that court and cannot be passed without notice and action. It is not enough that the doors of the temple of justice are open; it is essential that the ways of approach be kept clean.*** We refrain from extended comment because, as heretofore stated, the testimony is mainly by ex parte affidavits, which are often, this case being no exception, quite unsatisfactory, and it is only through the sifting process of cross-examination that the real facts can be disclosed. ***When the truth is ascertained, if there be wrongs as charged, the language of judicial condemnation should be clear and emphatic, and a punishment inflicted such as the wrongs deserve***; . . .

Hatfield v. King, 184 U.S. 162, 167-68 (1902) (Emphasis Supplied).

C. The senior judge improperly invoked the District Court's Jurisdiction

1. Standing analysis under Sprint

To establish standing under Article III of the Constitution, a plaintiff must demonstrate (1) that it suffered an injury-in-fact that is concrete, particularized, and

actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief. *See Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1618 (2020) *citing Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560-61 (1992). Nationstar and its attorneys have not established the trustees named as Plaintiffs in this case have Article III standing under *Sprint*[8] because they have not demonstrated that trustees operating pursuant to the P&S Agreement have third party standing of the sort traditionally amenable to, and resolved by, judicial process. Furthermore, the evidence in the record demonstrates that Nationstar, the attorney-in-fact, and its attorneys at law concede that entities acting as BNY Mellon trustees in these types of cases have nothing to gain or lose from such lawsuits, A238, and that the attorneys at law for attorney-in-fact, Nationstar, do not access and/or chose not to access such purported trustees for purposes of obtaining such information as the trustee's correct name, identity, citizenship, etc., *i.e.,* necessary information for purposes of establishing that "concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination," especially for purposes of establishing Article III jurisdiction *Sprint*, *supra*., at 288; A239–40. Additionally, the P&S Agreement demonstrates that for purposes of performing its servicing and litigation functions Nationstar does not act as an attorney-in-fact representing the trustee of the securitization, but the owners of the securities.

The above facts are significant because they demonstrate BNY Mellon entities are not "trustees" for either a business trust or a traditional trust. In *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458 (1980) this Court held in order to qualify as trustee of a business trust a trustee's control over the assets held in his or her name must be real

[8] Sprint's standing analysis is, of course, a different inquiry than BNY Mellon trustees' citizenship under 28 U.S.C. § 1332 or whether its conduct or those of its attorneys prevent the district court from invoking its jurisdiction pursuant to 28 U.S.C. § 1359. These issues are discussed *infra.*

and substantial. *Id.* at 460–61. The declaration of trust in that case "authorized the trustees to take legal title to trust assets, to invest those assets for the benefit of the shareholders, and to sue and be sued in their capacity as trustees." *Id.* at 464. Thus, this Court concluded: "[t]he respondents are not 'naked trustees' who act as 'mere conduits' for a remedy flowing to others. . . . They have legal title, they manage the assets, ***they control the litigation***." *Id.* at 465. (emphasis supplied)

We do not have the same situation here because there is no allegation in the Complaint or evidence in the record documenting that BNY Mellon entities acting as trustees under the P&S Agreement are anything more than a naked trustee controlled by Nationstar and its attorneys for purposes of this litigation against Stafne. *See Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990) (pointing out *Navarro* decided the trustees were the real parties in interest because their control over the assets was real and substantial. *Id.* at 191). *See also Bynane v. Bank of N.Y. Mellon,* 866 F.3d 351, 356-7 (5th Cir. 2017). *Cf. McNutt v. Bland,* 43 U.S. 9, 13-14(1844) (holding conduit for remedy owing to others is not real party-in-interest.)

Similarly, BNY Mellon has not demonstrated that it is acting as a trustee for a traditional trust because the Complaint does not allege the trust in question is a traditional one and the P&S Agreement and Power of Attorney attached to the Complaint demonstrate that it is a securitization and not a traditional trust. There is no donative intent and neither the trustee nor servicer have any fiduciary relationship with the beneficiaries and/or certificate holders.

2. Citizenship of trusts for diversity jurisdiction

While Stafne's first jurisdictional motion was pending this Court decided *Americold Realty Tr. v. ConAgra Foods, Inc.*, 577 U.S. 378 (2016). Stafne promptly notified the District Court of that decision, but the senior judge chose not to address

this controlling authority. The issue in *Americold* was the proper citizenship to be ascribed to an entity which called itself a "trust" for purposes of establishing diversity jurisdiction pursuant to 28 U.S.C. § 1332. Americold asserted that the proper citizenship for a "trust" is that of its trustee. This Court held otherwise. "While humans and corporations can assert their own citizenship, other entities take the citizenship of their members." *Americold*, 577 U.S. at 101.

In *Americold* the Court held that a real estate investment securitization, like this one, had the citizenship of its members. Because Americold did not establish the citizenship of all its members was diverse from the citizenship of the parties it sued, this Court held Americold had not established diversity jurisdiction. *Id.* at 1016–1017. *See also Strawbridge v. Curtiss*, 7 U.S. 267 (1806). The same is true here: By failing to allege or demonstrate the citizenship of the parties on behalf of whom this action is brought the attorney-in-fact has failed to demonstrate diversity jurisdiction exists pursuant to 28 U.S.C. §1332.

3. 28 U.S.C. §1359

Both *Sprint* and *Navarro* demonstrate this Court does not tolerate federal courts exercising jurisdiction that is prohibited by 28 U.S.C §1359, which is the present incarnation of an older statute. *See Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823 (1969) indicating that cases under specific older predecessor statutes remain instructive as to how 28 U.S.C. §1359 should be construed today. *Id.* at 826–27. The case this Court found most compelling in *Kramer* with regard to interpreting §1359 today is *Farmington v. Pillsbury*, 114 U.S. 138 (1885)[9]. *Farmington* observes

[9] Other real property cases the Supreme Court observed as instructive included *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327 (1895)(suit to recover possession of real property); *Smith v. Kernochen*, 48 U.S. 198 (1849)(ejectment action); *Maxwell's Lessee v. Levy,* 2 U.S.

it was disputes like this one—those involving the "recovery of real property"—that spurred this specific legislation to "protect the courts as well as the parties against such frauds on . . . [courts'] jurisdiction. . . ." *Id.* at 144. After reviewing the circumstances of the assignments at issue in *Farmington* this Court held that lawsuit appeared to be a contrivance to improperly invoke the jurisdiction of federal court and that as a result the federal court could not adjudicate the merits.

Stafne claims the same is true here: The assignments in the record, *see supra* pp. 16–17, indicate the assignors and the assignees are trying to manipulate Stafne's loan in such a way as to invoke jurisdiction. Otherwise, what is the need for all these assignments to an attorney-in-fact to enforce the security instrument?

Further, Stafne asserts the District Court and Court of Appeals were not free as courts of justice to ignore (without discussion) his arguments—and the evidence in the record—that the purported Plaintiffs violated 28 U.S.C. § 1359 by way of their assignments of interests in Stafne's loan. *See e.g.*, *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327 (1895) "[W]hen the inquiry involves the jurisdiction of a Federal court—the presumption in every stage of a cause being that it is without the jurisdiction of a court of the United States, unless the contrary appears from the record, [cites]." *Id.* 160 U.S. at 337. Certainly, if federal courts must sua sponte consider the presumption against jurisdiction even when it is not challenged, courts must do so when such a challenge is directly brought to their attention by a party.

4. Rule 17(b) analysis

The District Court—through its senior judge—relying on the "leniency" of

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381 (1797)(ejectment action.); *Little v. Giles*, 118 U.S. 596, 7 S. Ct. 32, 30 L. Ed. 269 (1886) *See also Lake Cty. Comm'rs v. Dudley*, 173 U.S. 243, § 250–55, (1899)(Collecting cases)

Rule 17 and its "salutary" purpose, accepts Nationstar's attorney Burnside at his word that he [Burnside] made an error in naming the wrong BNY Mellon entity as trustee,[10] A11–14. (But how could the senior judge have reached this conclusion in light of Section 9.08 of the P&S Agreement which clearly indicated the named original Plaintiff was not qualified to act as trustee. *See supra*. at 6.

Although the senior judge holds "[c]ourts regularly grant motions to substitute in the correct corporate entity in analogous situations" he fails to cite to any cases where Defendants were challenging jurisdiction based on (1) a lack of representational standing by an improper purported trustee; and (2) a factual challenge demonstrating the jurisdiction was likely improperly or collusively invoked in violation of §1359.

Fed. R. Civ. Pro. 82 states: "These rules do not extend or limit the jurisdiction of the district courts . . ." *See also Zurich Ins. Co. v. Logitrans, Inc.*, 297 F.3d 528, 531-33 (6th Cir. 2002). *Compare Cortlandt St. Recovery Corp. v. Hellas Telecomms.*, 790 F.3d 411, 423-25 (2d Cir. 2015). The District Court attempted to distinguish *Zurich* by suggesting that case involved sister companies and this case involves the relationship between a parent and a subsidiary company. But that distinction clearly has no relevance where a factual challenge based on §1359 is at issue, as it is in this case. *See e.g. Airlines Reporting Corp. v. S & N Travel*, 58 F.3d 857, 863 (2d Cir. 1995) holding that because "both scenarios necessarily present the opportunity for the collusive manufacture of jurisdiction, thereby frustrating the goals of §1359, we can think of no reason why the presumption of collusion should not apply with equal

[10] Stafne challenged Burnside's "honest mistake" explanation; demonstrating Burnside had made false representations about the citizenship of other BNY Mellon trustees to this same court in the past and had just weeks before claimed to have an attorney-client relationship with BNY Mellon, when he did not.

force to either" citing *Prudential Oil Corp. v. Phillips Petroleum Co.*, 546 F.2d 469 (2d Cir. 1976) and *Dweck v. Japan CBM Corp.*, 877 F.2d 790, 792 (9th Cir. 1989). Under these circumstances the entity claiming jurisdiction exists notwithstanding §1359 is required to show a legitimate business reason for the assignment based on the totality of the circumstances. *Id. See also Yokeno v. Mafnas,* 973 F.2d 803, 810 (9th Cir. 1992). *Cf. Nat'l Fitness Holdings, Inc. v. Grand View Corp. Ctr.*, LLC, 749 F.3d 1202, 1208 n. 2 (10th Cir. 2014)(suggesting there is a circuit split with regard to the presumption against good faith assignment by related entities.)

But Stafne does not rely on that circuit split to justify certiorari here because neither the District Court nor the Court of Appeals considered his factual arguments that §1359 applied to this case when both were constitutionally required to do so. Thus, Stafne relies on that part of Supreme Court Rule 10 that authorizes the writ of certiorari because the District Court and Court of Appeals have "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

D. The District Court and Court of Appeals have attempted to overrule the presumption against the jurisdiction of the federal courts

The federal courts of the Ninth Circuit appear to have inappropriately aligned themselves with the creditor class and their lawyers against individual debtors. As a result, the Ninth Circuit now simply assumes that BNY Mellon trustees oversee "traditional" trusts, so that federal courts in this circuit no longer have to demonstrate they actually have subject-matter jurisdiction over individual debtors. *See e.g., Bank of N.Y. Mellon v. Thunder Props.*, 778 F. App'x 488 (9th Cir. 2019). *But see Bank of Am., N.A. v. Remington Place Homeowners' Ass'n.,* No. 19-16802, 2021 U.S.

App. LEXIS 4112 (9th Cir. Feb. 12, 2021)(applying traditional subject-matter jurisdiction analysis in case not involving an individual debtor.)

In *Thunder Props.* the Ninth Circuit held in an unpublished memorandum that subject-matter jurisdiction did not have to be demonstrated by a "Bank of NY Mellon" purported trustee prior to the District Court granting summary judgment on the merits because (1) "nothing alleged in the complaint suggests the relevant trust is anything but a traditional trust," *Id.* at 488, and (2) "Defendants never sought discovery to contest the truth of Bank of New York Mellon's factual allegations regarding jurisdiction." *Id.* at 488, n. 1. This holding violates this Court's longstanding precedents that the presumption against lower courts' jurisdiction must be factually rebutted in the record in order for lower courts to exercise judicial power. *See e.g. DaimlerChrysler v. Cuno*, 547 U.S. 332, 342 & n.3 (2006); *Renne v. Geary*, 501 U.S. 312, 316 (1991); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546-547 (1986); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Miller & Lux, Inc. v. E. Side Canal & Irrigation Co.*, 211 U.S. 293, 302 (1908); *Thomas v. Bd. of Trs.*, 195 U.S. 207, 210-11 (1904); *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327, 337 (1895); *King Bridge Co. v. Otoe Cty.*, 120 U.S. 225, 226-27 (1887); *Grace v. Am. Cent. Ins. Co.*, 109 U.S. 278, 283-84 (1883); *Robertson v. Cease*, 97 U.S. 646, 649 (1878); *Turner v. President, Dirs., & Co. of Bank of N. Am.*, 4 U.S. (4 Dall.) 8, 11 (1799).

The rule is, and always has been that "[t]he facts necessary to establish standing . . . must not only be alleged at the pleading stage, but also proved at trial." *Gill v. Whitford*, 138 S. Ct. 1916, 1931, 201 L.Ed.2d 313, 329 (2018) citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)(holding that subject-matter jurisdiction must be established before a court can issue summary judgment.) *Cf. Sprint*, 559

U.S. 272–295 (requiring documentation in the record that the lawsuit by a representative plaintiff is of "the sort traditionally amenable to, and resolved by, the judicial process.")

The problem is not just the Ninth Circuit abused its judicial power in the *Thunder Props*. case, but that it did so in a deceptive way that suggests its departure from the longstanding presumption against subject-matter jurisdiction was appropriate, when the Ninth Circuit's decision here demonstrates that it is not. Stafne made the factual challenges to Nationstar's invocation of the District Court's jurisdiction pursuant to Fed. R. Civ. Pro. 12(b)(1), which both the District Court and Court of Appeals outright ignored as if their judicial power was not in any way limited. And Stafne moved these courts to require attorneys claiming to represent the trust to prove that authority by which they represented such trust in accordance with long established precedent from this Court, which those same lower courts again ignored.

E. The decisions of the District Court and the Court of Appeals promote judicial tyranny under the pretext that Stafne acted improperly

Stafne has never before asserted a similar defense, *i.e.,* lack of subject-matter jurisdiction as a sole defense, on behalf of a client facing a summary judgment because it is a very risky strategy. He does so here because the risk to his home and life is merited by the circumstances this nation confronts in the opening decades of the Twenty-First Century, including unprecedented homelessness, a pandemic, and greed, which as this case demonstrates now pervades our legal system. Stafne believes the Constitution is on his side. In *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) this Court observed "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course

of doing so." *Id.* at 341. This Court explained in *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 701-02 (1982):

> Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; ***it functions as a restriction on federal power and contributes to the characterization of the federal sovereign.*** . . . [A] court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. "[The] rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884).

Id. at 701–02 (Emphasis Supplied).

It has been through cases like this one—where an individual has been injured by an inappropriate exercise of governmental power—that the limits of power on the departments of the federal government and the division of power between the federal government and state governments have been most meaningfully defined. *See Bond v. United States*, 564 U.S. 211, 222-24, (2011). Stafne maintains here the District Court had no business exercising judicial power in the absence of a reasoned explanation of its jurisdiction to do so. *See* Alexander Hamilton, Federalist Paper No. 78, May 28, 1778. ("The judiciary . . . may truly be said to have neither FORCE NOR WILL, but merely judgment; . . .") By not providing their judgment in this case as to why the District Court had jurisdiction—the senior judge and the appeals court judges who rallied round him—exercised only naked power which the Constitution does not give to the judicial branch.

Hamilton hypothesized in Federalist Paper No 78 "though individual oppression may now and then proceed from the courts of justice; the general liberty of the

people can never be endangered from that quarter; . . .” One of the reasons for Hamilton’s confidence in this regard was that the exercise of judicial power by Article III judges is limited to deciding individual cases between aggrieved litigants. And while it is certainly true that limiting the exercise of judicial power to individual cases lessens the judicial branch’s potential to tyrannize the People as a whole; It is also true that there is a peculiar kind of cruelty often associated with giving government officials unrestrained power over individuals. Fydor Dostoevsky explains this well in *House of the Dead*. “Whoever has experienced the power and the unrestrained ability to humiliate another human being automatically loses his own sensations. Tyranny is a habit, it has its own organic life, it develops finally into a disease.”

Query: whether the senior judge’s latest Minute Order demanding the parties explain to him why the Sheriff has not yet sold Stafne’s home seems to be one a neutral judge would compose, or the order of an official for whom tyranny has become a habit?

In Federalist Paper No. 10 James Madison explained how the structure of the Republic established by the Constitution was designed to achieve justice and reduce the instability of factions.

> AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. . .. ***Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.***

In 1787 Madison observed a truth in Federalist 10 that remains with us today; namely that "the most common and durable source of factions" in this country is between those "who hold and those who are without property. . .. Those who are creditors, and those who are debtors." Such factions Madison observed back when our Constitution was being debated tempts us all, judges included, to do what is best for our faction. "Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them." Our founders knew however, that justice will not prevail if judges are not independent and neutral in the manner required by our organic law.

The federal courts in Washington state and the Ninth Circuit appear to have inappropriately aligned themselves with the creditor class and their lawyers to the detriment of the People. This is apparent from the fact that in cases like this one the Ninth Circuit now simply assumes that trustees oversee traditional trusts, so that they can exercise unrestrained judicial power over individual debtors. The power of the wealthy and their attorneys to take people's property from them in unjust ways without consideration of evidence deepens the divide of factions into today's world and encourages otherwise considerate and virtuous citizens, like Stafne and other wrongfully disposed homeowners, to forsake a government that has so clearly abandoned its quest to provide justice for all.

H. The decisions of the Court below should be summarily reversed pursuant to this Parties' Presentation Doctrine

In *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) this Court observed that "[i]n our adversarial system of adjudication, we follow the principle of party presentation . . . [I]n both civil and criminal cases, in the first instance and

on appeal . . ., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.* Here, the record below demonstrates the lower courts refused to address the subject-matter jurisdiction challenges asserted by Stafne. Because most of his challenges were factual challenges this Court should simply reverse and remand with instructions that they be considered. *See e.g., Hertz Corp. v. Friend*, 559 U.S. 77, 96-97 (2010).

This Court should also reverse the District Court's ruling on April 28, 2016, because Stafne's facial challenges to the Complaint were inappropriately dismissed. The Complaint did not allege the securitization on behalf of whom the trustee was claiming to act was a traditional or business trust, and the P&S Agreement indicated it was neither. Further, the Complaint did not allege the citizenship or domicile of the Defendants, Scott and Todd Stafne, and failed to allege the citizenship of Nationstar and those entities Nationstar was seeking to represent as an attorney-in-fact.

G. Senior Judge Zilly is not an independent judge.

Stafne asks this Court take judicial notice the adjudicator exercising judicial power on behalf of the federal branch of government in this case is Senior Judge Zilly, who is one of ten judges who have taken senior status on the United States District Court for Western Washington. *See* https://www.wawd.uscourts.gov/judges.

With all due respect—and indeed reverence—for the judicial branch of our government, that Department was never expected to be able to secure justice for the People without individual cases and controversies being adjudicated by neutral and independent judges. This means judges who apply the law fairly to the arguments advanced by the parties. Unfortunately, it is obvious that the senior judge in this case failed to perform this duty when he refused to adjudicate the factual challenges

to his subject-matter jurisdiction. Concerned citizens must wonder how Senior Judge Zilly could so easily ignore this centuries old obligation of judges.

Part of our problem today, in this case (and perhaps in modern society generally) stems from trying to get around the rules without addressing violations, or if necessary, amending the Constitution pursuant to Article V.

Article III requires district court judges to have good behaviour tenure. No "ifs", "ands", or "buts." Accordingly, federal judges who relinquish their tenure for a better retirement program than the rest of us by agreeing to periodic limitations on their exercise of judicial power are by definition no longer judges under the plain language of Article III.

28 U.S.C. § 371(b)(1) provides that "[a]ny . . . judge of the United States appointed to hold office during good behaviour may retain the office but retire from regular active service after attaining the age and meeting the service requirements . . . of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e)." Subsection (e) provides "In order to continue receiving the salary of the under subsection (b) . . . a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in one of the following subparagraphs of 28 U.S.C. 371 (e)(1)(A), (B), (C), (D) or (E). Stafne asks this Court to judicially notice that judges who have not chosen to take senior status do not have similar restrictions on their salary.

28 U.S.C. § 294 provides: "[a]ny judge of the United States who has retired from regular active service under section 371(b) . . . shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, *when designated and assigned as provided in subsections (c)*

and (d). (Emphasis added) Subsection (e) of 28 U.S.C. §294 provides: "No retired justice or judge shall perform judicial duties except when designated and assigned." Stafne asks this Court take judicial notice that active judges who have not taken senior status have no similar restrictions on their exercise of judicial power.

This Court, as well as numerous courts of appeal, have upheld these restrictions by Congress on the jurisdiction and authority of judges assuming senior status to act as adjudicators. *See e.g., Frad v. Kelly*, 302 U.S. 312 (1937); *Steckel v. Lurie*, 185 F.2d 291 (6th Cir. 1950); *Wrenn v. District of Columbia*, 808 F.3d 81 (D.C. Cir. 2015). Stafne asserts here that by accepting these restrictions as a condition of assuming senior status, senior judges—like Senior Judge Zilly—accept restrictions of their tenure and salary that are incompatible with being independent judges within the meaning of Article III. As this Court knows Article III mandates, "Judges . . . shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

In *Stafne v. Zilly*, 337 F. Supp. 3d 1079 (W.D. Wash. 2018) aff'd 820 F. App'x 594 (9th Cir. 2020) the active district court judge who had been assigned to decide Stafne's collateral attack on Senior Judge Zilly's exercise of judicial power in this case, *see* related cases, suggested the best way to resolve this issue would be by way of an appeal of this case. "At some point, the constitutionality of §371 may need to be resolved. That may even occur in the appeal of either BNYM or Burnside." 337 F. Supp. at 1099.

With respect, Stafne disagrees. Stafne asserts an appropriate course of action under the circumstances would be to consolidate both petitions for writ of certiorari.

Consolidation is appropriate because Article III's structural protection exists to protect the People. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015); *Gonzalez v. United States*, 553 U.S. 242, 251 (2008); *United States ex rel. Toth v. Quarles*, 350 U.S. 111 (1955). But consideration of these judges' interests in maintaining the attributes of independence under these circumstances may better develop the arguments to be made on this important issue. *See e.g., United States v. Hatter*, 532 U.S. 557, 568 1978); *Evans v. Gore*, 253 U.S. 245, 249 (1920).

In *Booth v. United States*, 291 U.S. 339 (1934) this Court allowed a federal judge to challenge these same statutes before they were amended in 1944 to impose the specific restrictions on senior judges' exercise of judicial power that Senior Judge Zilly and the other defendants in that case agreed to. *See Booth v. United States*, 291 U.S. 339 (1934). We should give these judges an opportunity to argue why the Constitution should not be applied as written to them.

CONCLUSION

Stafne's petition for writ of certiorari should be granted. Alternatively, the decisions of the courts below should be summarily reversed because neither the allegations of the Complaint nor the evidence in the record demonstrated the District Court had subject-matter jurisdiction over this dispute.

DATED this 8th day of March 2021,

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