

In the  
**Supreme Court of the United States**

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CHURCH OF THE GARDENS, et al.,

*Applicants,*

v.

QUALITY LOAN SERVICES CORP. OF WASHINGTON, et al.,

*Respondents.*

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**SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR  
ADMINISTRATIVE STAY OR INJUNCTION**

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On January 8, 2026, the United States Court of Appeals for the Ninth Circuit issued an order stating that it lacked jurisdiction to adjudicate Applicants' Motion for an Emergency Stay. *See* App. B at 038–039. Following that ruling, Applicants directed their emergency application to Justice Kagan.

Notwithstanding the Ninth Circuit's determination that it lacked jurisdiction, Deutsche Bank National Trust Company filed its opposition to the emergency stay application in the Court of Appeals rather than in this Court.

The purpose of this supplemental brief is therefore limited and procedural: to respond to arguments raised in Deutsche Bank's opposition that bear directly on the emergency relief now pending before Justice Kagan. *See* Declaration of Scott Erik Stafne in Support of Supplemental Brief.

Applicants submit that this supplemental response addresses new matter that Justice Kagan may wish to consider in deciding the application for emergency relief, particularly where Deutsche Bank's opposition was filed in a forum that has expressly declined jurisdiction over the stay request.

## **I. INTRODUCTION**

Appellants do not seek a stay to preserve a foreclosure dispute. They seek a stay to preserve the Court's ability to determine whether the foreclosure itself occurred pursuant to lawful judicial authority.

The judicial inquiries raised in this appeal are threshold constitutional questions that must be resolved before any merits determination may proceed. Those inquiries include:

(1) whether Deutsche Bank, as a Trustee<sup>1</sup>, was a “holder” within the meaning of the governing promissory notes and applicable commercial law, and therefore constitutionally entitled to invoke judicial power to enforce the notes by foreclosure; and

(2) whether the District Court, by failing to adjudicate those jurisdictional objections before the trustee’s sale occurred, deprived White of his property without the judicial process guaranteed by the Fifth and Fourteenth Amendments.

Respondents attempt to reframe these inquiries as routine foreclosure defenses or waived procedural objections. They are neither. They concern the limits of judicial authority itself, and whether a court may allow property to be taken before confirming that it possesses jurisdiction and neutrality to adjudicate the taking.

Because these questions implicate the structure of judicial power itself, they cannot be waived by pleading, cured by amendment, or subordinated to expediency. A stay is necessary not to preserve a litigant’s tactical position, but to preserve the constitutional integrity of the adjudicatory process.

Appellants do not seek to relitigate the foreclosure merits. They seek assurance that any adjudication occurs in a court that first confirms its authority to

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<sup>1</sup> In this context, “Trustee” refers to Deutsche Bank’s asserted capacity as trustee for a mortgage-backed securities trust. Trustee status alone does not confer ownership of, or entitlement to enforce, a promissory note. Any entity invoking judicial power to enforce a note by foreclosure must independently establish that it is a “holder” or otherwise a “person entitled to enforce” the instrument under applicable commercial law, regardless of any trust or agency designation.

adjudicate at all.

Absent a stay, review of these threshold questions risks becoming purely academic, while White's property interest is irreversibly transferred under disputed constitutional authority. Equity exists and was incorporated into this Nation's Article III judicial adjudication system to prevent precisely that result.

**II. Reply to “FACTUAL BACKGROUND”, Response pp. 3-5.**

**A. Reply to “A. Background of the District Court Action,” Response pp. 2-4.**

Respondents' factual narrative omits and mischaracterizes the central issue presented below.

Appellants did not contend merely that the promissory notes were “destroyed or lost.” Appellants consistently contended that no Trust or trustee was a “holder” of the notes within the meaning of the governing promissory notes and applicable commercial law, and therefore lacked standing to invoke judicial power to enforce the notes through foreclosure. *See RCW 62A.3-301; Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 104, 285 P.3d 34 (2012).

Under *Spokeo v. Robins*, 578 U.S. 330 (2016), statutory authorization to sue does not itself confer Article III standing. A party must possess a concrete, legally protected interest in the right it seeks to enforce. Where a party is not a “holder” or “person entitled to enforce” under governing commercial law, it lacks constitutional standing to invoke judicial foreclosure power, regardless of statutory foreclosure procedures.

The Complaint and every subsequent presentation challenged the absence of any party with holder status required to enforce the instruments at all. That inquiry precedes and controls any foreclosure analysis under Washington’s Deeds of Trust Act. *See Bain*, 175 Wn.2d at 104.

Respondents’ assertion that Appellants “never moved to remand” is both misleading and constitutionally immaterial. The case was assigned on December 28, 2023—four business days before two trustee sales were scheduled—under local procedures that initially placed the matter before a magistrate judge rather than an Article III district judge. During that interval, Appellants filed jurisdictional objections challenging both the authority of the removing parties and the Court’s constitutional capacity to permit a deprivation of property before adjudicating those objections. The District Court did not adjudicate those objections.

The constitutional injury alleged is therefore not limited to removal. It is the deprivation of property under color of judicial authority before the Court confirmed that it possessed jurisdiction and neutrality to adjudicate the taking.

Both the initial failure to assign an Article III judge to adjudicate these threshold objections, and the subsequent refusal of the District Court—once acting through an Article III judge—to adjudicate Appellants’ standing challenges, constitute the factual predicates for the present application for a stay.

**Reply to: “B. The District Court’s Dismissal of White’s Claims and Remand of COTG’s Claims,” Response pp. 5-6.**

Respondents’ description of the summary judgment proceedings again omits the controlling legal issue. Under Washington law, the authority to enforce a

promissory note by foreclosure depends upon establishing “holder” status under the Uniform Commercial Code. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83 at 104.

Accordingly, the dispositive question was not whether Deutsche Bank’s expert asserted possession of “wet ink notes.” The dispositive question was whether Deutsche Bank established that it was a “holder” or otherwise a “person entitled to enforce” the instruments within the meaning of the governing notes and commercial law—and whether that question was adjudicated before title to White’s property was transferred.

That question was never adjudicated by any court with constitutional authority to decide it.

Respondents’ assertion that Appellants “changed course” likewise misstates the record and misapprehends the law. Jurisdictional defects cannot be waived, cured by litigation conduct, or forfeited by timing. A court has a continuing obligation to ensure its own constitutional authority before permitting the exercise of judicial power. *See, e.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998).

Appellants consistently maintained that no party before the Court possessed the constitutional and statutory standing necessary to invoke the involuntary sale of title procedures where property owners asserted such a deprivation constituted a proper legal and/or equitable ground to restrain such sales pursuant to RCW 61.24.130.

If the District Court’s later remand of COTG’s claims was correct, then the constitutional consequence is unavoidable: the court lacked Article III jurisdiction over the removed case itself. Article III confers jurisdiction only over “cases” and “controversies,” not fragmented portions of a single civil action. A court that lacks jurisdiction over a party to a removed action also lacks jurisdiction to adjudicate the controversy that binds the parties together.

Thus, even accepting the District Court’s remand order as correct, it confirms that subject matter jurisdiction was lacking at the time White’s property titles were transferred. A deprivation of property interests occurring in the absence of judicial jurisdiction cannot satisfy the due process guarantees of the Fifth and Fourteenth Amendments.

The remand did not cure the constitutional injury. It merely acknowledged, after the fact, that the Court lacked authority to adjudicate claims that had already produced irreversible consequences.

**Reply to: “C. The District Court’s Denial of Recusal” Response p. 5.**

Respondents’ recusal argument rests on a fundamental mischaracterization of the record. Applicants did not file a motion seeking recusal of Judge Cartwright based on personal bias, prejudice, or adverse rulings. Applicants objected to the Court’s exercise of judicial power striking the trial date without adjudication of those standing issues they raised. In response to that objection, the Court sua sponte reframed the issue as a recusal motion and then denied it under standards applicable only to claims of personal judicial bias.

Where a court is alleged to have allowed title to property to be transferred while jurisdiction and judicial authority remained unresolved, the issue is not disagreement with a ruling of a judge. The issue is whether the court can continue to adjudicate challenges to its own constitutional authority to act in the same proceeding.

That concern arises from structural due process, not from dissatisfaction with outcomes. As Chief Justice Marshall explained, the legitimacy of judicial power depends upon its faithful exercise within constitutional bounds. *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (judicial power exists only to decide cases within constitutional authority).

When a federal court exercises judicial power in a removed case before confirming that Article III jurisdiction exists over the controversy, the resulting adjudication raises structural constitutional concerns implicating separation of powers, federalism, and the limits imposed by Articles III and VI. The issue presented is not one of a judicial officer's personal bias for or against a party.

Rather, it is a challenge grounded in constitutional structure: an independent court, and the judges who comprise it, may not adjudicate the legality of their own unresolved jurisdictional authority after permitting an irreversible deprivation of property to occur without first addressing that authority. Where a court's own jurisdictional legitimacy is in question, the problem is institutional and structural, not discretionary or personal, and it cannot be reduced to a conventional recusal analysis.

### **III. Reply to: “LEGAL ARGUMENT” pp 6-14.**

#### **A. Reply to “Appellants’ Motion is Premature.” Response, pp. 6-7.**

Respondents assert this Application for a stay is premature because “[i]n this matter, Appellants filed this Motion three days after the filing of the District Court Motion” and “Appellants provide no legitimate reason why they could not follow the procedure outlined in Fed. R. App. P. 8” Response, at 6.

Applicants filed their Notice of Appeal on January 2, 2026. As a matter of law, that filing transferred jurisdiction over the matters appealed to the Court of Appeals. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982). Once appellate jurisdiction attached, the District Court lacked authority to adjudicate the very jurisdictional and structural issues now before this Court.

The District Court did not promptly transmit the Notice of Appeal to the Ninth Circuit. *See* App. E at 064–067, Wood Decl. As a result, Applicants were compelled to file their stay application in the District Court as a procedural conduit, even though the application was directed to the Court of Appeals. The District Court nonetheless proceeded to treat the motion as its own and undertook to adjudicate it—despite having previously declined to adjudicate Applicants’ jurisdictional objections.

Applicants did not seek District Court adjudication of their stay request. They sought appellate protection from a court whose authority they had consistently and timely challenged.

Federal Rule of Appellate Procedure 8 is a procedural sequencing rule. It does not override constitutional limits on judicial power. As *Coinbase* confirms, when the authority of a tribunal to proceed is itself in dispute, appellate jurisdiction exists precisely to prevent parties from being forced to litigate in a forum that may lack constitutional authority to act. 599 U.S. at 742–43.

Here, Applicants allege that the District Court, as an institution, permitted foreclosure proceedings to continue before adjudicating whether it possessed constitutional authority to adjudicate the case at all. Under those circumstances, requiring exhaustion of Rule 8 procedures before seeking appellate protection would elevate form over constitutional substance.

Rule 8 cannot be applied to compel litigants to submit jurisdictional and structural constitutional objections to the very tribunal whose authority is in question. The stay sought here is not procedural convenience; it is a safeguard of appellate jurisdiction and constitutional due process. Accordingly, Applicants' application is not premature. It is constitutionally necessary.

**B. Reply to: "Appellants Motion should be denied Because Appellants Cannot Establish the *Winter* Factors" or "Serious Questions Going to the Merits."** Response, pp. 7–8.

Applicants do not dispute the *Winter* framework or the discretionary nature of a stay. Applicants agree that a stay is not a matter of right. But discretion must be exercised in light of the circumstances presented. Where the exercise of judicial power itself is challenged as constitutionally defective, the *Winter* factors weigh in favor of preserving appellate review rather than permitting further enforcement under disputed authority. This Application concerns whether judicial power was

exercised before jurisdiction, standing, and neutrality were established. In such circumstances, the *Winter* analysis must be applied in a manner that protects constitutional structure.

**1. Reply to “Appellants Cannot Show They Are Likely to Succeed on the Merits”, Response p. 9.**

Applicants have demonstrated a likelihood of success because they raise structural constitutional and jurisdictional defects that must be resolved before any merits determination can occur.

It is black-letter law that federal courts have an independent, continuing obligation to assure themselves of subject-matter jurisdiction. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). Likewise, litigants are constitutionally entitled to adjudication by a tribunal that is structurally neutral and competent. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

Applicants consistently argued that no defendant qualified as a “holder” or “person entitled to enforce” the promissory notes under Washington law, and that no party therefore possessed standing to invoke foreclosure authority. Those arguments were never adjudicated. Instead, the District Court declared Applicants’ jurisdictional challenges “moot” because the Church of the Gardens had not proved its standing to participate in this case removed from the state court.

Under *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94–95 (1998), a court may not assume jurisdiction in order to dismiss jurisdictional objections as immaterial. Jurisdiction must be resolved first.

Because Applicants' claims concern the legitimacy of the adjudicatory process itself, the likelihood-of-success inquiry must be evaluated in light of the judiciary's institutional duty to resolve jurisdictional and structural defects before permitting enforcement of judgments.

At minimum, Applicants have demonstrated "serious questions going to the merits," which is sufficient under Ninth Circuit precedent where, as here, irreparable harm is present and the balance of hardships favors preservation of appellate review.

**a. Reply to "The District Court Had Subject Matter Jurisdiction Over White's Claims Pursuant to 28 U.S.C. §§ 1331 and 1441, Response pp. 9-11.**

Respondents misstate both the nature of Applicants' pleadings and the constitutional inquiry presented.

Applicants' state-court Complaint sought declaratory and injunctive relief under RCW 61.24.130 to restrain trustee sales based on legal and equitable grounds, including federal constitutional principles. The Complaint did not request adjudication of federal constitutional claims as independent causes of action; rather, those principles were asserted as constraints on the State's involuntary sale of title procedures. Such pleading does not automatically confer federal-question jurisdiction. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005) (federal jurisdiction exists only where a federal issue is necessarily raised, actually disputed, substantial, and capable of resolution in federal court without disrupting the federal-state balance).

More fundamentally, Applicants' jurisdictional challenge does not rest on the pleading mechanics. It rests on whether any defendant possessed standing as a holder to enforce the notes at all, and whether the court could exercise judicial power in the absence of such standing.

Subject-matter jurisdiction cannot be created by waiver, litigation conduct, or amendment. *Arbaugh*, 546 U.S. at 514 (2006). Nor can later amendments retroactively cure jurisdictional defects. *Steel Co.*, 523 U.S. at 94–95.

Respondents' reliance on *City of Oakland v. BP PLC* assumes the very point in dispute: that the court possessed authority to adjudicate the enforcement controversy in the first place. But Applicants consistently maintained that:

1. No defendant was a “holder” entitled to enforce the notes;
2. Jurisdictional objections were timely and unresolved; and
3. Judicial power was exercised over property interests and the res in question without establishing enforceable rights.

Those defects are structural. They are not cured by pleading strategy, litigation participation, or amendment.

That the District Court later vacated its judgment as to COTG for lack of subject-matter jurisdiction underscores the very constitutional instability Applicants have identified. Jurisdiction cannot be selectively present and absent in the same enforcement controversy depending on which party's property interests are being adjudicated.

Accordingly, Applicants' appeal does not challenge jurisdiction as a tactical afterthought. It challenges whether judicial power was constitutionally exercised at all. That inquiry remains reviewable, substantial, and central to the legitimacy of the proceedings below.

**b. Reply to: "The Ninth Circuit Does Not Have Authority to Review the Remand Order as to COTG's Claims", Response pp. 10.**

Applicants do not seek review of the fragmented remand order as to COTG. They seek review of whether judicial power was constitutionally exercised before the District Court claimed it had no jurisdiction over the case because Church of the Gardens had been removed as a plaintiff.

An inferior Article III court may not exercise judicial power first and disclaim jurisdiction later. *Steel Co.*, 523 U.S. at 94.

Section 1447(d) bars appellate review of remand orders; it does not insulate all prior judicial conduct from constitutional review. Nor does it bar appellate consideration of whether a district court's prior rulings were void for want of jurisdiction. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (jurisdiction is "the first and fundamental question").

If the District Court lacked jurisdiction as to COTG, then its prior exercise of judicial authority over the same controversy remains constitutionally reviewable. Thus, under the facts of this case, the District Court's remand confirms the core defect which Applicants challenge: that judicial power was exercised in the absence of jurisdiction.

**c. Reply to: “Appellants Failed to Satisfy the Standard for Recusal” Response**  
pp. 10-11.

Respondents misframe Applicants’ judicial-neutrality challenge by treating it as a claim of personal bias. It is not.

Applicants did not seek recusal. The District Court sua sponte reframed Applicants’ jurisdictional objections as a recusal issue, thereby attempting to inappropriately convert a structural constitutional challenge into a discretionary personal-bias inquiry. That reframing avoided adjudication of the constitutional issue presented.

Applicants allege here, as they did below, structural, institutional partiality—not personal animus. Structural bias arises when the adjudicatory system itself creates a risk or appearance of partiality. *See Tumey v. Ohio*, 273 U.S. 510 (1927); *Ward v. Monroeville*, 409 U.S. 57 (1972); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). *Cf. Cain v. White*, 937 F.3d 446 (5th Cir. 2019) *cert. denied*, 140 S. Ct. 1120 (2020); *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019) *cert. denied*, 140 S. Ct. 1120 (2020).

Here, when the titles to White’s properties were sold without his consent just four business days after this case was removed to the District Court for the Western District of Washington:

1. The case had not been assigned to a District Judge, who comprised that court, App. BB at 429–440;
2. Jurisdictional objections to defendants standing as a *holder* appeared as part of the complaint and had not been answered, App. GG at 485–578;

3. A presentation objecting to the assignment of a magistrate judge was filed along with a notice to the District Court and defendants that if the titles to his property were sold as a result of the mechanics of this removal Applicants would pursue a remedy against the District Court and possibly its District Judges, App. EE at 476–478;
4. An entity identified as “Chambers”, purported to strike that objection to the District Court’s operation from the record. It was later clarified that this order came from the “chambers” of the magistrate judge, App. BB at 429–440;
5. The Church and property owner were required to file a motion to restore the record after titles to White’s properties were sold because the District Court (then still being operated by the magistrate judge’s chambers) refused to do so, App. CC at 452–461;
6. When a district judge was finally assigned to this case, that District Judge restored the objection but did not adjudicate it, App. W at 340–342;
7. The district court never adjudicated the judicial inquiry as to whether any of the defendants qualified as the “holder” of the note entitled to enforce the payment provisions of the pertinent notes notwithstanding this issue was obviously before that court, App. GG at 495–501; and
8. Now, even after the filing of the notice of appeal after almost three years of litigation, the District Court appears to be wanting to decide these same issues all over again now that the conduct of that District Court is on appeal, App. A at 009–010.

When a District Court's own authority, jurisdiction, and institutional conduct are at issue, the neutrality problem is not cured by the absence of personal bias.

The District Court below is, by definition, judging the legality of its own exercise of power. That circumstance implicates the ancient maxim *nemo judex in causa sua*—no one may be a judge in his own cause—which is a core component of due process. See *In re Murchison*, 349 U.S. at 136 (1955). *See also Tumey*, supra.

**2. Reply to: “Appellants Cannot Show Irreparable Harm Absent an Injunction”, Response pp. 12.**

The loss of title associated with specific real property parcels through allegedly unconstitutional taking mechanisms constitutes irreparable harm as a matter of law.

Due process protects not merely economic value, but the right to possess, use, and exclude others from specific property. *Fuentes v. Shevin*, 407 U.S. 67, 90–91 (1972); *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991). The deprivation of those rights without constitutionally adequate process is irreparable even if monetary compensation might later be possible.

Moreover, the Supreme Court has long recognized that the loss of constitutional rights, even temporarily, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And in the stay context, irreparable harm includes injury that cannot be undone through later appellate relief. *Hilton v. Braunschweig*, 481 U.S. 770, 776 (1987)

Real property is unique. Its loss is presumptively not compensable by money damages alone. Applicants do not merely lose economic value; they lose specific

parcels, specific possessory interests, and specific legal relationships to land—all while the constitutional authority for that loss remains unresolved. Accordingly, Applicants have demonstrated irreparable harm.

**3. Reply to: “The Balance of the Equities Tip in Favor of the Trusts” Response pp. 12-13.**

Respondents argue that the equities favor foreclosure because White has been in default and has received rental income. That framing misstates the nature of the Motion.

Applicants do not seek to avoid contractual obligations. They seek to preserve this Court’s ability to adjudicate whether any court possessed constitutional authority to permit sale of the titles to White’s properties at all.

Where a litigant asserts that property has been taken under color of judicial authority before jurisdictional and neutrality objections were adjudicated, the equities cannot be measured by payment history alone. The balance of equities must account for whether a court system may extinguish property interests before resolving its own authority to act.

If the stay is denied, Applicants permanently lose possession of the properties, and this Court’s prospective review of the constitutional and jurisdictional questions becomes functionally moot. If the stay is granted, Respondents experience only a temporary delay in enforcement of interests whose validity remains in dispute.

Equity therefore favors preservation of appellate jurisdiction and constitutional review, not acceleration of enforcement before that review occurs.

**4. Reply to: “An Injunction is Not in the Public Interest” Response p. 12.**

Respondents invoke the public interest in stability of land titles under Washington’s Deeds of Trust Act. That interest, while legitimate, is subordinate to the public interest in courts exercising only constitutionally authorized judicial power.

The public has no interest in stability achieved through proceedings whose jurisdictional and neutrality foundations remain unresolved. To the contrary, the public interest is undermined when property titles are finalized before courts determine whether they had constitutional authority to permit the transfer.

Preserving confidence in the legitimacy of the judicial process is itself a core public interest. A temporary stay serves that interest by ensuring that constitutional questions are resolved before irreversible enforcement occurs.

**C. Reply to “Nowhere in the Motion Do Appellants Offer “a Bond of Other Security”. Response pp. 13.**

Federal Rule of Appellate Procedure 8(a)(2)(E) authorizes a court to require a bond; it does not mandate one. Bond requirements are routinely waived where the relief sought is to preserve constitutional or jurisdictional rights rather than to secure a money judgment.

Applicants do not seek to restrain ordinary commercial activity. They seek to preserve this Court’s jurisdiction to determine whether judicial authority was constitutionally exercised. Conditioning that preservation on a financial bond would improperly transform constitutional adjudication into a privilege available only to those able to post security.

Respondents identify no quantifiable interim damages that would justify a bond beyond the ordinary consequences of appellate delay. Accordingly, the absence of a proposed bond provides no basis to deny jurisdiction-preserving relief.

**IV. Reply to: “Conclusion”, Response p. 15.**

Given the above, Applicants’ Application for a Stay should be granted.

Respectfully submitted this 22nd day of January 2026 at Arlington, Washington.

By: *s/ Scott Erik Stafne, WSBA No. 6964*

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